

Imprisonment for drug-related offenses in Argentina

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Introduction

Within the international illegal drugs market, Argentina is a “transshipment” country for cocaine. Recent decades have seen an increase in the consumption of narcotic and psychotropic substances in the country, and in recent years, laboratories for the production of cocaine hydrochloride have begun to appear, though not on the scale of those in Colombia, Peru, or Bolivia.

Argentina’s criminal laws in relation to these substances have been evolving since 1924, but since the 1970s their repressive aspects have been accentuated. The growing persecution that has resulted from this legislation has come down especially hard on users and small-scale players in the trafficking business, in particular women and foreigners, groups that are overrepresented in the population of persons imprisoned for such offenses.

Developments in criminal legislation

Argentina’s criminal legislation related to drugs developed throughout the 20th century accompanied by a proactive police presence and, in the second half of the century, in tandem with international legislation.

Neither the 1921 criminal code nor previous legislation made any reference to narcotic substances. In 1924, Law 11,309 incorporated the terms “narcotics” and “alkaloids” into the criminal code and made it an offense to bring such substances into the country clandestinely, sell them without a medical prescription, or prescribe or distribute them in dosages greater than those indicated. In 1926, a new amendment to the criminal code was approved, Law 11,331, which made it possible to criminalize possession without distinguishing between traffickers and users.

According to some specialists, the “drug problem” took hold in Argentina in the late 1960s.¹ Law 17,567 of 1968 expanded the description of criminalized conduct follow-

ing the model set by international legislation,² and penalties were increased from one to six years in prison. Unlawful possession “that exceeded the amounts corresponding to personal use” was punished with the same penalty. This was the only time that Argentine criminal legislation expressly excluded punishment of possession for consumption. This law lasted until 1973, when it was repealed for having been issued by a de facto government and the legislation returned to the 1926 version.

In 1974, Law 20,771 came into force. It was the first special criminal law on drugs promoted by the Ministry of Social Welfare under José López Rega, founder of the Argentine Anticommunist Alliance (AAA: Alianza Anticomunista Argentina), who shared the views of Richard Nixon on the potential for using the “war on drugs” to fight guerrilla organizations. The message that accompanied the bill indicated that these offenses constituted an attack on “national security.” This rhetoric would justify drug-related offenses being considered federal offenses.

The return to democracy in 1983 saw changes in both legislation and case-law. While Law 20,771 remained in force, the new sensibilities of the incipient democracy were reflected in a draft reform of that law in 1986 that blended some progressive initiatives³ with others more reflective of the times, including novel features in the legislation.⁴

Nonetheless, the delay in taking up the draft legislation, the appearance of other perspectives, and the influence of the United Nation’s 1988 Vienna Convention all resulted in a new law based on the already-existing one, but with more severe penalties and some new aspects. The current drugs statute, Law 23,737 of 1989, did not substantially modify the definition of trafficking offenses and increased the applicable range of sentences to between four and 15 years in prison. In addition, it maintained the punishment for personal consumption (a prison sentence of one month to two years). Months before its entry into force, a specialized secretariat was established in the Office of the Presidency of the Nation which would come to have more functions over the following years.⁵

In 2009, the Arriola judgment of the Supreme Court found repression in response to possession for personal use unconstitutional. Nonetheless, there is still a tension between how the security forces and the courts enforce the law on this point. Indeed, the law that explicitly punishes possession for personal consumption remains in force, police employ practices that enforce the law with repression, and courts interpret the law in discriminatory and inconsistent fashion.

In summary, one observes a tendency towards harsher criminal legislation over the past century, even though a serious problem of consumption of “paco” (a relatively recent variety of cocaine derivatives, similar to crack in its effects) has only appeared in recent years.

Argentina's criminal legislation on narcotic drugs

- **1924 (11,309):** The terms “narcóticos” and “alcaloides” were incorporated into the law. The following conduct was criminalized: clandestinely bringing such substances into the country; the sale by those who, being authorized, do so without medical prescription; and the prescription and dispensing of dosages larger than those indicated. Penalty: six months to two years in prison.
- **1926 (11,331):** The unlawful possession of narcóticos and alcaloides is considered a crime. Penalty: six months to two years in prison.
- **1968 (17,567):** The term “estupefacientes” (narcotic drugs) is incorporated into the law. Distinct forms of conduct that are part of trafficking are listed – including unlawful possession – and the penalty is increased (one to six years in prison). Unlawful possession remains criminalized, but only if “it exceeds that corresponding to personal use.”
- **1973 (20,509):** Law 17,567 is repealed and the law reverts to the 1926 legislation.
- **1974 (20,771):** Different conduct that constitutes trafficking is listed, and the penalty is increased (three to 12 years in prison). Unlawful possession is distinguished with a lesser penalty (one to six years in prison), but it includes possession for personal use.
- **1989 (23,737):** Different forms of conduct that constitute trafficking are listed, and the penalty is increased (four to 15 years in prison). Unlawful possession (simple), with the same penalty (one to six years of prison), is distinguished from possession for personal consumption with a lesser penalty (one month to two years in prison) and the possibility of diversion to a treatment program (if “dependent”) or an educational program (in the case of “experimenters”).

The prison system, defense counsel, and other actors

Argentina's prison system is composed of various penitentiary services. Along with the Federal Penitentiary Service (SPF: Servicio Penitenciario Federal) are the penitentiary services of each of Argentina's 23 provinces. The federal prisons hold persons who have been detained by order of the Federal Courts (for federal offenses)⁶ or National Courts (for common offenses),⁷ whereas the prisons of the Province of Buenos Aires hold persons detained by order of the courts of the judicial branch of the Province of Bue-

nos Aires for common (not federal) crimes, though this distinction is not so clear-cut in every case.

While the number of persons detained in the SPF represents less than 20 percent of the persons detained nationwide, it accounts for almost 60 percent of those in prison for drug offenses. It is followed, in numbers detained, by the Penitentiary Service of the Province of Buenos Aires (SPB: Servicio Penitenciario de la Provincia de Buenos Aires), which accounts for just over 40 percent of persons imprisoned in all of Argentina, and for just over 20 percent of prisoners held for drug offenses nationwide. This concentration of persons detained for drug-related offenses (80 percent of the national total) in these two services (SPB and SPF) justifies taking a closer look at them for the purposes of this investigation.

