

# WOMEN BEHIND BARS FOR DRUG OFFENSES IN LATIN AMERICA: WHAT THE NUMBERS MAKE CLEAR

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REPORT



Advocacy for Human Rights in the Americas



## EXECUTIVE SUMMARY

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Women's incarceration in Latin America has increased dramatically over the last two decades. Not only have the sheer numbers increased, but the percentage of females in the overall prison population has also risen, and the rate of the ongoing increase in the size of the female prison population is alarming. Moreover, the number of women being put behind bars is growing much faster than the number of men.

These trends cannot be explained by growth of the overall female population, or simply by the increase in the total number of prisoners. Rather, the driving force behind the data is the adoption of punitive drug laws that disproportionately affect women. In the majority of Latin American countries, drug-related crimes are the main cause of female incarceration. For instance, available data shows that in Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico, Panama, Paraguay, Peru, and Venezuela, drug-related offenses are the most common offense for female prisoners. In sheer numbers, more men than women are incarcerated for drug-related offenses in Latin American countries. But the percentage of women imprisoned for that offense is almost always higher than the percentage of men. Data compiled by WOLA shows that in Brazil, Chile, Costa Rica, Panama and Peru, the proportion of women prisoners who are incarcerated for drug offenses is at least 30% higher than in the case of men imprisoned in those countries. The excessive use of pretrial detention is a primary factor contributing to the over-incarceration of women for drug offenses in Latin America. Research shows that more women than men are in pretrial detention for drug offenses in almost all of the countries studied.

The incarceration of these women does nothing to disrupt drug markets or thwart the drug trade, as they are primarily engaged in high-risk but low-ranking jobs and are easily replaced, while those running criminal enterprises rarely end up behind bars. Yet the consequences of incarceration for these women, their families and their communities can be devastating. The COVID-19 pandemic—and its disproportionate impact on people in prison—gives even greater urgency to implementing reforms to dramatically reduce the number of women

behind bars. The report concludes with a plea to adopt recommendations for developing and implementing gender-sensitive drug and prison-related policies rooted in human rights and public health—policies that also take into account the intersectionalities and multiple vulnerabilities of women in situations of poverty or extreme poverty; those who are LGBTI+, Afro-descendent, foreign women, or indigenous; and women who are pregnant and/or have children.

## INTRODUCTION AND METHODOLOGY

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Governments across Latin America are incarcerating alarming numbers of women, often for low-level drug offenses. This report presents statistical data that substantiate this and related assertions. The women incarcerated in Latin America for drug offenses tend to have similar socio-economic characteristics and backgrounds. They come from situations of pervasive poverty and inequality. They have low levels of education and are either underemployed or unemployed, often working in the informal economy. They may become engaged in the drug trade to put food on the table for their families and pay the rent. Many of them also come from a background of physical and sexual abuse.<sup>1</sup> While for many women getting involved in the drug trade may be a conscious decision, others may be coerced by intimate partners or family members, or they may be brought into a family business. Others get tricked or deceived, unaware, for example, that the suitcase that they are carrying contains drugs. And still others may become involved because of their own drug dependency.

Information on the actual involvement of Latin American women in the drug trade is hard to obtain. Most major reports on the drug trade do not incorporate a gender perspective or an analysis of women's participation. Moreover, as recognized in the *2018 World Drug Report* of the United Nations Office on Drugs and Crime (UNODC), which has a special section on women and drugs, there are “difficulties in evaluating the extent of women's involvement in drug [crop] cultivation and production,” as the data gathered is usually focused on location, size of plantation, and quantity of drugs, rather than on the people involved.<sup>2</sup> The importance of data collection cannot be overstated because, as the

Interamerican Commission of Women of the Organization of American States (CIM/OAS) has noted, “the lack of both quantitative and qualitative information on the participation of women in the question of illicit drugs ... is a significant obstacle to the formulation and implementation of effective and appropriate policies and programs.”<sup>3</sup>

According to a 2018 study of incarcerated women in eight Latin American countries, women rarely commit violent crimes, are usually at the lowest levels in the chain of organized crime, and for 62% it is their first time behind bars.<sup>4</sup> In fact, women generally perform only auxiliary activities in the street level drug trade.<sup>5</sup> An extremely common task is, for instance, being a “human courier,” transporting drugs within and over a country’s borders, or smuggling drugs into prison. Other usual roles for women include being small-scale sellers, or working in the cultivation, storing, cleaning, delivery, and packaging of drugs.



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*“Women rarely commit violent crimes, and are usually at the lowest levels in the chain of organized crime.”  
Mujeres en Prisión: Los alcances del castigo<sup>6</sup>*

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It is important to note, however, that a small number of women reach powerful, leadership positions, and have a more active role in operations. A 2019 report by the Colombian Observatory of Organized Crime highlights that, “Although female participation has been lower than male participation and has traditionally been focused on subordinate roles in a criminal world that privileges and rewards male behaviors, their growing prominence in organized crime merits thoughtful and layered analysis.”<sup>7</sup>

Yet with a few exceptions, the women involved in the drug trade are expendable and easily replaced; their incarceration has no impact on drug markets or on the drug trade. It does, however, have devastating consequences for the women put behind bars, their families and their communities.

This report provides an overview of women incarcerated for drug-related offenses in Latin America. The data presented here includes both women held in pretrial detention as well as those who have been convicted and sentenced. It covers the full range of drug-related activities that Latin American countries criminalize: drug use, cultivation, transportation, and trafficking, among many others. By “drugs” this document refers to the substances that Latin American countries consider illegal—such as cannabis, cocaine, heroin, among others—in contrast to “legal” drugs, such as alcohol and tobacco.

