



The exceptional situation of women incarcerated for drug-related offences

Equis: Justicia para las Mujeres de México
Corporación Humanas de Colombia
Corporación Humanas de Chile

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Luz Piedad Caicedo
Equis: Justicia para las Mujeres de México
Corporación Humanas de Colombia
Corporación Humanas de Chile

Presentation

This document is the synthesis of the main research findings carried out by Equis: Justicia para las Mujeres of Mexico, Corporación Humanas of Chile, and Corporación Humanas of Colombia with women deprived of their liberty in the three countries for offences related to the use, trafficking or sale of narcotic drugs. The investigations were one of the sources for a project that supported the elaboration of political and legal arguments to promote the application of alternative measures to imprisonment in cases where women were charged and sentenced for drug-related offences. The goal of this project is to contribute to the discussion about the drug policy flexibility that countries of the region have undertaken since 2010.¹

Introduction

Prison is, by definition, a male space, and the male population in jail for breaking the law far exceeds female population. For example, in Colombia, by December 2014 there were 105,675 men in prison, whereas women totaled only 7,948, or 7% of the total prison population. In Chile, by April 2015 there were 38,952 men in prison (92.5%) and women accounted for a 7.4% of the population (3,216). Mexico also has a male population in prison much larger than women. Men make up 94.8% (243,916) of the population and the female population represents a 5.2% (13,375).

Regardless of their low percentages, women deprived of their liberty have gained greater importance as their number in prison facilities continuously increases. Although the numbers do not allow a comparative analysis among countries, all of them show the same trend. In Colombia, the female prison population saw a 459% increase between 1991 and 2014 (an increase of 168 points more than the male population). In Mexico, the number of women deprived of their liberty for federal offences has increased in 400% since 2007 (UN, 2013). In Chile, between 2012 and 2015, the number of women in prison for drug-related offences increased 16.7 percentage points. This tendency is not unique to the Latin American region, is a situation that is common to all countries of the world, and the increase is related to the intensification of legal prosecution of drug use and trafficking (Cels, 2011, 23.)

¹ In that year the Inter-American Drug Abuse Control Commission approved the OAS 2010 Hemispheric Strategy on Drugs and the Action Plan 2011-2015 that agrees to search for alternatives for treatment, rehabilitation, and social reintegration of offenders of drug related crimes.

In the three countries the largest number of women that are deprived of their liberty are charged or sentenced for drug-related offences. In Chile, 58.9% by April 2015; in Mexico 12% by 2013; and in Colombia, 35% of the charges were drug-related by December 2014.

More people in jail can be interpreted as a success in the persecution of drug operations, and the increase in female offenders in jail serves as proof of the harshness and equitable reaction to crime. But, do the numbers actually reflect a success in the fight against drug trafficking? No; what the numbers reflect is the capacity of different for-profit structures in the drug business to find replacements for those that go to prison.

The increased use of women in the drug business has led to the label of feminization of drug trafficking.² In turn, this would also be related to the feminization of poverty.

This document is organized in three sections. Part one presents the profile of the incarcerated women interviewed in the Buen Pastor prison in Bogota (Colombia), the Centro de Readaptación Social Femenil in Tanivet (State of Oaxaca) and the Centro Femenil de Readaptación Social in Tepepan (Mexico City) in México, and the Centro Penitenciario Femenino in Santiago, Chile. Part two presents some of the prejudices identified in court rulings. Part three, presents some considerations to rethink criminal justice policy for drug-related offences.

Profiles of incarcerated women for drug-related offences

The total number of interned persons interviewed was 49 women: 17 in Bogota, 15 in Santiago, and 17 in Mexico City.

In general, these women are the head of single parent families; they became mothers very young, have very low levels of education, most of them are poor and some of them are even homeless. These characteristics establish an almost direct relation with their involvement in criminal activities: the need to provide for their sons and daughters (and in some cases, other members of an extended family) in a situation of poverty, unemployment or with an income insufficient to cover the family expenses. This reaffirms the findings of several reports on the region. Conditions of poverty, large numbers of children, and a majority of cases with an absent father that contributes with income, are all contributing factors that lead women to become involved in criminal activities.