The SPF's budget in 2009 was \$270 million USD (0.5 percent of the federal budget), whereas the SPB's budget was \$274 million USD (1.9 percent of the budget for the province of Buenos Aires). Monthly spending per detainee in the SPF is \$1,600 USD; in the SPB, it is estimated at \$864 USD.

The SPF is made up of 31 establishments with a capacity for 10,489 persons. As a result of the increase in capacity and the decline in the number of persons detained, as of late 2006 there was no more overcrowding. The SPB has capacity for 23,858 inmates and – according to official figures – there is no overcrowding. Nonetheless, if the number of persons detained in police facilities in the province of Buenos Aires is also considered, one could say there is a shortfall in total capacity.

The SPF has 7,786 agents in the units that house inmates: 2,607 (33 percent) for security, 3,458 (45 percent) for treatment (social reinsertion), and 1,721 (22 percent) for administration. A total of 344 professionals and 271 auxiliaries work in the health area. At present, 17,000 persons work in the SPB, but data is not available on how many work in the places of detention.

The Procuración Penitenciaria (prisoner advocate office) is an agency that pertains to the National Congress and works in the federal system, where it undertakes to protect the human rights of persons deprived of liberty. Its annual reports reflect a more critical view of the prison situation than that presented by the SPF itself.

With respect to public defenders, since the 1994 constitutional reform, the Public Ministry of Prosecutors (Ministerio Público Fiscal) and the Office of Public Defenders (Ministerio Público de la Defensa, MPD, also known as the Defensoría General de la Nación) became independent of all other branches of government, enjoying functional autonomy and financial self-sufficiency. The MPD performs its work in criminal cases (for common and federal offenses) in the city of Buenos Aires through 82 public defenders

and their support staff and in federal criminal cases in the rest of the country, with approximately 97 defense counsel and support staff. The MPD has a prisons committee and a gender committee that work on both issues. Civil society organizations also provide information on the prison situation⁸ and/or assistance to the detainees during or after their imprisonment. Some of these organizations are made up of persons who were imprisoned, or their family members,⁹ and are trying to change the prevalent view of the incarcerated.

The prison population according to various sources

The prison population in Argentina increased steadily following the return to democracy in late 1983, although recent years have seen a decline.

Taking into account all prison systems in the country, in 1997 a total of 29,690 persons were behind bars. According to the National System of Statistics for the Enforcement of Sentences (SNEEP, Sistema Nacional de Estadísticas para la Ejecución de Penas), by 2001 the total had risen to 41,007 inmates, peaking in 2005 at 55,423 inmates.¹⁰ In 2007, the number of inmates stood at 52,457, and in late 2007, the prison rate was 133 per 100,000 population, compared to 63 per 100,000 in 1992 and 109 per 100,000 in 2001 (Graph 1).¹¹

According to SPF data (in Graph 2), in 1984, some 2,369 persons were being held in SPF facilities; in 1989 that number climbed to 4,108; in 2000 to 7,146; and in 2005 to 9,625. The last available information indicates that as of March 26, 2010, SPF prisons were holding 9,391 persons.

The data on detainees in the SPB from 1997 to 2007 is presented in Graph 3. The 2009 report of the Committee Against Torture of the Provincial Commission for

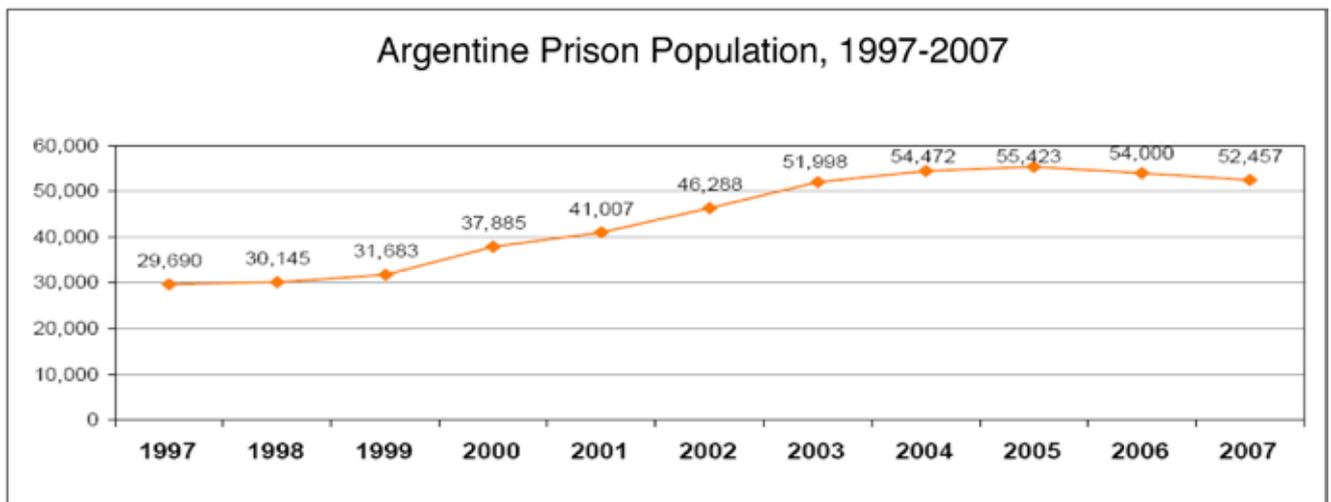
Memory notes that “as of March 2008 there were 21,104 detainees; this figure had risen to 24,180 by March 2009. In all, the province had, as of March 2010, 28,322 persons in prison.”¹²

Different sources indicate that of the federal prison population (SPF), one third were in prison for drug-related offenses, this being the second leading type of offense after crimes against property (mainly robberies).

