

## Women deprived of liberty

### Submission to the Working Group on the issue of discrimination against women in law and in practice

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#### Introduction

This submission was prepared by the Washington Office on Latin America (WOLA), the International Drug Policy Consortium (IDPC), the Centro de Estudios Legales y Sociales (CELS, Argentina), EQUIS: Justicia para las Mujeres (Mexico) and Dejusticia (Colombia).<sup>1</sup> This joint submission aims to contribute to the upcoming report of the UN Working Group on ‘Women deprived of liberty’.<sup>2</sup> It focuses on the disproportionate impacts of overly punitive drug policies on women, and therefore addresses the questions included in Section I of the questionnaire on the ‘Justice system’. Please note that while much of the data and analysis presented here is from Latin America, the trends are applicable across the world. Also note that this submission includes data of a report that will soon be published by WOLA; as it is not yet released, relevant sections are not cited but all data presented below include sources.

#### Most recent data on women’s incarceration

According to the Institute for Criminal Policy Research, as of 2017, at least 714,000 women and girls were held in penal institutions throughout the world.<sup>3</sup> That number represents 6.9% of the global prison population. The data shows that the number of women and girls in prison has increased by 53% between mid-2000 and mid-2016, a period in which the worldwide male prison population increased by around 20%. The data identifies particularly sharp increases in Guatemala, El Salvador, Brazil, Colombia, Cambodia and Indonesia. Over a third of these women were imprisoned in the Americas, where the percentage of female prisoners rises to 8.4%. The United States has the highest number of female prisoners in the world (211,870), Brazil has the fourth highest (44,700), and Mexico has the tenth highest (10,832).<sup>4</sup> The sheer number of women imprisoned in Latin American countries is deeply worrisome (see [Table 1](#)).

In 2017, the Americas had by far the highest female prison population rate in the world at 31.4 per 100,000 of the national population. Even if the data from the United States were excluded, the rate for the Americas in 2017 remains at 14.6, which is higher than in other regions.<sup>5</sup> These rates are important because they show the proportion of women incarcerated vis-à-vis the larger national population.

Finally, available statistics show a major increase in the female prison population since around 2000 (see [Table 2](#)). In 2017, countries like El Salvador had ten times more female prisoners than in 2001, and Guatemala had five times more female prisoners compared to 2001. In 2017, Brazil had four and a half times more female prisoners than in 2000, and even more worryingly, their female prison population rose sharply between 2015 and 2017.<sup>6</sup>

The most recent data therefore show that the incarceration of women in Latin America is reaching alarming proportions. Unless governments implement reforms, the problem of mass incarceration of women in Latin America will only worsen.

**Table 1. Women deprived of liberty<sup>7</sup>**

| Country     | Number of women deprived of liberty | Year |
|-------------|-------------------------------------|------|
| Brazil      | 44,700 approx.                      | 2016 |
| Mexico      | 10,591                              | 2018 |
| Colombia    | 7,806                               | 2018 |
| Peru        | 4,886                               | 2018 |
| Chile       | 3,534                               | 2018 |
| Argentina   | 3,184                               | 2016 |
| Venezuela   | 3,044                               | 2017 |
| Ecuador     | 2,927                               | 2018 |
| El Salvador | 2,761                               | 2018 |
| Guatemala   | 2,445                               | 2018 |
| Bolivia     | 1,157                               | 2016 |
| Costa Rica  | 1,034                               | 2017 |
| Panama      | 870                                 | 2018 |
| Paraguay    | 834                                 | 2015 |
| Honduras    | 627                                 | 2014 |
| Uruguay     | 585                                 | 2017 |
| Nicaragua   | 575                                 | 2014 |