Six patterns of involvement were found that are not mutually exclusive. Each of them will be briefly described.

1. Social and economic vulnerability: An important motivation to get involved in the drug business is economic desperation or situations of social and economic vulnerability.

² Expression used by Edwards (2010) and Uprimny, Guzman and Parra (2013)

Some of these women declared that they had no possibility to guarantee the survival of the people under their care. Coincidentally, women with this profile were caught in their first attempt.

2. Problematic dependence of psychotropic substances: Another group is made up of women that have a problematic dependence of psychotropic substances that were living in the streets or homeless because of their problematic drug use. In these cases, drugs sale was a way to have access to their own doses.
3. Drug trafficker partner: Some women started selling drugs because their partners did it. In general, these are women that initiated their lives with their partners very young and got pregnant quickly. The economic pressure pushed them to do the only thing they knew: the business of their partner.
4. Family business: Closely related to the above are the cases of women that get involved because the occupation of their family is the sale of narcotic drugs. In this environment it becomes natural to become involved and it is understood like a family business.
5. Entrepreneurship: Other women—although they do not make a normal activity out of the sale or any other related to drugs—get involved because it means a job opportunity for them. They are women that, by means of street sale, home sale, or smuggling drugs into correctional facilities, can generate additional income to the one provided by other members of the family group, complement their own income, or make enough money with just one job, to meet the necessary needs of their responsibilities as provider or care taker. In general, these are women with no other job alternatives, or that can only have access to underpaid positions with long working hours and no daycare options. The income they make using some of these alternatives allows them to cover their basic needs and on counted occasions to have a surplus for additional goods (Snickers, brand clothes, or toys for their children). In all these cases women interviewed had been able to multiply several times their income. Some of them sold for a limited time and others were repeat offenders. In general, they are poor women but not to the degree of vulnerability of the first group. A studied carried out by *Gendarmeria* de Chile determined that women that are involved in micro trafficking activities make on average CLP \$600.000 Chilean pesos per month, around US\$870.
6. Framing: This pattern is present in some cases of accused and sentenced women, although only eleven of the women interviewed in the three countries (one in Colombia, two in Chile and eight in Mexico) declared they had no responsibility and were not related to the world of drug trafficking. Also some of the interviewed report having being deceived and tricked into a ***rip-on rip-off*** scheme, called “gancho ciego” in Colombia and “palo blanco” in Chile. This means that they were not expected to carry out the transport or delivery because the police were tipped off, either to facilitate the police to show positive results, or as a distraction to facilitate a larger transaction. Similarly, deceit can be related to the type or amount of drug transported. The “mules” (that include those that bring drugs inside correctional facilities) are usually the target of this deceit. Deception plays two major roles: The first is to reduce the apprehensions

that women could have regarding carrying out the task—they are led to believe that the consequences are not too serious. The second role is for the woman to receive less money than the agreed in the market of these transactions. Among the women that were pushed or forced to transport drugs are those that wanted to assess the actual risk or to make a less rushed decision, however they could not turn back because the criminal structure closed that possibility. Paradoxically, some women feel that being incarcerated allowed them to gain freedom from drug trafficking networks.

Disproportionate laws and unbalanced court proceedings

In the Colombian case, Uprimny, Guzmán and Parra demonstrate that penalties prescribed for the possession, transport and processing of drugs are disproportionate from a penal, utilitarian and constitutional perspective.

As an example, from the penal point of view, the possession and trafficking of drugs in Colombia carries a penalty between 10.6 to 30 years in jail. In contrast, the minimum time considered for offences with larger social impact and that “seriously harm determined legal rights” is lesser. Thus, the minimum prison time considered for murder, violent sex crimes, personal harm with anatomical or functional loss of limb or organ, and forced displacement is 8 years (Uprimny, Guzman and Parra, 2013:53 and 54), in contrast with the minimum time of 10.6 years for drug-related offences. The maximum time for the possession and trafficking of drugs is higher than the 23 years contemplated for human trafficking, or the 20 years contemplated for violent carnal access and abusive carnal access with persons younger than 14 years old (Uprimny, Guzman and Parra, 2013:53 and 54).