The data presented in this paper are based on statistics provided by the countries’ governments—which often use narrow definitions of gender while compiling the data—and by civil society organizations. We recognize that there might be individuals included in the data who do not identify as female, and individuals who identify as female but who were not included. We seek to encompass the problem of the incarceration of all who identify as women in Latin America, and not just those captured by the official data.

Finally, the focus here on women is not meant to detract from the experiences of men imprisoned for drug offenses in Latin America. Our goal is, rather, to analyze the situation from a gendered and an intersectional perspective and identify issues that disproportionately affect women.<sup>8</sup>





## MOST RECENT DATA ON WOMEN'S INCARCERATION IN LATIN AMERICA

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Women's incarceration in Latin America has increased dramatically in the last two decades. Not only have the sheer numbers increased, but the percentage of females in the overall prison population has also risen, and the rate of female prison population increase is alarming.

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*Many countries in Latin America including Bolivia, Chile, Ecuador, El Salvador, and Guatemala had higher female percentages of the prison population than the global percentage of 6.9%.  
The World Prison Brief<sup>9</sup>*

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According to the Institute for Criminal Policy Research, as of 2017, there were at least 714,000 women and girls held in penal institutions throughout the world.<sup>10</sup> That number represents 6.9% of the global prison population.<sup>11</sup> Over a third of these women were imprisoned in the Americas, including Canada and the United States, where the percentage of females in prison rises to 9.8%.<sup>12</sup> The United States had the highest number of females in prison in the world, Brazil had the fourth highest, and Mexico had the tenth highest.<sup>13</sup> As of 2018 (the last year for which the global percentage is available), many countries in Latin America had higher female percentages of the prison population than the global percentage of 6.9%. Table 1 shows the latest data on female prisoners in Latin America.



**Table 1: Number and percentage of women in prison as a proportion of the total prison population**

Country (Year)	Number of Women in Prison	Percentage of All Prisoners Who Were Women
Guatemala (2020)	2,923	11.2%
Bolivia (2016)	1,157	8.2%
El Salvador (2020)	2,867	7.8%
Chile (2020)	2,986	7.5%
Colombia (2020)	7,427	6.8%
Ecuador (2020)	2,612	6.7%
Paraguay (2015)	834	6.5%
Honduras (2018)	1,160	5.7%
Peru (2020)	5,258	5.5%
Costa Rica (2017)	1,034	5.4%
Nicaragua (2014)	575	5.4%
Uruguay (2020)	635	5.4%
Venezuela (2017)	3,044	5.3%
Mexico (2018)	10,591	5.2%
Panama (2020)	904	5.1%
Brazil (2019)	37,197	4.9%
Argentina (2018)	4,990	4.8%

Source: *The World Prison Brief*.<sup>14</sup>

Expressed in terms of the population rate—the number per 100,000 women in the overall population—the incarceration of women in the Americas is the highest in the world at 31.4 per 100,000 (as of 2017).<sup>15</sup> Even excluding data from the United States, the rate in 2017 was still 14.6, which was higher than in other regions.<sup>16</sup> Latin American countries with particularly high female incarceration rates (per 100,000 population) are: El Salvador (44.2), Panama (21.1), Costa Rica (20.4), Uruguay (18.2), and Brazil (17.6).<sup>17</sup> Table 2 shows the latest data on the female prison population rate in Latin America.

**Table 2: Female incarceration rate (per 100,000 population)**

Country (Year)	Female Prison Population Rate
El Salvador (2020)	44.2
Panama (2020)	21.1
Costa Rica (2017)	20.4
Uruguay (2020)	18.2
Brazil (2019)	17.6
Guatemala (2020)	16.3
Chile (2020)	16.1
Peru (2020)	15.8
Ecuador (2020)	14.9
Colombia (2020)	14.8
Honduras (2018)	13.0
Paraguay (2015)	11.8
Argentina (2018)	11.1
Bolivia (2016)	10.3
Venezuela (2017)	9.5
Nicaragua (2014)	9.3
Mexico (2018)	8.5

Source: *The World Prison Brief*.<sup>18</sup>

The most recent data show that the incarceration of women in Latin America has reached alarming proportions. However, what is most worrisome is the rate of increase of the female prison population, which indicates that, unless governments change their approaches to dealing with drug use and the drug trade, the problem of the incarceration of women in Latin America will only worsen.

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*Between 2000 and 2017, worldwide, the total female prison population increased by 53.3%, while that of men increased by only 19.6%.*

**World Female Imprisonment List<sup>19</sup>**

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Since the early 2000s, Latin American countries have witnessed a rapid increase in their female prison populations. Between 2000 and 2017, the total female prison population worldwide increased by 53.3%, compared to a 19.6% increase of men behind bars.<sup>20</sup>

Countries like El Salvador had in 2020 seven times their number of female prisoners as compared to 2000, while Guatemala had six times their number of female prisoners from 2001.<sup>21</sup> Table 3 shows the increase in female prison population since around the early 2000s to the most recent year with available data for Latin American countries.