According to research led by Alcira Daroqui, in 2001 an estimated 32.6 percent of persons in prison were detained on drug charges, whereas 40.6 percent were in for crimes against property.¹³ The data produced by the SNEEP, based on the drug-related offenses mentioned, show that in 2004 and 2007 these percentages remained similar, at 27.26 percent and 32.64 percent, respectively, while crimes against property accounted for 43.01 percent and 43.25 percent. Similar figures appear in the report prepared by the United Nations Office on Drugs and Crimes (UNODC) after its visit to the SPF in mid-2008.¹⁴

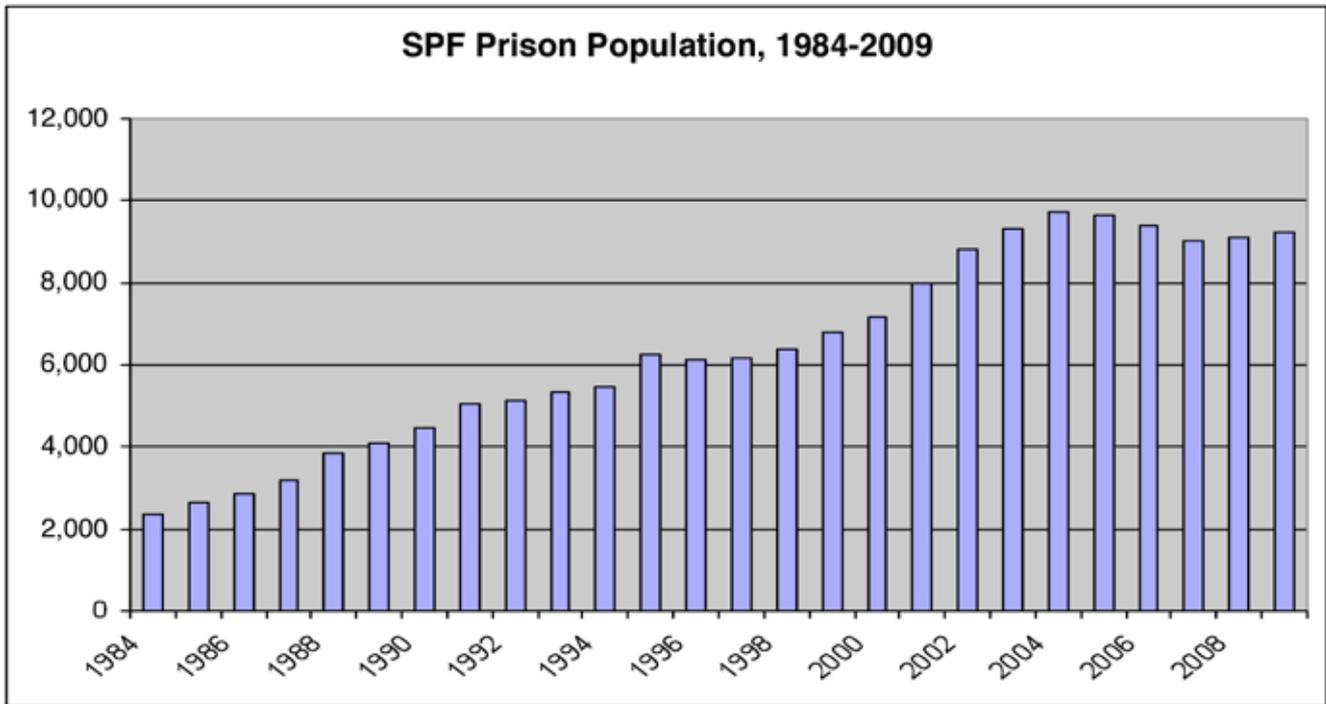
Research by the National Women’s Council (CNM, Consejo Nacional de la Mujer) on the prison population from 1995 to 2000 also suggests that convictions for drug-related offenses were on the rise during the 1990s, coinciding with the years in which Law 23,737 was in force. Breaking down the types of offenses for which persons were detained in the SPF, there is a section under the title “Special Laws” in which the drug laws have an exclusive or at least very major impact. According to the available information, 33 persons were detained under the special laws in 1985. In 1989, the year the law currently in force was adopted, the figure increased to 332, and it continued to rise in subsequent years; in 1995, it reached 1,400, and by the year 2000, the last year for which the figure is available, 1,872 were in prison under the special laws. Accordingly, whereas in 1985 this category accounted for 1 percent of SPF prisoners, in 1989 it reached 8 percent, in 1995 it surpassed 25

Graph 1



Source: SNEEP, Annual Report 2007; National Bureau of Criminal Justice Policy of the Ministry of Justice, Security, and Human Rights of the Nation

Graph 2



Source: Federal Penitentiary Service (Annual Report 2008 and website - www.spf.gov.ar; 1982-1992 and 2000-2009) and SNEEP, SPF 2007 (1993-1999)

percent, and by the year 2000, more than 27 percent of all persons imprisoned in the SPF were behind bars for drug-related offenses.

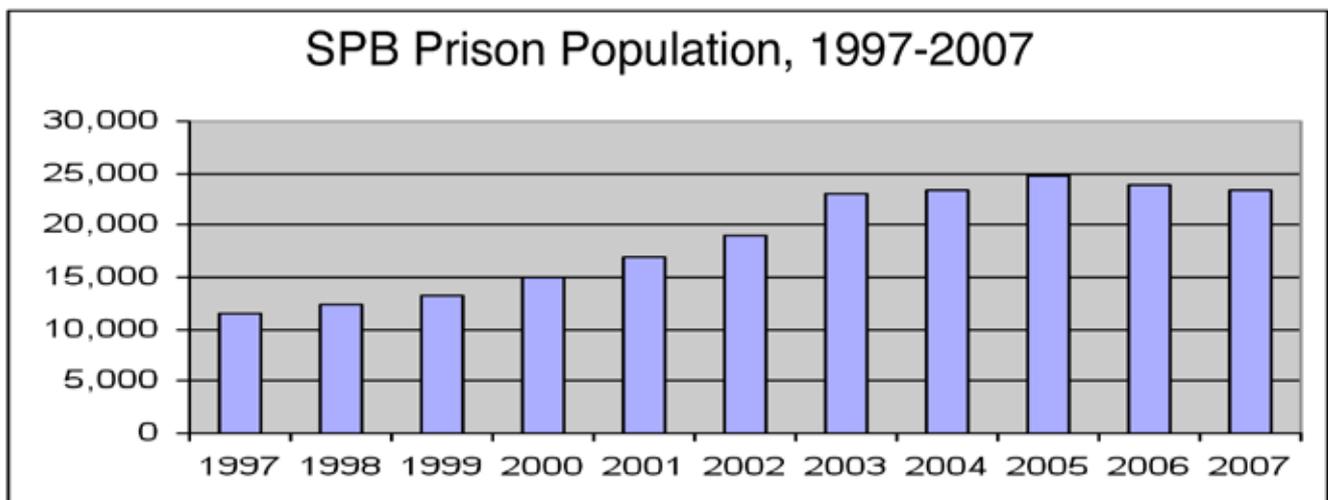
Within the SPB, in 2007 drug-related offenses accounted for only 4.78 percent of inmates, a figure which, while below that of the SPF, appears to show an upward trend in recent years, following the reform known as “de-federalization.”¹⁵