**Table 2. Increase in female prison population in Latin America<sup>8</sup>**

| Country     | Increase (in %)       | Base number        | Most recent number    |
|-------------|-----------------------|--------------------|-----------------------|
| El Salvador | 644.20%               | 371 (2000)         | 2,761 (2018)          |
| Guatemala   | 464.67%               | 433 (2001)         | 2,445 (2018)          |
| Brazil      | 342.05%               | 10,112 (2000)      | 44,700 approx. (2016) |
| Ecuador     | 329.18%               | 682 (2002)         | 2,927 (2018)          |
| Paraguay    | 302.90%               | 207 (1999)         | 834 (2015)            |
| Venezuela   | 225.21%               | 936 (2001)         | 3,044 (2017)          |
| Colombia    | 148.52%               | 3,141 (2000)       | 7,806 (2018)          |
| Uruguay     | 143.75%               | 240 approx. (1999) | 585 (2017)            |
| Nicaragua   | 141.60%               | 238 approx. (1999) | 575 (2014)            |
| Peru        | 137.88%               | 2,054 (2001)       | 4,886 (2018)          |
| Costa Rica  | 127.75%               | 454 (2003)         | 1,034 (2017)          |
| Chile       | 85.32%                | 1,907 (1999)       | 3,534 (2018)          |
| Mexico      | 55.45%                | 6,813 (2000)       | 10,591 (2018)         |
| Panama      | 33.03%                | 654 (2000)         | 870 (2018)            |
| Argentina   | 32.56%                | 2,402 (2002)       | 3,184 (2016)          |
| Honduras    | 2.13% <sup>9</sup>    | 614 (2002)         | 627 (2014)            |
| Bolivia     | -16.94% <sup>10</sup> | 1,393 (2000)       | 1,157 (2016)          |

## **Punitive drug laws are the main causes for women coming into conflict with the law and facing the associated deprivation of liberty**

### **What the numbers show**

As mentioned above, although women continue to represent a small proportion of the general prison population, they are also the fastest growing prison population. In Latin America, this is driven by repressive drug policies. According to the United Nations Office on Drugs and Crime (UNODC), at global level, 12% of women were in prison for drug-related crimes (based on 2016 data).<sup>11</sup> However, the WOLA investigation referred to above shows that in many Latin American countries, drug-related crimes are the main cause of female incarceration. This is the case for Mexico,<sup>12</sup> Costa Rica,<sup>13</sup> Panama,<sup>14</sup> Argentina,<sup>15</sup> Bolivia,<sup>16</sup> Brazil,<sup>17</sup> Chile,<sup>18</sup> Colombia,<sup>19</sup> Venezuela,<sup>20</sup> Paraguay<sup>21</sup> and Peru<sup>22</sup> (see [Table 3](#)). Although, in sheer numbers, more men than women are incarcerated for drug-related offences in Latin America, the percentage of women imprisoned for that offence is always higher than for men (see [Table 4](#)).

The highest levels of incarceration of women can be found in East and Southeast Asia, where the mass incarceration of individuals charged with low-level, non-violent drug offences has led to severe prison overcrowding. According to the Thailand Institute of Justice, 82% of women behind bars in Thailand are convicted of drug offences. Of those, 78% are first time offenders and 93% are convicted.<sup>23</sup> In the Philippines, the latest estimates show that 53% of the female prison population are convicted for drug-related offences<sup>24</sup> – although this figure has likely significantly increased since President Duterte launched his war on drugs in the Philippines, which has led to over 27,000 deaths<sup>25</sup> and a surge in the overall prison population which led to a 511.9% congestion rate in 2017.<sup>26</sup>

**Table 3. Number & percentage of women incarcerated for drug offences in Latin America**

| Country    | Number                                      | % out of the total female prison population   | Year      |
|------------|---|---|-----------|
| Argentina  | 1,093 <sup>27</sup>                         | 37% <sup>28</sup>                             | 2015      |
| Bolivia    | 451 <sup>29</sup>                           | 39% <sup>30</sup>                             | 2016      |
| Brazil     | 25,418 <sup>31</sup>                        | 68% <sup>32</sup>                             | 2014      |
| Chile      | 1,989 <sup>33</sup>                         | 54.5% <sup>34</sup>                           | 2017      |
| Colombia   | 3,594 <sup>35</sup>                         | 34.37% <sup>36</sup>                          | 2018      |
| Costa Rica | -   | 68.6% <sup>37</sup>                           | 2016      |
|            | 944 <sup>38</sup>                           | 75.46% <sup>39</sup>                          | 2011      |
| Ecuador    | 709 <sup>40</sup>                           | 43% <sup>41</sup>                             | 2015      |
| Mexico     | -   | 48% (federal) / 6.3% (state) <sup>42</sup>    | 2015      |
|            | 528 (federal) / 1,547 (state) <sup>43</sup> | 44.8% (federal) / 14.2% (state) <sup>44</sup> | 2013-2014 |
| Panama     | -   | 70% <sup>45</sup>                             | 2016-2017 |
| Peru       | 2,679 <sup>46</sup>                         | 60.6% <sup>47</sup>                           | 2014      |
| Uruguay    | 165 <sup>48</sup>                           | 30.6% <sup>49</sup>                           | 2016      |
| Venezuela  | 1,170 <sup>50</sup>                         | 64% <sup>51</sup>                             | 2008      |