**Table 3: Increase in Female Prison Population**

Country	Base Number	Most Recent Number	Percentage Increase in Female Prison Population
El Salvador	371 (2000)	2,867 (2020)	672.8%
Guatemala	433 (2001)	2,923 (2020)	575.1%
Paraguay	207 (1999)	834 (2015)	302.9%
Ecuador	682 (2002)	2,612 (2020)	283.0%
Brazil	10,112 (2000)	37,197 (2019)	267.9%
Venezuela	936 (2001)	3,044 (2017)	225.2%
Uruguay	240 approx. (1999)	635 (2020)	164.6%
Peru	2,054 (2001)	5,258 (2020)	156.0%
Nicaragua	238 approx. (1999)	575 (2014)	141.6%
Colombia	3,141 (2000)	7,427 (2020)	136.5%
Costa Rica	454 (2003)	1,034 (2017)	127.8%
Argentina	2,402 (2002)	4,990 (2018)	107.7%
Honduras	614 (2002)	1,160 (2018)	88.9%
Chile	1,907 (1999)	2,986 (2020)	56.6%
Mexico	6,813 (2000)	10,591 (2018)	55.5%
Panama	654 (2000)	904 (2020)	38.2%
Bolivia	1,393 (2000)	1,157 (2016)	-16.9%

Source: *The World Prison Brief*.<sup>22</sup> Percentages calculated by WOLA.

## PUNITIVE DRUG LAWS DRIVE WOMEN'S INCARCERATION ACROSS THE REGION

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The increase in the Latin American female prison population cannot be explained by the growth of the overall female population, or simply by the increase in the total number of prisoners.<sup>23</sup> The driving force behind the data above is, rather, the adoption of punitive drug laws that disproportionately affect women. In short, the exportation of the U.S. “war on drugs” is the primary reason women are being put behind bars in Latin America.

Research carried out by the Research Consortium on Drugs and the Law (Colectivo de Estudios Drogas y Derecho, CEDD) documents how sentences imposed for drug-related offenses in Latin America are excessively harsh and disproportionate. CEDD’s report, *Addicted to Punishment: The disproportionality of drug laws in Latin America*, documents that since 1950, there has been a steady increase in the number of what are considered to be drug-related offenses, and that both minimum and maximum sentences have risen steadily. Depending on the country, the maximum penalties for drug trafficking can range from 15 to 40 years.<sup>24</sup> Often the legislation fails to distinguish between levels of involvement in the drug trade—treating small-scale dealers or those transporting drugs the same as large-scale drug traffickers—and between violent and non-violent offenses. In addition, it is often the case that all drug offenses are precluded from benefits such as alternatives to incarceration or early release, resulting in those convicted for low-level offenses spending even more years behind bars.<sup>25</sup> The cumulative effect of these characteristics of drug laws is that governments across the region are filling their prisons beyond bursting with men and women accused of low-level drug offenses for excessively long periods of time.

For the women convicted of drug-related offenses in Latin America, sentences may be even harsher than for men. In Mexico, for instance, one study shows that women often serve longer terms than men because they tend to be charged with possession with intent to sell, whereas men are more likely to be charged with simple possession.<sup>26</sup> In 2015 in Mexico, possession with intent to sell was one of the most

common crimes for women.<sup>27</sup> In Panama, judges often do not take into account the amount of drugs being trafficked, which puts women at a disadvantage because they generally transport smaller quantities than men.<sup>28</sup> Moreover, in several Latin American countries, the offense of transporting drugs is punished more severely than other drug crimes, and women are more frequency convicted of transporting drugs.<sup>29</sup>

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*“In some countries, for instance in Latin America, drug-related offences account for the first or second cause of incarceration among women, yet only between the second and the fourth cause among men.”*

United Nations Office on Drugs and Crime<sup>30</sup>

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## WHAT'S WRONG WITH THIS PICTURE?

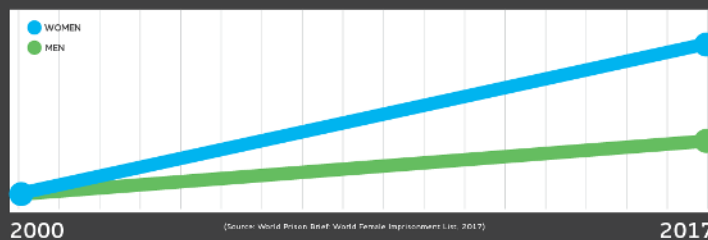
Harsh drug laws are filling prisons with people for low-level, non-violent offenses while disproportionately impacting women. Between 2000 and 2017, the worldwide female prison population increased at a much higher rate than the male prison population.



53% increase



19% increase



Women's incarceration has devastating consequences for them, their children, families, and communities.

Learn more: <https://womenanddrugs.wola.org/>

**WOLA**  
Advocacy for Human Rights in the Americas

The incarceration of women for drug-related offenses is a problem worldwide. According to the UNODC's 2018 *World Drug Report*, 35% of the world's female prison population is incarcerated for drug-related offenses, while 19% of the world's male prisoners are behind bars for the same reason.<sup>31</sup> Moreover, from 2012 to 2016, Central America was the region with the highest percentage of women brought into contact with the criminal justice system for drug-related purposes (22%).<sup>32</sup> South America was also one of the highest, at 12.4%.<sup>33</sup> As Table 4 below shows, 10 out of the 12 Latin American countries studied have a percentage of women incarcerated for drugs that is higher than the global average percentage of 35%.