In its most recent annual report, the Centro de Estudios Legales y Sociales (CELS) states: “According to official data, the intake of persons to the Penitentiary System of the Province of Buenos Aires (SPB) for such offenses climbed from 46 inmates in 2005 to 960 in 2008 (not counting persons detained at police stations). As of September 2009, 7.5

percent of the population held in the SPB was behind bars for violating Law 23,737.”

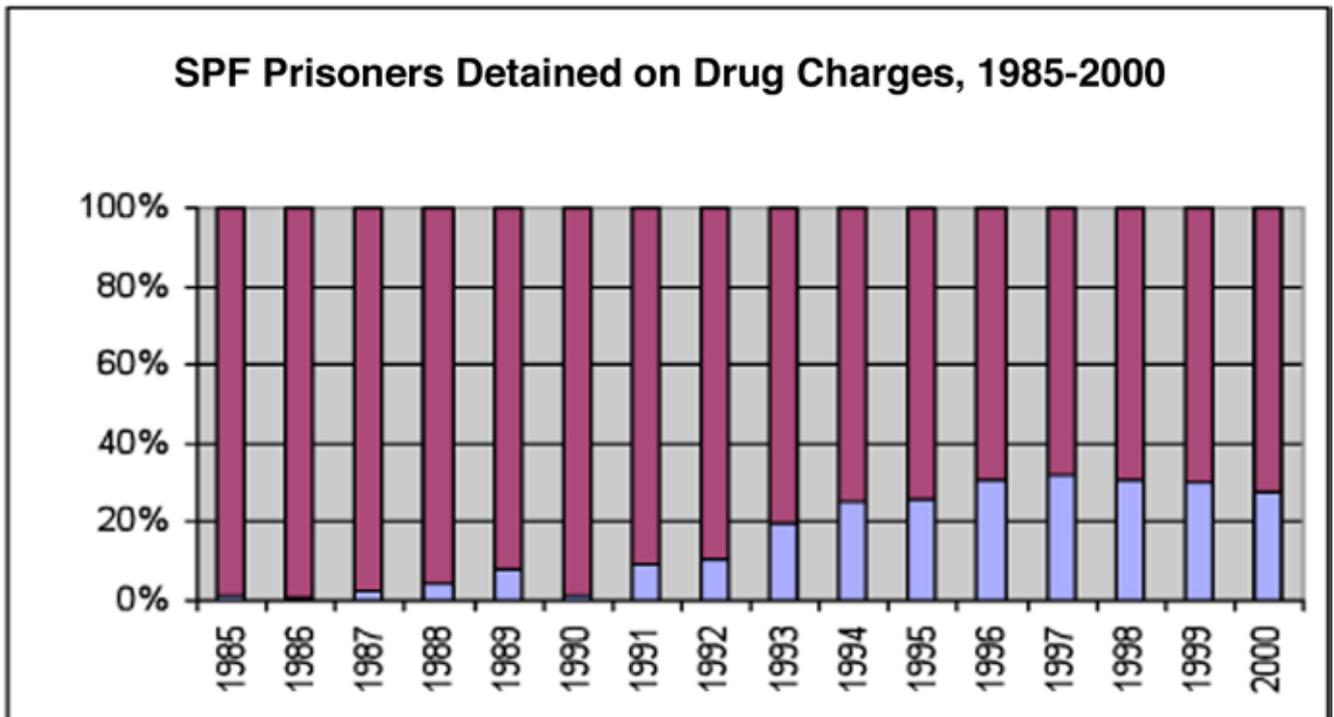
The available information does not allow one to discern the specific offense within this category, making it impossible to learn more details about the offenses for which they are in prison. Nonetheless, the offenses are those whose minimum penalties are more than three years in prison, and that do not permit the defendant to be released during trial¹⁶ or allow for the imposition of a suspended sentence.¹⁷ These would include, among others, the offense of drug trafficking, both nationally and internationally, and would exclude those associated with use, such as possession or growing for one’s own consumption. A similar finding, though limited to women prisoners who have been convicted, is in

Graph 3



Source: SNEEP, Annual Report 2007; National Bureau of Criminal Justice Policy of the Ministry of Justice, Security and Human Rights of the Nation

Graph 4



Source: National Women’s Council (Research project on the population of women prisoners held in the SPF, 2001)

the CNM’s 1995 research study, which states: “The cases in this population of women involve possession to sell, contraband, transport, and commerce of drugs ... they do not include cases of consumption.”¹⁸

Nonetheless, there are cases of users whose acts have been construed as trafficking or who, though treated as users, suffered the consequences of being detained, whether due to having been incarcerated or having a judicial case pending and being subject to potential police and judicial abuse.