**Table 4. Proportion of men and women incarcerated for drug related offences in Latin America**

| Country    | % of women incarcerated for drug offences out of the total female prison population | % of men incarcerated for drug offences out of the total male prison population | Year      |
|------------|---|---|-----------|
| Argentina  | 37% <sup>52</sup>   | 10% <sup>53</sup>   | 2015      |
| Brazil     | 68% <sup>54</sup>   | 26% <sup>55</sup>   | 2014      |
| Chile      | 54.5% <sup>56</sup>   | 20.1% <sup>57</sup>   | 2017      |
| Colombia   | 34.37% <sup>58</sup>  | 13.72% <sup>59</sup>  | 2018      |
| Costa Rica | 68.6% <sup>60</sup>   | 22.2% <sup>61</sup>   | 2016      |
| Mexico     | 48% (federal) / 6.3% (state) <sup>62</sup>  | 30.4% (federal) / 5.3% (state) <sup>63</sup>                                    | 2015      |
| Panama     | 70% <sup>64</sup>   | 31% <sup>65</sup>   | 2016-2017 |
| Uruguay    | 30.6% <sup>66</sup>   | 9.9% <sup>67</sup>  | 2016      |

### **Disproportionate penalties for drug offences**

It is important to highlight the urgent need for better information systems on incarcerated populations, disaggregated by sex.<sup>68</sup> However, data available to date shows that most women are arrested for drug use, possession of drugs for personal use, and other non-violent, low-level yet high-risk activities, such as small-scale drug dealing or transporting drugs. They are generally first-time offenders. Although most women incarcerated for drug offences are generally engaged at the lowest levels of the drug chain, they often face disproportionate prison sentences. This is because many countries across Latin America do not necessarily differentiate between low-level and high-level trafficking, consider the role of the offender in the chain (minor, mid-level, leadership role, etc.) or mitigating circumstances based on factors of socio-economic vulnerability.

A 2013 report by Dejusticia and the Collective for the Study of Drugs and the Law (CEDD) documented that the average maximum sentence for a drug offence in the seven Latin American countries studied rose from 34 years in prison in 1950 to 141 years in 2013; in Colombia, micro-trafficking is punished by a higher prison sentence than rape or even murder.<sup>69</sup> In various countries across the world, drug laws and criminal codes impose mandatory minimum sentences for drug offences, preventing any flexibility on the part of the judge to impose less severe punishment for first-time, non-violent offences.

Furthermore, for the women convicted of drug-related offences in Latin America, sentences are often harsher than for men. In Mexico, for instance, a study showed that women tend to serve longer terms than men because they are charged with possession with intent to sell, while men tend to be charged with possession for personal use.<sup>70</sup> In 2015, possession with intent to sell was one of the most common crimes for women in Mexico.<sup>71</sup> Moreover in several Latin American countries, the offence of transporting drugs is punished more severely than other drug crimes, and women are more frequently convicted of transporting drugs.<sup>72</sup>

### **Disproportionate impact on women in situations of vulnerability**

The incarceration of women involved in low-level drug offences contributes little to reducing the overall scale of the illegal drug market or improving public security, as they are easily replaced in the illegal drug trade. These women often have little or no schooling, live in conditions of poverty, and are heads of household responsible for the care of young, elderly or disabled dependents.<sup>73</sup> They may also need harm reduction services,<sup>74</sup> or treatment for drug dependence and for mental or physical health problems. Most have suffered some form of sexual violence before and/or during their incarceration.