## **INCARCERATION OF WOMEN FOR DRUG-RELATED OFFENSES: THE DATA**

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*In Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico, Panama, Paraguay, Peru, and Venezuela, drug-related offenses are the most common for female prisoners.*

(Data compiled by WOLA)

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In the majority of Latin American countries, drug-related offenses are the main cause of female incarceration. For instance, available data show that in Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico, Panama, Paraguay, Peru, and Venezuela, drug-related offenses are the most common for female prisoners.<sup>34</sup> Table 4 shows the latest available data for the percentage of women incarcerated for drug-related offenses in Latin American countries, out of the total female prison population.

**Table 4: Number and percentage of women incarcerated for drug-related offenses vis-à-vis total women in prison**

Country (Year)	Number of women incarcerated for drug-related offenses	Percentage of women incarcerated for drug-related offenses
Panama (2015) <sup>35</sup>	-	70.0%
Costa Rica (2016) <sup>36</sup>	-	68.6%
Venezuela (2008) <sup>37</sup>	1,170 (estimates)	64.0%
Brazil (2017) <sup>38</sup>	26,260	62.0%
Peru (2018) <sup>39</sup>	2,769	55.1%
Ecuador (2019) <sup>40</sup>	1,600	54.0%
Chile (2018) <sup>41</sup>	1,986	53.7%
Colombia (2020) <sup>42</sup>	3,140	46.0%
Mexico (2016) <sup>43</sup>	1,169 (federal) / 1,911 (state)	43.0% (federal) / 13.5% (state)
Argentina (2017) <sup>44</sup>	1,108	40.0%
Bolivia (2019) <sup>45</sup>	464	36.4%
Uruguay (2018) <sup>46</sup>	221	14.0%

Punitive drug laws disproportionately affect women. Although, in sheer numbers, more men than women are incarcerated for drug-related offenses in Latin America, the percentage of women imprisoned for that offense is higher than the percentage of men. Table 5 shows the percentage of women incarcerated for drug-related offenses out of the total female prison population, compared to the percentage of men incarcerated for drug-related offenses out of the total male prison population.

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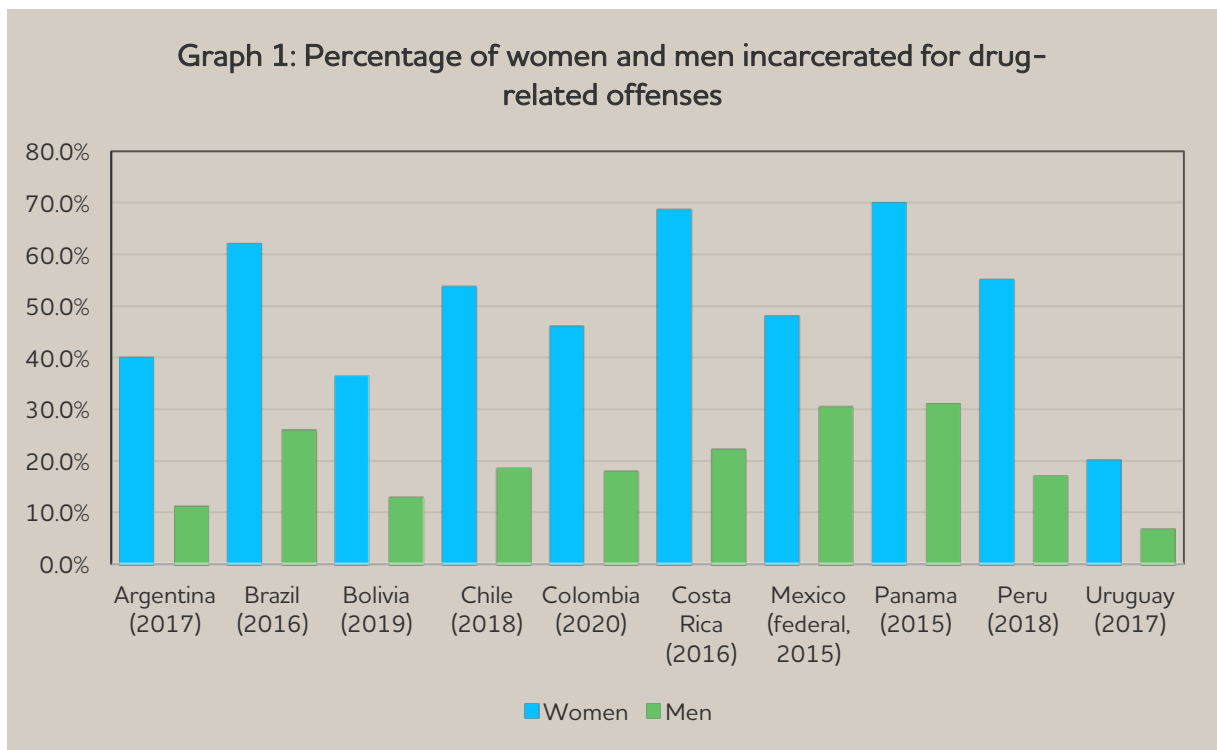
*Punitive drug laws disproportionately affect women. In Brazil, Chile, Costa Rica, Panama and Peru, there is more than a 30% difference between the percentage of women incarcerated for drug-related offenses, as compared to that of men.*  
*(Data compiled by WOLA)*

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**Table 5: Percentages of women and men incarcerated for drug-related offenses**

Country (Year)	Percentage of incarcerated women held for drug-related offenses	Percentage of incarcerated men held for drug-related offenses
Argentina (2017) <sup>47</sup>	40.0%	11.3%
Brazil (2016) <sup>48</sup>	62.0%	26.0%
Bolivia (2019) <sup>49</sup>	36.4%	13.0%
Chile (2018) <sup>50</sup>	53.7%	18.6%
Colombia (2020) <sup>51</sup>	46.0%	18.0%
Costa Rica (2016) <sup>52</sup>	68.6%	22.2%
Mexico (2015) <sup>53</sup>	48% (federal) / 6.3% (state)	30.4% (federal) / 5.3% (state)
Panama (2015) <sup>54</sup>	70.0%	31.0%
Peru (2018) <sup>55</sup>	55.1%	17.1%
Uruguay (2017) <sup>56</sup>	20.1%	7.0%



Source: Data compiled by WOLA.