About 60 percent of the persons behind bars in the federal system have not been convicted (they are facing charges) and about 40 percent have been convicted. The above-mentioned study by Daroqui indicates that in 2001 the percentages were 58 percent on trial and 41 percent convicted. The data of the SNEEP show that in 2004, the breakdown was 51 percent on trial and 48 percent convicted, and in 2007, 55.8 percent and 43.7 percent, respectively. The data available as of March 5, 2010, present similar findings, though over 60 percent of the women imprisoned were still on trial.¹⁹

Nonetheless, in the province of Buenos Aires, according to the data,²⁰ in both 2001 and 2004, 85 percent of those being held were on trial and 14 percent had been convicted. According to the SNEEP data, in 2007 the situation had improved, with 76 percent on trial and 21 percent convicted. Nonetheless, another report by the Committee against Torture of the Provincial Commission for Memory indicates that of all women in the SPB, 84 percent are facing trial; among those who live with their children, this figure is 96 percent.²¹

The SNEEP also shows (in 2004 and 2007) that 70 percent of the persons detained in the SPF were behind bars for the first time. Of the persons convicted, 50 to 51 percent had sentences of three to six years, followed by those who had received six to nine years (17 to 18 percent) and then by those with sentences of nine to 12 years (10 percent). In the SPB (2007), 67 percent were in prison for the first time. Among those convicted, 42 percent were facing sentences of three to six years, followed by those facing sentences of six to nine years (33 percent), and then by those sentenced to up to three years (10 percent).

The available information on the SPF indicates that while most of this prison population is made up of men, the number of women has been climbing at a quicker pace, meaning that the percentage of women as within the overall SPF population has grown.

Table 1

| Population held in the SPF as of March 5, 2010 | | |
|--|-----------|-------|
| General | | |
| On trial | Convicted | Other |
| 5,143 | 4,147 | 61 |
| 55% | 44% | 1% |

| Women | | |
|----------|-----------|-------|
| On trial | Convicted | Other |
| 476 | 310 | 6 |
| 60% | 39% | 1% |

Source: Servicio Penitenciario Federal

In 1984, there were 100 women imprisoned; the figure had climbed to 253 by 1989 and to 718 in 2000. As of March 5, 2010, the number of women in SPF prisons stood at 792.²² According to these figures, from 1989 to 2008 the number of women in the SPF increased 271 percent,²³ while the number of men rose 112 percent. Up to 1988, under democratic governments, the percentage of women had never accounted for more than 5 percent of the population of the SPF; in 1989 it reached 6.2 percent and by 1995, women came to account for 10 percent of the prisoners and continue to do so to date, according to figures from various sources. The nominal and percentage increase of women in the population of the SPF has coincided with the entry into force of Law 23,737 (which increased the penalties), first in the 1990s and persisting to the present day. This trend shows an initial link between drug-related offenses and the female prison population.

In the population of the SPB, women account for a smaller percentage of prisoners. While it is not possible to illustrate how it has evolved as shown in the case of the SPF, the latest information shows that women account for 4 percent of the total population.²⁴ Nonetheless, the Provincial Commission for Memory notes that whereas in 2007 the percentage was less than 3 percent, according to the 2008 data it had climbed above 4 percent. The increase is a result, according to the commission, of the enforcement of the drug law.²⁵

Various investigations indicate that the leading cause for which women are behind bars in the SPF is drug-related offenses. A similar increase is now beginning in prisons in the province of Buenos Aires.

The research studies by the National Women's Council (CNM) reveal that in 1995, 45.7 percent of women in prison were convicted for drug-related offenses,²⁶ whereas by 2001, this figure had risen to 55.7 percent. The research project headed by Daroqui shows that in 2001, 69.3 percent of women in prison were there for drug offenses. In addition, the 2006 report produced by the Prisons Commission (Comisión de Cárceles) of the Office of Public Defenders in two different prison facilities shows that the percentages of women in prison for drug-related offenses reached 65 percent and 72 percent, respectively.²⁷ Of particular interest, in the prison with the higher percentage there were more foreign women, a circumstance that raises questions regarding the motives for imprisonment of this particular population. A news article from late 2009 indicated that according to the information provided by the SPF, there were some 700 women in federal prisons for drug-related offenses, accounting for 80 percent of the total number of women behind bars.²⁸

According to the Provincial Commission for Memory, as of September 2007, at the SPB prison that held 88 percent of the women with children, 31 percent were in for drug-related offenses.²⁹ The report's author, Laurana Malacalza,

"... the most common thing was to have women who sold in their neighborhood... you know ... the 31, the 11-14, the one from Saavedra, that is, all the marginal neighborhoods here around Buenos Aires ... and I had many such friends who are women who were supporting the family."

Author's interview with a 40-year-old woman

noted subsequently that approximately 40 percent of the women in the SPB were confined for such offenses.

In recent years there has also been an increase in the percentage of foreigners detained in the SPF. Daroqui's research indicates that in 2001, the foreign population reached 14.94 percent, and the 2004 SNEEP placed it at 14 percent. These figures show that the foreign population accounts for approximately 20 percent.³⁰ It accounts for only 3 percent of the total in the SPB.

Recent years have seen certain changes in the composition of the foreign population in the SPF. The information available indicates how, early in the first decade of the 21st century, approximately 90 percent of foreigners were from other countries in the Americas, mostly South America. In recent years, this figure has dropped to 80 percent, with a sharp increase in the number of persons from Europe and Asia. In 2003, persons of European origin accounted for 5.21 percent, whereas in 2008, they accounted for 13.21 percent; in the same years, persons of Asian origin saw an increase in their numbers from 1.86 percent to 3.19 percent. Among Europeans, special note should be made of the large number of persons of Spanish origin, who account for nearly 40 percent of all prisoners from Europe. Also striking is the high percentage of persons of South African origin, accounting for 83 percent of the Africans.

Of the foreign prisoners, the percentage behind bars for drug-related offenses is higher than for the general population. In the first years of this decade, the percentages were approximately 50 percent and, as of 2005, over 60 percent, having peaked in 2007 at 68.46 percent.

The percentage of women in the foreign prison population is greater than the percentage of women in the general prison population, and unlike the latter has increased in recent years. While the research of the CNM showed that in 1995 and 2001 women accounted for more than 20 percent of all foreigners convicted, other sources from subsequent years place that figure at approximately 15 percent. As of 2005, according to SPF data, the figure climbed above 20 percent, peaking in 2007 at 23.22 percent.