In Latin America in particular, the overwhelming majority of women become involved in the drug trade due to poverty and social exclusion, as they are unable to find job opportunities in the legal economy. In Colombia, for example, 76% of incarcerated women do not have a high school diploma.<sup>75</sup> In some cases, women become involved in the drug trade because it is a family business. Others are coerced into drug dealing and trafficking by male relatives or intimate partners.<sup>76</sup> In Bolivia, incarcerated women identify coercion from partners and family members as one of the main reasons for engaging in illegal drug activity.<sup>77</sup> Furthermore, even if the women were not initially coerced to get involved with the drug trade, once they are part of a mission, they are often forbidden to back out as they and/or their family members may be threatened with violence.<sup>78</sup> Drug couriers are also often misled and lied to by traffickers.<sup>79</sup> In many Latin American courts, judges do not take into account factors of coercion when deciding what sentence to give to accused women.<sup>80</sup> Moreover, coercion can also take place after the offence has occurred and the women have been imprisoned: women may be so fearful of their superiors that they do not plead their best case.<sup>81</sup>

### **Disproportionate impact on mothers and their children**

The vast majority of incarcerated women in Latin America have children. According to a recent report, 87% of women incarcerated have children, while 78% of men do. Similarly, 27% of the women incarcerated have more than 3 children, as compared to 23% of men.<sup>82</sup> In Chile in 2015, 95% of incarcerated women were mothers, and 47.17% had children below the age of 18.<sup>83</sup> In Mexico in 2012, 88% of incarcerated women had children, in comparison to 78% of men.<sup>84</sup> In Uruguay, 75% have children below 18 years old,<sup>85</sup> while in Panama, at least 70% of women have children, and most have two or more.<sup>86</sup>

Women incarcerated for drug offences are no exception. In Colombia, of all women who entered prison for drug crimes between 2010 and 2014, 93.4% had children, compared to only 76.2% of their male counterparts. With regards to women heads of household, 86.4% were detained solely for minor, non-violent drug crimes.<sup>87</sup> Many of these women became mothers at an early age: 55% of the women incarcerated in Latin America had their children when they were adolescent, while only 17% of the men did.<sup>88</sup> Early motherhood in many cases leads to them quitting school, have less opportunities to work, and be abused by family members of romantic partners.<sup>89</sup>

Of particular concern, a large portion of incarcerated women in Latin America are single mothers, which makes their economic situation even more pressing. A 2012 government study in Costa Rica revealed that more than 95% of women in prison who were detained for smuggling drugs into prisons were single mothers with the sole

responsibility for providing for their children.<sup>90</sup> Similar trends can be found in Asia. Research carried out by IDPC and the Thailand Institute of Justice shows that over 78% of incarcerated women in Thailand are mothers, as are 85% in the Philippines and 84% in Indonesia.<sup>91</sup>

The incarceration of mothers can have a long-term and devastating impact on their dependents. In some countries, babies and young children are in prison with their mothers. In Argentina, for instance, at least 131 children are in prison with their mothers.<sup>92</sup> These children must leave the prison when they turn four years old, being suddenly separated from their mothers. There are no social policies in place to support these children through the traumatic experience.

In the absence of strong social protection networks, the dependents of imprisoned women are exposed to abandonment and are further marginalised. Prison further limits the chances of finding decent and legal employment, as women coming out of prison have a criminal record. These factors can perpetuate cycles of poverty, involvement in illegal drug activities and incarceration.<sup>93</sup>

## Main challenges for women’s access to justice

### The overuse of pretrial detention for drug offences

In countries like Bolivia, Brazil, Ecuador and Mexico, pre-trial detention is mandatory for all drug offences, whether of minor or high-level nature, and people can await trial for months up to several years.<sup>94</sup> This means that even in countries – like Mexico – where there are provisions for pregnant women or women with young children to avoid pre-trial detention, these do not apply for women accused of drug offences. These practices have largely contributed to prison overcrowding across the region.