## THE EXCESSIVE USE OF PRETRIAL DETENTION

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*The particular risk of abuse that women face in pretrial detention shall be recognized by relevant authorities, which shall adopt appropriate measures in policies and practice to guarantee such women's safety at this time.*

The Bangkok Rules, Rule 56<sup>57</sup>

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The excessive use of pretrial detention is a primary factor contributing to the over-incarceration of women for drug offenses in Latin America.<sup>58</sup> After Africa, the Americas have the greatest number of people incarcerated without a conviction, with an average of 36.3% of the prison population; in some countries, the figure is much higher.<sup>59</sup> A significant percentage of women deprived of liberty in Latin America are in pretrial detention. For instance, in Guatemala in 2017, there were more women in preventive detention (1,112) than those who had been sentenced (966).<sup>60</sup> Similarly, in Argentina, Bolivia, Ecuador, Guatemala, Mexico, Panama, Paraguay, and Uruguay more than half of incarcerated women had not been sentenced, with many languishing for several years in pretrial detention. Table 6 shows the percentage of women and men in pretrial detention as a proportion of the total number of people deprived of liberty, where data was available, for the latest year available.



Entrance to Tanivet Women's Prison Center in Oaxaca, Mexico (Photo Credit: -Scopio)

**Table 6: Population in Pretrial Detention as a Proportion of the Total Prison Population**

Country (Year)	Number of Women in Pretrial Detention	Percentage of Incarcerated Women in Pretrial Detention	Number of Men in Pretrial Detention	Percentage of Incarcerated Men in Pretrial Detention
Argentina (2017) <sup>61</sup>	2,581	59.4%	36,131	44.3%
Bolivia (2019) <sup>62</sup>	1,070	71.0%	11,505	66.0%
Brazil (2016) <sup>63</sup>	19,223	45.0%	-	-
Chile (2018) <sup>64</sup>	1,507	42.8%	11,993	32.5%
Colombia (2019) <sup>65</sup>	2,882	35.0%	35,577	32.0%
Ecuador (2019) <sup>66</sup>	1,535	50.9%	-	-
Guatemala (2017) <sup>67</sup>	1,112	53.5%	8,687	45.7%
Mexico (2017) <sup>68</sup>	4,142	53.5%	60,470	33.8%
Panama (2020) <sup>69</sup>	312	35.0%	6,696	40.0%
Peru (2018) <sup>70</sup>	2,065	41.0%	33,553	39.3%
Uruguay (2018) <sup>71</sup>	369	71.2%	7,393	69.7%

As Table 6 shows, with the exception of Panama, the proportion of women held as pretrial detainees is higher than is the case for men (albeit some with a small margin of difference). For instance, in Mexico, Argentina, Chile, and Guatemala the percentage of women in pretrial detention is around 20, 15, 10, and 8 percentage points higher than men, respectively.

As noted above, harsh drug policies are driving the increase in the number of women in pretrial detention. In many Latin American countries, drug-related offenses are one of the most common among female pretrial detainees. For instance, in Peru, Ecuador, Argentina, Bolivia, and Chile around half of women are in pretrial detention for drug offenses (54.5%, 53.0%, 51.7%, 71.0%, and 43.8% respectively). Moreover, among the women in prison for drug-related charges, a vast portion is usually in pretrial detention. For instance, in Argentina in 2017, 70% of the women in prison for drug-related offenses were in pretrial detention.

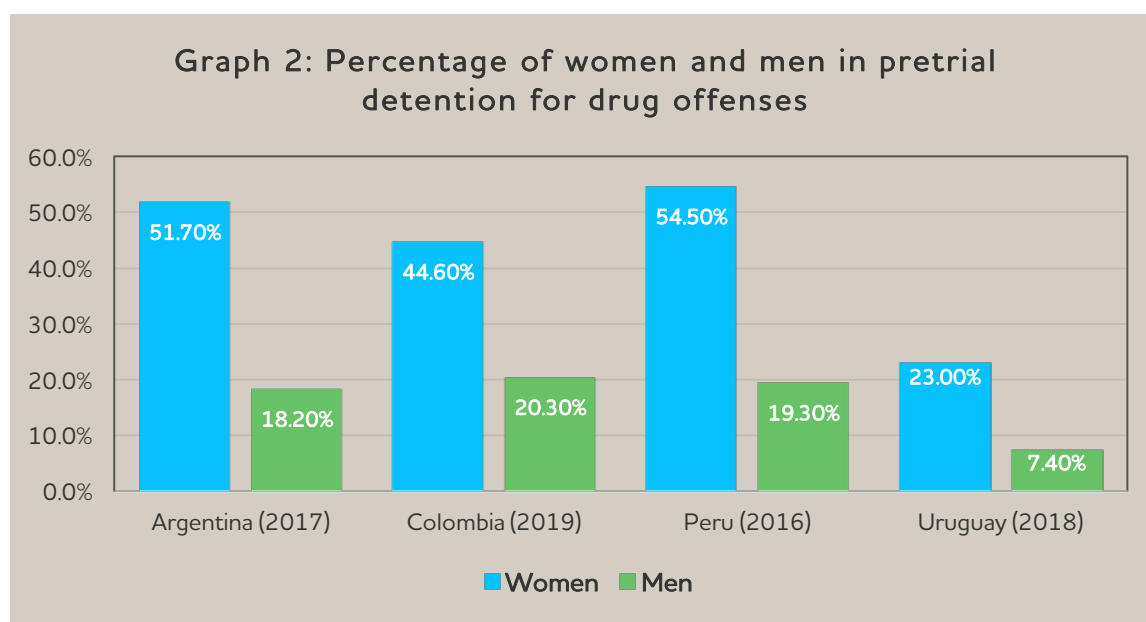
Table 7 shows the number and percentage of women in pretrial detention for drug offenses as a proportion of the total female prison