The Mexican situation is similar. The current legislation related to drugs reproduces the international framework of the United Nations and takes it to an extreme form. Regarding drug-related offences, pre-trial detention is mandatory, access to sentence reduction or pre-liberation benefits are limited, the possibility of pardon is denied and disproportional sentences are applied.

Chile does not show a disproportion as found in Colombia and Mexico.

Beyond the disproportion, Colombian and Mexican legislation consider the explicit prohibition of use of alternative measures to the deprivation of liberty in drug-related offences. Therefore, it is not possible to build a legally sound case for the application of sentences that consider the specific characteristics of women.

In Colombia, the deprivation of liberty and the effects associated with it, in addition to the limitation of benefits to have access to alternative measures to the deprivation of liberty, makes the situation of women more severe. The situation is compounded by the harsh sentences that exceed the limits to have access to the benefits, or by the recent reforms that exclude these types of offences from the substitute mechanisms to the deprivation of

liberty. Many women declared having requested more than once house arrest and received negative answers given the type of offence, considered of the most serious ones.

In Mexico, to define a sentence aggravating factors are considered but no mitigating factors are included and there is a total lack of gender perspective. The National Code for Penal Court Proceedings considers one exception to the mandatory pre-trial detention in the case of pregnant women or women with lactating children. However, the opportunity to receive this exception is at the discretion of the judge. In consideration of the rigid formalism of those who impart justice, it is possible to think that this prerogative will not be used extensively. In general, the strict legal frameworks and the judicial rigor is not open to make use of the prerogatives to not apply laws that violate human rights, and as a consequence, imprisonment remains the main response for men and women. What was found in the analysis of the sentences is a tendency to apply minimum sentences in cases of women that are first time offenders.

In the Chilean case, the legislation allows for the application of an alternative measure of providing a monthly signature in cases of drug-related offences under very restricted circumstances. However, the application of this measure has no effect on preventing recidivism because it does not address the underlying reasons for the crime, and women that have received the benefit of this measure are not able to enter the formal labor force and avoid relapsing. As a result, when they are arrested again for an offence, they receive a double punishment for being recidivist and get a harsher treatment and heavier sentences.

The three countries present serious shortcomings in matters of legal defense of women in courts proceedings associated to drug-related offences. Many women do not get to meet their lawyers; some meet them only a few moments before a hearing. Many recommend indiscriminately pleading guilty as charged to benefit from a less severe treatment that in reality does not occur. In sum, a majority of women incarcerated do not know nor understand the judicial processes they are facing.

In Colombia, none of the interviewed women had the means to pay for an adequate defense, nor had a minimal knowledge and information to understand the process of their trial. In some extreme cases they were not even present the moment they were tried. They understood that when they were allowed to return to their home dwellings they had no pending matters with the justice system, or they never understood that they had to return to appear in court, or the judicial system was incapable of a subpoena to the pertinent hearings. On the other hand, the payment of bail bond, as a prerequisite to gain access to alternative measures or benefits, becomes an obstacle for women to benefit from these measures. More so, because bail bond amounts for these type of offences are high, in harsh contrast with the lack of resources of the majority of women in prison.

In the Chilean case, the attorney's general office has special units to investigate drug-related offences, but the office of the public defender does not. This represents a structural

inequality in the treatment of these offences given that the accused has to confront the maximum rigor of a specialized prosecuting office with a scarce defense that is not specialized and lacks adequate financial or legal resources for a quality legal defense.

Defense in Mexico is practically non-existent. In most of the cases, arrests are made in situations of *flagrante delicto*, which most of the time ends in conviction. The sentencing analysis and the interviews show no attempt by the defense to rebut the testimony of the arresting officers. It should be noted that even in the case that a defense exists, the tendency of the magistrates is to dismiss the evidence provided by the defense at the same time that the full probative value to the evidence presented by the prosecution is granted.

Gender prejudices

When women request to exchange the sentence of reclusion for home detention and refer to the harsh consequences that incarceration has for their families as mothers and heads of household, the negative answer reveals prejudices against women.