**Table 5. Percentage and number of people held in pretrial detention, and evolution over the years<sup>95</sup>**

| Country     | % of prison population in pretrial detention | Number of people held in pretrial detention | Year | Increase in pretrial detention (in %) | Years     |
|-------------|--|---|------|---------------------------------------|-----------|
| Argentina   | 47.7%  | 36,374                                      | 2016 | 37.38%                                | 2002-2016 |
| Bolivia     | 69.9%  | 12,537                                      | 2018 | 149.29%                               | 2005-2018 |
| Brazil      | 36.6%  | 249,753                                     | 2018 | 209.2%                                | 2000-2018 |
| Chile       | 34.5%  | 14,173                                      | 2018 | -11.6%                                | 2000-2018 |
| Colombia    | 32.9%  | 38,228                                      | 2018 | 88.24%                                | 2000-2018 |
| Costa Rica  | 13.3%  | 2,543                                       | 2016 | 35.27%                                | 2002-2016 |
| Ecuador     | 34.9%  | 13,073                                      | 2018 | 139.83%                               | 2001-2018 |
| El Salvador | 31%  | 12,101                                      | 2018 | 135.11%                               | 2002-2018 |
| Guatemala   | 53.2%  | 12,043                                      | 2018 | 180.79%                               | 2001-2018 |
| Honduras    | 53.1%  | 9,660                                       | 2017 | 31.29%                                | 2005-2017 |
| Mexico      | 39.1%  | 80,056                                      | 2018 | 25.63%                                | 2000-2018 |
| Nicaragua   | 21.4%  | 3,140                                       | 2016 | 289.1%                                | 2004-2016 |
| Panama      | 53%  | 8,584                                       | 2018 | 63.91%                                | 2000-2018 |
| Paraguay    | 77.5%  | 9,466                                       | 2016 | 103.5%                                | 2004-2016 |
| Peru        | 40%  | 34,295                                      | 2018 | 121.59%                               | 2001-2018 |
| Uruguay     | 69.7%  | 7,721 <sup>96</sup>                         | 2017 | 48.6%                                 | 2007-2017 |
| Venezuela   | 71.3%  | 39,028 <sup>97</sup>                        | 2016 | 516.46%                               | 2000-2016 |

Data on women held in pre-trial detention for drug offences are not available. However, [Table 5](#) shows the number of people in pretrial detention in Latin American countries for the latest year available, and the percentage that

that number represents vis-à-vis the total prison population. In 13 out of the 17 countries studied, more than a third of the prison population has not yet received a sentence. In seven countries, more than half is in pretrial detention. In Bolivia, Uruguay, Venezuela, and Paraguay, over two thirds are waiting in prison without having yet been declared guilty. With the exception of Chile, the number of people in pretrial detention in Latin American countries has increased over the years, and continues to do so.

### **Lack of effective legal counsel**

Another reason why women end up in prison is their inability to obtain adequate legal counsel. Effective legal counsel is generally extremely expensive and in short supply, especially for those accused of drug offences.<sup>98</sup> When asked, most women in prison say they would rather have a private attorney represent them if they could afford them, but most of the time they cannot.<sup>99</sup> Moreover, even if the accused could afford private counsel, many times lawyers refuse to represent them because of the stigma associated with drug offenders. In countries like Bolivia, for instance, the law forbids private defence lawyers specialising in drug trafficking cases from running for high-level judicial offices when one or more of their clients have been convicted.<sup>100</sup>

In addition, women are almost always at the bottom of the hierarchy of drug trade organisations, hence they usually do not possess ‘valuable’ information that can be given to the prosecution in exchange of lighter sentences or to avoid prison altogether.<sup>101</sup> This is one of the reasons why women may end up with harsher sentences than men. As the Special Rapporteur on violence against women pointed out, ‘women who commit relatively low-level drug crimes find themselves serving prison time while more serious offenders often escape imprisonment by entering into plea-bargaining deals’.<sup>102</sup>

### **The lack of drug services for women in prison**

The rights to equality and non-discrimination are protected under international law, from which different obligations arise. Under the Convention on the Elimination of all forms of Discrimination against Women and other human rights treaties and standards, States are obliged to ensure equal rights to men and women in all respects, including equal access to health care services for both men and women.<sup>103</sup> According to the latest data from the UNODC, drug use remains high in prison.<sup>104</sup> The United Nations also emphasize the need to ensure comprehensive health and reproductive services for women who use drugs, including HIV-related services, in prison.<sup>105</sup> And yet, access to harm reduction and drug dependence treatment services is severely limited in prisons and other closed settings, and are generally only available in male prisons. This means that women who use drugs in prison have no access to these life-saving services,<sup>106</sup> and as a result are more likely to contract HIV, hepatitis, tuberculosis and risk dying of an overdose. In 2014, the UN Committee on the Elimination of Discrimination against Women recommended ‘gender-sensitive and evidence-based drug treatment services to reduce harmful effects for women who use drugs, including harm reduction programmes for women in detention’.<sup>107</sup>