population in pretrial detention, where data was available, for the latest year available.

**Table 7: Female Population in Pretrial Detention for Drug Offenses**

Country (Year)	Number of Women in Pretrial Detention for Drug Offenses	Percentage of Women in Pretrial Detention for Drug Offenses
Argentina (2017) <sup>72</sup>	1,081	51.7%
Bolivia (2020) <sup>73</sup>	772	71.0%
Chile (2018) <sup>74</sup>	1,034	43.8%
Colombia (2019) <sup>75</sup>	1,284	44.6%
Ecuador (2019) <sup>76</sup>	813	53.0%
Mexico (2018) <sup>77</sup>	1,342	26.3%
Peru (2016) <sup>78</sup>	1,219	54.5%
Uruguay (2018) <sup>79</sup>	119	23.0%

In certain countries, women accused of having committed drug-related offenses are much more likely to be held in pretrial detention than are men accused of drug-related offenses. For instance, in Argentina, Peru, and Uruguay the percentage of women in pretrial detention for drug-related offenses (51.7%, 54.5%, and 23.0%, respectively) is 3 times higher than that of their male counterparts (18.2%, 19.3% and 7.4%), and in Colombia, the percentage of women (44.6) is more than double that of men (20.3).<sup>80</sup>



Source: Data compiled by WOLA<sup>81</sup>

## FOREIGN WOMEN IN PRISON

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An under-analyzed issue is the high percentage of women from foreign countries facing pretrial detention. Such analysis is impeded by the lack of disaggregated data available on this issue; however, data obtained in Chile, Colombia, and Peru shows that foreign nationals in pretrial detention represent 73.3, 50.9, and 42.9 percent (respectively) of foreign women in prison.<sup>82</sup>

**Table 8: Percentage of Foreign Nationals in Prison**

Country (Year)	Percentage of Foreign Nationals
Argentina (2018)	6.5%
Bolivia (2014)	4.1%
Brazil (2017)	0.3%
Chile (2018) <sup>83</sup>	26.7%
Colombia (2019)	1.3%
Costa Rica (2017)	13.1%
Ecuador (2014)	8.1%
El Salvador (2020)	1.3%
Guatemala (2017)	3.2%
Honduras (2011)	1.3%
Mexico (2013)	1.2%
Nicaragua (2014)	2.9%
Panama (2014)	10.1%
Paraguay (2014)	4.2%
Peru (2020)	2.4%
Uruguay (2020)	2.8%
Venezuela (2016)	2.3%

Source: *The World Prison Brief*<sup>84</sup>

In addition to the characteristics common to all women in prison, women from foreign countries face particular challenges that may include an irregular migratory situation and lack of stable housing or a job, and they often do not have the financial means to secure legal counsel or avoid pretrial detention.<sup>85</sup> As is often the case with indigenous women, foreign women who are imprisoned in Latin America may not speak the language, and may not understand the legal system or have difficulties dealing with unfamiliar criminal justice proceedings. Foreign nationals are also more likely to be drug couriers in the international drug trade, a

position in the hierarchy that, as explained above, puts them at a disadvantage.<sup>86</sup> A small but significant portion of the prisoner population in Latin America is foreign, as table 8 shows.

Moreover, among women in prison for drug-related offenses, there are often many foreigners. For example, according to statistics provided by Mexican federal and state officials to Equis Justicia para las Mujeres in 2016, at that time there were 68 foreign women in prison for drug-related offenses.<sup>87</sup> In Chile, in 2018 40% of women detained for drug-related offenses were from other countries.<sup>88</sup>

## **THE DISPROPORTIONATE IMPACT OF INCARCERATION ON WOMEN**

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The data presented in this report paints a very clear picture: Latin American countries are incarcerating alarming numbers of women, primarily for low-level drug offenses. This does nothing to disrupt drug markets or thwart the drug trade; as described above, the overwhelming majority of these women pose no threat whatsoever to society. They are primarily engaged in high-risk but low-ranking tasks and are easily replaced, while those running criminal enterprises rarely end up behind bars. Yet the consequences of incarceration for these women, their families and their communities can be devastating.