While there is no information detailing the exact offenses for which foreign women are detained, in the information provided by the National Women's Council for 1995, of the 27 foreign women convicted, 24 (88 percent) were

convicted of drug-related offenses. A similar proportion (80 percent) was convicted of such offenses according to the 2008 UNODC report.³¹ According to the report of the Asociación por los Derechos Civiles (Association for Civil Rights), in federal prisons “87 percent of all women detained from bordering countries and Peru are in prison for violations of the law on narcotic drugs.”³²

Table 2 illustrates a breakdown of the population held in the SPF and SPB by age.³³

The research by the CNM shows that women in prison for drugs tend to be older than women in prison for other types of offenses. While those convicted of crimes against property are in the 18-to-34-year age range (almost half ages 18-to-24), those held for drug-related crimes are predominantly in the 25-to-44 year range. Even in the research done in 1995, 56 percent of the women convicted of violations of the drug law are in this age bracket; in 2001 this figure increased to 63 percent.

The 1995 research study indicated that most of the women convicted of drug-related offenses were separated or divorced (42 percent) or did not have a partner (62 percent), though this latter figure appeared to drop again in the 2001 investigation. In addition, both research studies note a larger presence of women with children, and a larger number of children, among the women convicted of drug-related offenses.

Table 3 shows the levels of schooling of prisoners in the SPF and the SPB in 2007.

The research by the CNM shows that in the case of women convicted of violating the drug law, most had completed primary school, followed by those who had not finished secondary school.

As for the employment situation of the persons arrested in 2007, in the SPF, 63 percent of the population had no trade or profession, 28 percent had a trade, and only 9 percent had a profession. In the SPB, 53 percent had no trade or profession, 39 percent had a trade, and 8 percent had a profession.

In the SPF, 75 percent of the prisoners were from urban areas and 25 percent from rural areas; whereas in the SPB, these figures were 96 percent and 4 percent respectively.

While there are no publicly available studies of drug use in the prisons, the above-mentioned report by the UNODC³⁴ makes reference to a survey in which 80 percent of respondents were former drug users and 5 percent said they had been intravenous drug users. It also indicates that the population of intravenous drug users could be larger than it seems, though the authorities indicate that there are few or none.

Several of the interviews conducted in the context of this research mentioned drug use in the prisons, sometimes with drugs brought in by family members pressured to do so, and other times by prison staff. On further inquiry, the issue of the use of tranquilizers by the prison authorities themselves came up, especially in women’s prisons.

The SPF has Centers for the Rehabilitation of Drug Addicts (CRDs: Centros de Rehabilitación para Drogadependientes) in five of the 31 units, though they operate with a strict regime and offer only one type of service (therapeutic community). In late 2008 these had a population of 96 persons and a capacity for 123,³⁵ even though there were “waiting lists.”³⁶ Its annual report for 2008 mentions that three more centers are planned, and that outpatient programs have been implemented for those not reached by the CRDs.³⁷

Table 2

| Ages of the prisoners in the SPF and the SPB (2007) | | | | | | |
|---|-------|-------|-------|-------|-------|----------|
| | 18-24 | 25-34 | 35-44 | 45-54 | 55-64 | 65 y más |
| SPF | 1,666 | 3,664 | 2,104 | 981 | 444 | 110 |
| % | 19% | 41% | 23% | 11% | 5% | 1% |
| SPB | 5,617 | 8,972 | 3,446 | 1,578 | 541 | 194 |
| % | 28% | 43% | 17% | 8% | 3% | 1% |

Source: SNEEP, SPF and Buenos Aires 2007

Table 3

| Schooling of prisoners in the SPF and the SPB (2007) | | | |
|--|----------------------|-------------------|----------------------|
| | Primary not finished | Completed primary | Incomplete secondary |
| SPF | 21% | 37% | 20% |
| SPB | 23% | 53% | 13% |

Source: SNEEP, SPF and Buenos Aires 2007

Table 4

| Employment situation of prisoners in the SPF and SPB (2007) | | | |
|---|------------|-----------|-----------|
| | Unemployed | Part time | Full time |
| SPF | 48% | 29% | 23% |
| SPB | 51% | 27% | 22% |

Source: SNEEP, SPF and Buenos Aires 2007

Minor players in the drug-trafficking business: Some stories

Looking in greater depth at the profile of the persons imprisoned for drug-related offenses beyond the statistical data, it becomes evident that while most have participated in conduct related to drug trafficking, they did so as minor players, becoming caught up in it due to situations of vulnerability. In the case of women these situations appear to be accentuated, and even more so for foreign women.

As noted by Patricio Varela, “for the most part, women are in prison for drug-related conduct ... they generally are involved in relatively unimportant roles in the chain of illicit drug trafficking, as they are in charge of delivering the substances to users, or are those who transport drugs hidden in their body or among their belongings – ‘mulas’ – assuming the most exposed roles, as they are the visible links in the chain and therefore at greatest risk of being detected and apprehended.”³⁸

The research studies by the CNM looking at the places where the acts were committed and where the women were detained, suggest that women are involved in minor roles in both domestic selling and cross-border trafficking. In both studies, drug trafficking activities appear to constitute an economic alternative motivated by the family situation, which places them in a special situation of vulnerability.

In carrying out this research we found that in many cases, situations of vulnerability stand out in which the agencies of the criminal justice system overreach in their role of fighting drug trafficking, considering innocent persons as suspects, or trumping up charges. Some examples we learned of include:

- A 29-year-old Peruvian woman convicted and sentenced to seven years in prison even though she always protested her innocence. The cocaine found in her home belonged to her former boyfriend and she maintained that she never knew about it.
- Based on information provided by the U.S. Drug Enforcement Administration (DEA), two Peruvians were detained, accused of being part of a drug trafficking organization. In neither case were any drugs found in their homes. One of them was convicted and sentenced to six years behind bars for having a friend who was engaged in that illegal activity.

- A travel agent with 30 years experience has been held in pre-trial detention for the last 18 months for having sold airline tickets to a person who was involved in drug-trafficking. No substance was ever found in the travel agent’s home.