## **The need for alternative approaches**

### **Alternatives to criminalisation and incarceration**

The UN Special Rapporteur on violence against women,<sup>108</sup> as well as the Committee on the Elimination of all forms of Discrimination against Women,<sup>109</sup> have both called upon States to develop gender-sensitive alternatives to incarceration, and promote a paradigm shift away from incarceration and towards community-based sentencing for female offenders. This also requires a review of national drug laws and policies to ensure

proportionate penalties for drug offences, including the consideration of mitigating factors such as socio-economic vulnerability, being the sole care provider of dependents, and drug dependence, among others.

These recommendations are incorporated in the UNGASS Outcome Document 'Our joint commitment to effectively addressing and countering the world drug problem' adopted in April 2016.<sup>110</sup> The UN Rules for the Treatment of Women Prisoners (Bangkok Rules) also protect the principle of non-discrimination, requiring States to address the specific challenges confronted by women in the criminal justice and prison systems. This includes the use of alternatives to incarceration for women in prison for drug offences.<sup>111</sup> Nevertheless, alternatives to incarceration remain underused in Latin America. Costa Rica is one of the rare examples that has developed a gender-sensitive approach to drug policy, including more proportionate sentencing and alternatives to imprisonment (see below).

Furthermore, the exacerbated health harms associated with the incarceration of large numbers of people who use drugs has led 26 countries worldwide to remove criminal sanctions for drug use and possession of drugs for personal use.<sup>112</sup> In addition to decongesting prisons, the decriminalisation of drug use offers better access to health and reduces the social stigma and discriminations faced by people who use drugs. Women are particularly stigmatised for their drug use for breaking with what is considered as their traditional role as a care provider.<sup>113</sup> In this context, decriminalising their drug use is all the more important to address the stigma and discriminations women face in accessing health and social services, and reducing their rate of incarceration. The decriminalisation of drug use has been endorsed by a number of UN entities, including the OHCHR,<sup>114</sup> UN Women,<sup>115</sup> the UN Committee on Economic Social and Cultural Rights,<sup>116</sup> UNAIDS,<sup>117</sup> WHO,<sup>118</sup> the United Nations Development Programme,<sup>119</sup> a number of UN Special Rapporteurs on human rights,<sup>120</sup> as well as the UN High Commissioner for Refugees, UNICEF, the World Food Programme, the International Labour Organization, UNESCO, the UN Population Fund and the International Organization for Migration.<sup>121</sup>

### **Costa Rica implements gender-sensitive drug policies to curb incarceration**

In 2011, Costa Rica revised its drug legislation to introduce greater proportionality of sentencing and gender sensitivity. The reform reduced the length of incarceration for vulnerable women accused of smuggling drugs into prison. The programme initially benefited 150 women who were immediately released from prison. Those convicted for this offence can now benefit from alternatives to incarceration.<sup>122</sup> In 2014, the country's Public Defender's Office also launched an inter-institutional support network, which works to divert women in situations of vulnerability away from the criminal justice system and offer them services such as counselling, drug dependence treatment, and job training. The needs of each woman are determined by a caseworker, and a tailored action plan is developed for each client. The goals of the programme are to reduce recidivism and help women regain their rights and dignity.<sup>123</sup>

Of particular significance, Costa Rica implemented an important reform to eliminate barriers to re-entry into society for all non-violent offenders. As noted above, criminal records constitute a significant barrier for formerly incarcerated people who are seeking employment. Law 9361, passed in January 2017, reformed the court registry in Costa Rica, allowing for criminal records to be eliminated. The opportunity to erase one's criminal record is based on criteria that take into account the length of the sentence, the offence committed and, when relevant, the 'situation of vulnerability' of the offender.<sup>124</sup>

## Recommendations

We suggest that the following recommendations for member states be considered for inclusion in the report of the Working Group:

- Collate recent, relevant, and reliable national prison data disaggregated by sex to ensure that policies can effectively meet the needs of women in situation of vulnerability who are incarcerated for drug offences.<sup>125</sup>
- Commit to a rights- and gender-based harm reduction approach to women who use drugs, and end the criminalisation, stigmatisation and incarceration of women who use or have used drugs.
- Review drug laws and policies to ensure more proportionate sentencing for drug offences, in order to avoid the imposition of lengthy sentences for women who have committed non-violent drug offences such as possession of small quantities of drugs, small-scale dealing or engagement in the drug trade as drug couriers – the objective being that incarceration is used only as a last resort.<sup>126</sup>
- End mandatory pre-trial detention for drug offences. The use of pre-trial detention should be the exception, rather than the rule.
- Implement alternatives to incarceration for women incarcerated for drug offences, in particular for those who are pregnant or in charge of dependents.<sup>127</sup>
- Encourage and ensure women’s participation in the development, implementation, evaluation and monitoring of drug policies and programmes, especially those women who are directly impacted by drug use, the drug trade or drug policies. This should include women who use drugs; women who are or have been incarcerated; mothers, wives or partners of persons who are incarcerated; and members of communities that have been impacted.

## Endnotes

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<sup>1</sup> The contents of the submission are based upon the work conducted by a working group on ‘women, drug policy and incarceration in Latin America’, led by WOLA, IDPC and Dejusticia in collaboration with the Inter-American Commission on Women of the Organization of American States. The working group seeks to promote gender-sensitive drug policies rooted in public health and human rights and, specifically, end the mass incarceration of women for low-level drug offences. The working group is composed of 25 individuals from NGOs, academia and governments. Members are from 9 Latin American countries, the United States, United Kingdom and Canada. Additional information can be found here: <https://womenanddrugs.wola.org/about-the-project>

<sup>2</sup> See: <https://www.ohchr.org/EN/Issues/Women/WGWomen/Pages/WomenDeprivedLiberty.aspx>

<sup>3</sup> Walmsley, R. (2017), *World Prison Brief: World Female Imprisonment List*, 4th ed. (Institute for Criminal Policy Research at Birkbeck, University of London), p. 2,

[http://www.prisonstudies.org/sites/default/files/resources/downloads/world\\_female\\_prison\\_4th\\_edn\\_v4\\_web.pdf](http://www.prisonstudies.org/sites/default/files/resources/downloads/world_female_prison_4th_edn_v4_web.pdf)

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Institute for Criminal Policy Research at Birkbeck, *The World Prison Brief*, <http://www.prisonstudies.org/> (accessed 26 September 2018)

<sup>8</sup> Calculated by the Washington Office on Latin America (WOLA). Data from: Institute for Criminal Policy Research at Birkbeck, *The World Prison Brief*, <http://www.prisonstudies.org/> (accessed 26 September 2018)

<sup>9</sup> But between 2005 and 2014, the percentage increase was 58.73% in Honduras

<sup>10</sup> But between 2005 and 2016, the percentage increase was 26.73% in Bolivia

<sup>11</sup> United Nations Office on Drugs and Crime (11 July 2016), *La UNODC aboga por medidas sustitutivas al encarcelamiento para delitos menores y no violentos relacionados con las drogas, en especial para las mujeres*, <https://www.unodc.org/bolivia/es/La-UNODC-aboga-por-medidas-sustitutivas-al-encarcelamiento-para-delitos-menores-y-no-violentos-relacionados-con-las-drogas.html>

<sup>12</sup> Instituto Nacional de Estadística y Geografía (2016), *Censo Nacional de Gobierno, Seguridad Pública y Sistema Penitenciario Estatales*, <http://www.beta.inegi.org.mx/proyectos/censosgobierno/estatal/cngspspe/2016/>

<sup>13</sup> Washington Office on Latin America, International Drug Policy Consortium, Dejusticia, Inter-American Commission of Women & Organization of American States (2016), *Women, Drug policy and incarceration: A guide for Policy reform in Latin America and the*



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<sup>14</sup> United Nations Office on Drugs and Crime (2016), *Caracterización de las personas privadas de libertad por delitos de drogas, con enfoque socio-jurídico del diferencial por género en la aplicación de justicia penal*, p. 4, <http://www.seguridadciudadana.gob.pa/wp-content/uploads/2017/06/Genero-Carcel-y-Droga.pdf>