The personal impact on women of being confined in prison cannot be underestimated. They often suffer from violence, including sexual violence, during their arrest and throughout their time behind bars. As is the case with male prisoners, they are housed in inhumane conditions, in overcrowded facilities and without access to adequate food or even water. But women prisoners face additional hardships, as they live in spaces designed for men, often do not have access to sanitary products, and the already woefully inadequate health care services are not designed to meet the needs of women. Women also tend to receive less support, including the provision of food and other basic supplies, from their families while they are in prison as compared to their male counterparts. This situation is even more pronounced for trans women in prison.<sup>89</sup>

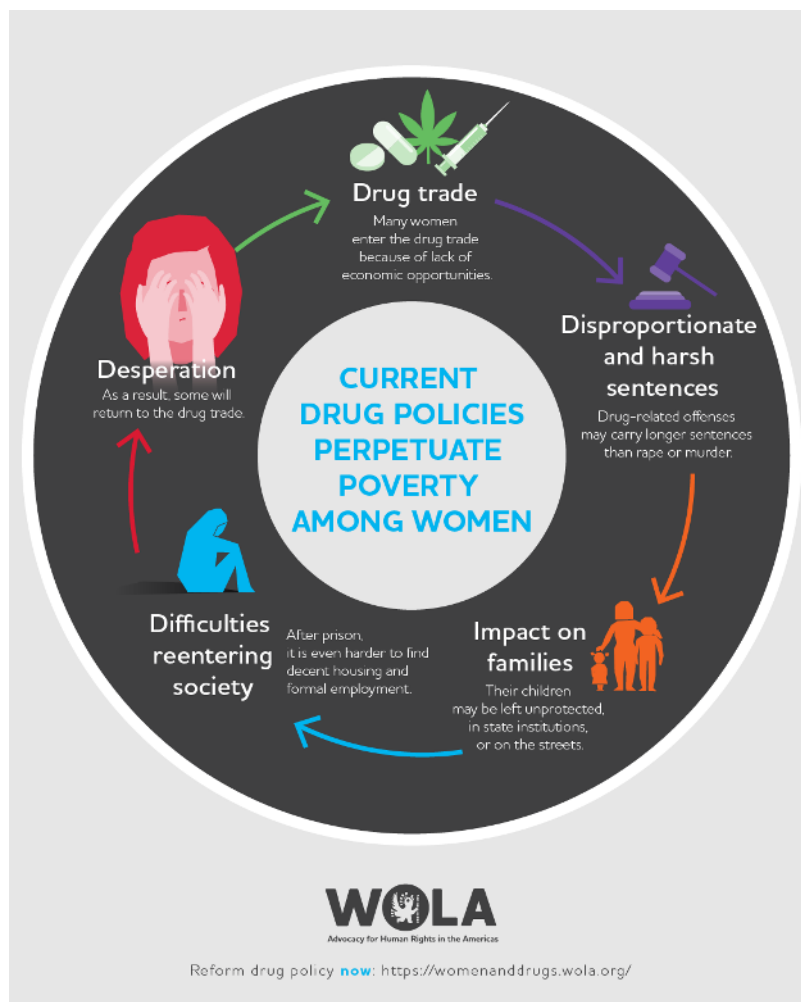
The children of incarcerated parents are also directly impacted when their parents are put behind bars. A landmark study carried out in eight Latin American countries, *Childhood that matters: The Impact of Drug Policy on Children of Incarcerated Parents in Latin America and the Caribbean*, concludes 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.”<sup>90</sup> These numbers are simply staggering. The report provides a stark portrayal of how children and adolescents suffer from increased poverty, violence, disruptions to their education, physical and mental health issues, and stigma and discrimination because of the incarceration of their parents.<sup>91</sup>

The incarceration of women also impacts their larger families. Interviews with people who had a family member in prison conducted as part of a 2015 study in Mexico revealed that: 63.3% reported problems with health, 34.2% reported problems at work, 30% reported problems with their children, 27% reported problems with their family, 10.9% reported problems with a partner, 15.7% reported problems with school, and 11.2% reported problems with their children’s school.<sup>92</sup> The negative consequences for families and society are exacerbated when the person behind bars is a woman. Women are usually responsible for members of society beyond their family, as they take care of others’ children, elderly members of their families, and other individuals that require aid. According to one study in Argentina, 20 percent of women in prison had other people aside from their children for whom they were responsible.<sup>93</sup>

Finally, women face disproportionate obstacles to rebuilding their lives upon leaving prison. The vast majority of women behind bars entered prison already in situations of vulnerability, including poverty, low-levels of education, and lack of job opportunities. Upon their release, they have a criminal record, which makes it even harder to find decent employment and housing. Those with children struggle to get them back. In addition, they face greater stigma than men do for having landed behind bars; they are not only seen as “criminals,” but also as “bad



women” or “bad mothers” because they did not fulfill the “role” that society assigned to them.<sup>94</sup> In other words, women experience greater prejudice and judgment than men due to gendered social expectations.<sup>95</sup> As the CIM/OAS has put it, “[w]hen women break the law and are imprisoned, they defy and transgress these stereotypes and face a double punishment: they are both sanctioned by the law and condemned by a patriarchal society.”<sup>96</sup> This is the case even if the crimes were non-violent and/or first-time offenses.<sup>97</sup>



## RECOMMENDATIONS

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Policy debates—including in regional forums such as the UN’s Commission on Narcotic Drugs and the OAS—have for some years now highlighted the disproportionate impact of incarceration on women, their children and families, and their communities. However, that growing awareness, with rare exceptions, has yet to translate into meaningful policy reforms on the ground. The COVID-19 pandemic has shone a spotlight on horrific conditions in prisons across the world and has created greater urgency for implementing the reforms necessary to both release from and reduce the flow of people going into prison.