- A Bolivian citizen was involved in a criminal case stemming from the fact that his neighbor sold marijuana. When his house was searched, all that was found were 12 bags of coca leaf, which weighed 5.4 kilos, and of which, he said, “I used it to burn in ceremonies, a Bolivian custom, and I chewed it for diabetes, and to make coca tea.” Despite those explanations, and the fact that Argentine law does not consider possession of coca leaf for consumption to be a crime, he was held for over a year.

Also significant is the phenomenon of the ‘mulas’ or human drug couriers. In statements to the press, legislator Marcela Rodríguez said that “the fact that more than half of the women held in the prisons of the Federal Penitentiary Service have been accused of drug trafficking means that they were used as couriers by the large drug trafficking organizations.”³⁹

The following are among the cases we learned of involving human drug couriers:

- The case of a 38-year-old Bolivian woman who, to cover the costs of an operation that her 12-year-old daughter needed (she was losing her hearing), agreed to transport drugs to Europe from Buenos Aires in exchange for \$4,000 USD. A woman recruited her in La Paz and put her in touch with a man about whom she knew nothing. She was being monitored at all times and was told in which hotels to stay. In the hotel, they gave her the capsules with cocaine that she was to ingest, and they gave her an injection for cramps. When she refused to ingest the capsules, the person who was monitoring her said, “You’re crazy, you’re not getting out of this.” As a result, she had to buy a belt and plastic at the supermarket, in which she placed the capsules. Finally, her monitor accompanied her in a taxi to the airport, where he left her; he never saw her again. When she was arrested at the pre-boarding checkpoint for a flight to Madrid, they found 83 capsules of cocaine in her belt, and one more capsule in her vagina; in all, the cocaine weighed 952 grams. Even though much of what she said about the persons who had given her the capsules was corroborated, and even though Argentine law allows for reducing the sentence in exchange for such information, a

“If a judge had given me the opportunity after three months of being in prison to sit down with him and hear me out, he would have realized that it was useless to keep me locked up ... you see!... it was useless...”

Q: You needed an opportunity....

“Obviously! And just like me, there are many people that need an opportunity ... there’s more a question of the consumption that led them there, all those people need an opportunity.”

The same woman – who has a son who was addicted to cocaine and who stopped selling drugs for that reason – was convicted and sentenced to four years in prison.

strict interpretation by the courts blocked the application of that provision, and she was sentenced to four years and six months in prison.

- The case of a 28-year-old Bolivian man who, on returning from his country where he went to visit his father, who was ill, was pushed by economic necessity, and so agreed to ingest approximately ten capsules of cocaine that weighed nearly 100 grams to take them to Buenos Aires in exchange for \$200 USD. Upon arriving in Buenos Aires he felt major stomach pain, which led him to go to a clinic where he received treatment to finish evacuating the pills. Yet as a result, he was turned in by the medical personnel who assisted him, despite the professional confidentiality that should prevail in such cases.
- The case of a 20-year-old Brazilian woman who, out of economic necessity, transported one kilo of cocaine by air inside her body from Sao Paulo to Buenos Aires, this being her first attempt to take drugs across international borders. While at the moment of doing so she did not realize it, reviewing what happened she believes that there were other persons on that same flight who, like her, were transporting cocaine, but who were not detained. This young woman notes that most people involved in carrying drugs like that do so out of necessity; she recalls the case of one person who did so to be able to feed their children.
- A 30-year-old woman who was introduced, by the man with whom she was ending a relationship, to a friend who supposedly was going to get her a job in Brazil. At the airport, security personnel found cocaine in her double-bottomed suitcase, and she realized she had been used. Ultimately, she spent four years (1994 to 1998) of the almost six years of the sentence in prison.

Conclusions

Argentina’s criminal laws on narcotic drugs developed without any correlation to a large-scale public health problem, with the exception of the situation that arose in the last decade.

The special statutes that were adopted (Law 20,771 of 1974 and Law 23,737 of 1989, still in force) have generated increased law enforcement by the criminal justice agencies, mainly acting against users. As of the 1990s, the law has come down hard on the small players in drug trafficking (small-scale sellers or small cross-border transporters), resulting in one-third of the persons behind bars in federal prisons being there for such offenses. The figure is approximately two-thirds in the case of women and foreigners, and higher still in the case of foreign women.

Accordingly, enforcement of the drug law is focused primarily on minor offenders, who are easier to arrest, and is associated with the imprisonment of two vulnerable populations, women and foreigners.

To the extent that interdiction continues to come down especially hard on such persons, its successes will only be momentary, without actually helping to contain drug trafficking. In addition, imprisoning persons who are vulnerable on various accounts (poverty, gender, nationality) aggravates the difficult situation such people already face.

NOTES

1 Touzé, G. (2006). *Evolución del ‘problema droga’ en la Argentina*. In Touzé, G. (ed.). *Saberes y prácticas sobre drogas: el caso de la pasta base de cocaína* (pp. 47-76). Buenos Aires, Argentina: Intercambios Asociación Civil-Federación Internacional de Universidades Católicas.

2 Argentina approved the Single Convention on Narcotic Drugs by Decree-law No. 7672/63, which was ratified by Law 16,478 of 1964.

3 Not only did the 1986 draft establish that possession for consumption is not punishable, it also established attenuating circumstances for drug-trafficking conduct by minor players.

4 Such novel features included revealing information in exchange for a reduction or exoneration of the sentence.

5 Presently this office is called the Secretariat of Programming for the Prevention of Drug Addiction and Fighting Drug-Trafficking (SEDRO-NAR: Secretaría de Programación para la Prevención de la Drogadicción y la Lucha contra el Narcotráfico).

6 The offenses in the law on narcotic drugs are federal offenses. Nonetheless, as of the reform known as “de-federalization” (2005), the provinces are allowed to prosecute certain offenses (consumption and direct sale to consumers). This possibility took effect in the province of Buenos Aires in late 2005.

7 This term is used to describe the courts of the City of Buenos Aires, which before the 1995 constitutional reform was a national territory.