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<sup>120</sup> Office of the High Commissioner for Human Rights (15 April 2016), *Joint Open Letter by the UN Working Group on Arbitrary Detention; the Special Rapporteurs on extrajudicial, summary or arbitrary executions; torture and other cruel, inhuman or degrading treatment or punishment; the right of everyone to the highest attainable standard of mental and physical health; and the Committee on the Rights of the Child, on the occasion of the United Nation General Assembly Special Session on Drugs*, [https://www.ohchr.org/Documents/Issues/Health/UNGASS-joint\\_OL\\_HR\\_mechanisms\\_April2016.pdf](https://www.ohchr.org/Documents/Issues/Health/UNGASS-joint_OL_HR_mechanisms_April2016.pdf)

<sup>121</sup> See: UNAIDS, UNHCR, UNICEF, World Food Programme, United Nations Development Programme, UNFPA, UN Women, International Labour Organization, United Nations Educational, Scientific and Cultural Organization, World Health Organization, Office of the High Commissioner for Human Rights & International Organization for Migration (2017), *Joint United Nations statement on ending discrimination in health care settings*, [http://www.unaids.org/sites/default/files/media\\_asset/ending-discrimination-healthcare-settings\\_en.pdf](http://www.unaids.org/sites/default/files/media_asset/ending-discrimination-healthcare-settings_en.pdf)

<sup>122</sup> Pieris, N. (2017), *Reducing female incarceration through drug law reform in Costa Rica* (Washington Office on Latin America, International Drug Policy Consortium, Dejusticia & Inter-American Commission of Women), [https://www.wola.org/wp-content/uploads/2017/05/DONE-2-Costa-Rica-77bis\\_ENG\\_FINAL-.pdf](https://www.wola.org/wp-content/uploads/2017/05/DONE-2-Costa-Rica-77bis_ENG_FINAL-.pdf)

<sup>123</sup> Pieris, N. (2017), *Costa Rica's inter-institutional network in support of women caught in the criminal justice system* (Washington Office on Latin America, International Drug Policy Consortium, Dejusticia & Inter-American Commission of Women), [https://www.wola.org/wp-content/uploads/2017/05/DONE-3-Red-interinstitucional-Costa-Rica\\_ENG\\_FINAL-.pdf](https://www.wola.org/wp-content/uploads/2017/05/DONE-3-Red-interinstitucional-Costa-Rica_ENG_FINAL-.pdf)

<sup>124</sup> Washington Office on Latin America, International Drug Policy Consortium, Dejusticia & Inter-American Commission of Women (2017), *Eliminating barriers to re-entry: Criminal record reform in Costa Rica*, [https://mujeresydrugas.wola.org/wp-content/uploads/2017/12/DONE-14-Criminal-Records-in-CR\\_ENG\\_FINAL-1.pdf](https://mujeresydrugas.wola.org/wp-content/uploads/2017/12/DONE-14-Criminal-Records-in-CR_ENG_FINAL-1.pdf)

<sup>125</sup> For more information on data collection with a gender perspective, see: Pol, L. (2016), *Generating and collecting data on women incarcerated for drug offenses* (Washington Office on Latin America, International Drug Policy Consortium, Dejusticia & Inter-American Commission of Women), [https://www.wola.org/sites/default/files/Data%20English\\_FINAL.pdf](https://www.wola.org/sites/default/files/Data%20English_FINAL.pdf)

<sup>126</sup> For more information, see: Washington Office on Latin America, International Drug Policy Consortium, Dejusticia, Inter-American Commission of Women & Organization of American States (2015), *Women, Drug policy and incarceration: A guide for Policy reform in Latin America and the Caribbean*, <https://womenanddrugs.wola.org/women-drug-policy-and-incarceration-a-guide-for-policy-reform-in-latin-america-and-the-caribbean/>

<sup>127</sup> For more information on alternatives to incarceration with a gender perspective, see: Washington Office on Latin America, International Drug Policy Consortium & Dejusticia (2015), *Alternatives to incarceration for women involved in the drug market*, [https://www.wola.org/sites/default/files/Alternatives%20to%20incarceration\\_English\\_Final\\_0.pdf](https://www.wola.org/sites/default/files/Alternatives%20to%20incarceration_English_Final_0.pdf)