Working in collaboration with the International Drug Policy Consortium (IDPC), Dejusticia, and other members of our Working Group on Women, Drug Policy and Incarceration, WOLA has participated in the production of a series of reports (see Key Resources below) that provide detailed policy recommendations for developing and implementing gender-sensitive drug policies that are rooted in human rights and public health, and would dramatically reduce the number of women behind bars in Latin America.

Together, the policy recommendations laid out in these reports provide a roadmap for officials and others interested in developing and implementing gender-sensitive drug and prison-related policies rooted in human rights and public health. They also take into account the conditions of greater and multiple vulnerabilities of women in situations of poverty or extreme poverty; those who are LGBTI+, foreign women, Afro-descendent, or indigenous; and women who are pregnant and/or have children.

These recommendations can be boiled down into two basic concepts:

**Rethink drug policies:** Decades of experience has shown that harsh drug laws and sentencing policies have failed to make any dent in drug markets or the drug trade. Sentences need to be commensurate with the gravity of the crime committed, mandatory minimums should be eliminated, and the use of pretrial detention should be the exception

rather than the rule, among other reforms. Better yet, countries should move in the direction of decriminalization (removing criminal penalties for possession and small-scale cultivation of drugs and drug crops) and creating legally regulated markets, beginning with cannabis and other less dangerous substances, in order to take organized crime—and the violence and corruption it generates—out of the drug trade.

**De-carcerate and provide alternatives to incarceration:** It is past time to fundamentally rethink who is put behind bars and for what reasons, and perhaps most importantly, to explore alternatives to incarceration. Ten years ago, the United Nations “Bangkok Rules” were adopted with the intention of improving the treatment of women in prison and promoting non-custodial alternatives. Yet a decade later, women are rarely offered alternatives to incarceration. These can range from doing community service to going to school or to job training—opportunities that can provide women the skills and resources they need to live lives with dignity and hence reduce recidivism. Even better, rather than investing in prisons, governments should invest in communities; they should invest in reforms and programs that promote gender equality and socioeconomic justice. As those in the U.S.-based National Council for Incarcerated and Formerly Incarcerated Women and Girls constantly remind us, it is time to end the incarceration of women and girls and to reimagine our communities.<sup>98</sup> Who better than women who have experienced the trauma and horror of prison to guide us in this process.

## KEY RESOURCES

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Maria Santos and Teresa García Castro, coordinators, *Transwomen Deprived of Liberty: Invisible Stories Behind Bars* (2020), [https://www.wola.org/wp-content/uploads/2020/04/Trans-Women-Deprived-of-Liberty.-Invisible-Stories-Behind-Bars\\_Final-3.pdf](https://www.wola.org/wp-content/uploads/2020/04/Trans-Women-Deprived-of-Liberty.-Invisible-Stories-Behind-Bars_Final-3.pdf)

Teresa García Castro, *Pretrial Detention in Latin America: The Disproportionate Impact on Women Deprived of Liberty for Drug Offenses* (2019), [https://www.wola.org/wp-content/uploads/2019/05/Pretrial-detention-in-Latin-America\\_June-2019.pdf](https://www.wola.org/wp-content/uploads/2019/05/Pretrial-detention-in-Latin-America_June-2019.pdf)

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<sup>84</sup> Institute for Criminal Policy Research at Birkbeck, *The World Prison Brief* (Accessed on September 14, 2018).

<sup>85</sup> International Drug Policy Consortium, UK Aid and Penal Reform International, *Reforming criminal justice responses to drugs: 10-point plan*, 3; Defensoria del Pueblo: Estado Plurinacional de Bolivia, *Bolivia: Situación de los Derechos de las Mujeres Privadas de Libertad: Informe Defensorial* (2012), 159, <https://www.defensoria.gob.bo/uploads/files/mujeres-privadas-de-libertad.pdf>.

<sup>86</sup> International Drug Policy Consortium, UK Aid and Penal Reform International, *Reforming criminal justice responses to drugs: 10-point plan*, 3.

<sup>87</sup> EQUIS Justicia para Mujeres, *Políticas de drogas, género y encarcelamiento en México: Una Guía para Políticas Públicas Incluyentes*, 13.

<sup>88</sup> Request submitted to the Gendarmería de Chile with folio number AK006T0009459 responded to in November 2018.

<sup>89</sup> For additional information see, Teresa García Castro, María Santos (coordinators), *Trans Women Deprived of Liberty: Invisible Stories Behind Bars* (2020), [https://www.wola.org/wp-content/uploads/2020/04/Trans-Women-Deprived-of-Liberty.-Invisible-Stories-Behind-Bars\\_Final-3.pdf](https://www.wola.org/wp-content/uploads/2020/04/Trans-Women-Deprived-of-Liberty.-Invisible-Stories-Behind-Bars_Final-3.pdf).

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<sup>94</sup> Rebeca Calzada, Horizontal, *Las mujeres y la guerra contra drogas: el reflejo del sistema patriarcal*, (March 15, 2017), <https://horizontal.mx/las-mujeres-y-la-guerra-contra-drogas-el-reflejo-del-sistema-patriarcal/>.

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<sup>96</sup> Inter-American Commission of Women, Organization of American States, *Women and drugs in the Americas: A policy working paper*, 29.

<sup>97</sup> *Ibid*, 29.

<sup>98</sup> See: <https://www.nationalcouncil.us/>

## **ABOUT WOLA**

WOLA is a leading research and advocacy organization advancing human rights in the Americas. We envision a future where public policies in the Americas protect human rights, recognize human dignity, and where justice overcomes violence.

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