In the first place, it is assumed that the essence of the feminine is goodness and correctness, and any deviant behavior is not only an affront to society but an unnatural act as it contravenes the feminine essence.

Second, when becoming involved in crime, women are aware that this action will separate them from their role: to be with their children and at home. Hence, any woman that appeals based on their condition as a mother to get a lighter sentence, in fact is asking a third party (the judge) to do something she herself disregarded, undervalued or did not consider in a thoughtless outburst. The criminal cannot request "clemency" if she did not have it with their own children.

Third, the role of caregivers that is assigned to women completely overrides the reality of those who are also economic providers.

Thus the answer to any request for alternative measures is the demand for standards of proof that are difficult to achieve. It is the charge of being bad mothers that placed their families at risk by becoming involved in criminal activities. Women are labeled as a risk to the best interests of their children.

In addition, in Chile it was found that in the case of drug-related offences, judicial policy affects women especially harshly. In many cases, the mere knowledge that their partners or relatives are involved in drug-related crimes implies their criminal responsibility for crimes committed by others. This does not happen in any other kind of crimes. Often they assume liability for the mere fact of having known of the commission of the crimes.

Some considerations to modify repressive policies

Imprisonment adds instability and poverty to the women and their dependents. In many cases the only provider of income to the household is now behind bars.

In Colombia, many women became drug users after being incarcerated, in part to survive the inhuman conditions they have to endure (Briceño-Doon, 2006:33).

A change in the repressive policy would have a big impact in the reduction of the prison overcrowding. The calculations of Uprimny and Guzman lead to the conclusion that in 2009, overcrowding could have been around 18.3% instead of the 38.9% that the statistics in Colombia indicate (Uprimny and Guzman, 2010: 48).

The weakest links in the chain are easily replaceable, and putting them in jail has not shown any results. In “some cases police and court resources could be better used to fight against violent crimes, large scale drug-related crimes, at the same time alternatives measures to imprisonment are made available” (CICAD, 2015, p.16).

There is no clear relationship between increasing jail times to those that break the law and the decrease of insecurity (CICAD, 2015, p.17). In fact, some studies report that being incarcerated for more than a year can increase the probabilities of recidivism (CICAD, 2015, p.18).

None of the three United Nations International Conventions for the Prevention of Drug and Crime (1961, 1971, and 1988) indicate that “it is required that minor drug-related offences be punished with jail time or any other specific sanction” (CICAD, 2015, p.13).

Conclusions

The gender perspective is absolutely absent in the definition of criminal justice policies for the types of offences related to drug trafficking.

There is no institutional acknowledgement in public policy of the differentiated effects that punitive policies have in women, or of the criminogenic factors that lead them to commit these types of crimes.

Drug policy based on the use of the penal code, excessive sentences, and the limitation of alternative measures to the deprivation of liberty is not effective. On the contrary, it has become functional to the large networks of traffickers that sacrifice the weakest links of the business, many of whom are women, for their effective operation.

Instead of being affected by the policies for prosecuting drug cases, drug traffickers have adapted to them. The networks detect, prey on, and seduce poor women that must fulfill the double role of providers and caregivers until they become involved in the drug trade. Among the new recruits, a percentage will be turned over to the authorities so they can show results, while the *capos* profit from those that actually were assigned to and completed a mission.

The involvement of women in drug-related offences is determined by the economic vulnerability and the capacity to perform at the same time as a caregiver for different members of the family.

The crisis in correctional facilities expressed in overcrowding and systematic violations of the rights of incarcerated people is directly related to the drug policies that prefer sentences that deprive from liberty in prison facilities instead of alternatives measures that could be more effective in terms of the purpose of the punishment.

The narratives of the interviewed women underscore the need for the court operators to identify the specific situation of each woman, the circumstances that led them to commit crimes, and the reasons for their recidivism.

It is necessary to generate opportunities after being released from the correctional facility to prevent recidivism and promote the reconstruction of a life project (job opportunities, reduction of social stigmatization, and education for children, among others).

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