8 Such as the Centro de Estudios Legales y Sociales (CELS), the Committee against Torture of the Provincial Commission for Memory, the Centro de Estudios sobre Política Criminal y Derechos Humanos (CE-POC), and Unidos por la Justicia Asociación Civil, among others.

9 Among these are the Grupo de Mujeres Argentinas and their Intrapostmuros Project (<http://www.proyintrapostmuros.com.ar>), the NGO Rompiendo Muros (ong.rompiendomuros@gmail.com), and the Asociación Civil Familiares de Detenidos en Cárceles Federales.

10 SNEEP (2008). *Informe Anual 2007*, op. cit. (p. 3).

- 11 International Center for Prison Studies, King's College London (at http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_country.php?country=212; last visit: October 2009). The SNEEP shows similar trends, though not always with identical data (*Informe Anual 2007*, op. cit., p. 2, with mention of King's College London), with a rate of 134.61 per 100,000 (as of December 31, 2007); as does the report by ILANUD (Latin American Institute for the Prevention of Crime and Treatment of Offenders) (see note 45), where mention is made of the following rates: 1992, 63 per 100,000; 2001, 126 per 100,000; 2005, 164 per 100,000; 2007, not available.
- 12 Committee Against Torture of the Provincial Commission for Memory (2009). *Informe Anual 2009. El sistema de la crueldad IV* (p. 28). La Plata, Argentina (at <http://www.comisionporlamemoria.org/comite/informes/webinforme09.pdf>; last visited: March 2010).
- 13 Daroqui, A. (et al.) (2006). *Voces del encierro: mujeres y jóvenes encarceladas en la Argentina una investigación socio-jurídica* (p. 68). Buenos Aires, Argentina: Omar Favale Ediciones Jurídicas.
- 14 In February 2008, "this type of offense accounted for 31.70 percent of all detainees," United Nations Office on Drugs and Crime (UNODC, 2008). *Evaluación y Recomendaciones para el perfeccionamiento de los programas de prevención y atención al uso de drogas y del VIH que se implementan actualmente en los establecimientos del Servicio Penitenciario Federal. Informe de la misión de la ONUDD. 21-25 de julio de 2008* (at http://www.spf.gov.ar/pdf/informe_onudd.pdf, last visited: November 2009).
- 15 See note 6.
- 16 In the federal procedural regime, until recently release during trial depended mainly on the scale of penalties applicable to the offense, not allowing release for those offenses for which the minimum penalty was greater than three years in prison. In recent years, certain criteria that have been put forth in case-law that accord greater weight to other considerations (danger of flight, hindering of the investigation) have made it possible to expand the situations in which release during trial is allowed, including in those offenses with minimum penalties greater than three years in prison, though they are not always uniformly applied.
- 17 A suspended sentence ('sursis') suspends enforcement of the penalty for a given time on condition that a new offense not be committed.
- 18 CNM. *Investigación sobre la población penal femenina alojada en el servicio penitenciario federal 1995*, op. cit.
- 19 http://www.spf.gov.ar/sintesis_semanal/sintesis_semanal_femenina_05-03-10.pdf; last visited: March 2010.
- 20 http://www.spb.gba.gov.ar/index.php?option=com_ponygallery&Itemid=28&func=viewcategory&catid=1; last visited February 2010.
- 21 Committee against Torture of the Provincial Commission for Memory (2007). *Mujeres que residen junto a sus hijos en los lugares de detención de la provincia de Buenos Aires*, p. 2 (in <http://www.comisionporlamemoria.org/comite/mujeres/05.pdf>; last visited March 2010).
- 22 The data up to 2000 are from the CNM 2001; the information for 2004 is from the SNEEP SPF 2004. Both were prepared based on information provided by the SPF; the others were drawn from the website of the SPF.
- 23 An almost identical trend, from 1990 to 2006, is presented in the report by the Prisons Commission of the Office of the Human Rights Ombudsman (2007). *Informe Semestral, julio-diciembre de 2006* (pp. 35-6). Buenos Aires, Argentina: Ministerio Público de la Defensa.
- 24 SNEEP (2008). *Buenos Aires 2007*, op. cit. (p. 2).
- 25 Committee Against Torture of the Provincial Commission for Memory (2009), op. cit. (p. 18, note 47).
- 26 At the same time, the study indicated that the percentage of men convicted under Law 23,737 accounted for only 4 percent of all men in prison.
- 27 Prisons Commission of the Office of Public Defenders (2007), op. cit. (pp. 45 and 72).
- 28 Diario Página 12 (November 29, 2009). *Las perejilas*. Buenos Aires, Argentina.
- 29 Committee Against Torture of the Provincial Commission for Memory (2007), op. cit.
- 30 The SNEEP (SPF 2007) indicates 22 percent, and the SPF annual report for 2008 indicates 21 percent.
- 31 UNODC (2008), op. cit. (item 25).
- 32 See note 79, which states: "This is the situation of 97 percent of Bolivian women prisoners, 81.4 percent of Peruvian women prisoners, 76.3 percent of Paraguayan women prisoners, 80 percent of the Brazilian women prisoners, 70 percent of the Uruguayan women prisoners, and 50 percent of Chilean women prisoners."
- 33 SNEEP (2008), *SPF 2007*, op. cit. (p. 6. and p. 2, respectively)
- 34 UNODC (2008), op. cit. (item 59).
- 35 Information available as of December 31, 2008. (http://www.spf.gov.ar/sintesis_2008/sintesis_semanal_femenino_31-12-08.pdf; last visited April 2010).
- 36 UNODC (2008), op. cit. (item 83).
- 37 SPF (2009), op. cit. (pp. 42-44). Also mentioned in the UNODC report, citing the design of these programs (item 87).
- 38 Varela, P. (2009). *Madres, niños y cárcel. In Mujeres Privadas de libertad*. (pp. 69/95). Office of the Human Rights Ombudsman -UNICEF. Buenos Aires, Argentina.
- 39 Diario La Nación (June 22, 2008), *Hay más mujeres que cometen delitos*. Buenos Aires, Argentina.