

WOMEN IN PRISON: AN INTERNATIONAL SYMPOSIUM ON THE BANGKOK

RULES

WOMEN IN PRISON IN ARGENTINA'S FEDERAL PENITENTIARY SERVICE

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I.- INTRODUCTION

Women continue to constitute a very small proportion of the general prison population worldwide. In Argentina, women represent less than 9% of the federal imprisoned population. However, not only is this figure increasing in tandem with the rise in the overall prison population, some studies have also shown that the number of female prisoners is increasing at a faster rate than that of male prisoners. For example, in Argentina, the number of female prisoners within the federal system increased by 271% while the male population rose by 112% from 1989 to 2008. Since 2008, though, the population started to decrease gradually.

In view of the significant rise in the rate of women's imprisonment, the Argentinian Public General Defense, together with Cornell Law School and University of Chicago Law School, has carried out some research in women's federal prisons in Argentina.¹ This study reflects the causes and consequences of this increase and also suggests some measures that could be taken to reduce the female prison population. The report considers the most common offences which lead to women's imprisonment and the harmful effects it produces in the social reintegration of a large majority of female offenders.

II.- CAUSES OF THE INCREASE IN WOMEN'S IMPRISONMENT IN ARGENTINA

Tougher criminal policies worldwide have meant that a growing number of women are being imprisoned for minor offences. In Argentina, tough legislation for drug-related offences has had a significant impact on the number of women in prison and on the increase in the rate of imprisonment. The study found that almost 56% of the women surveyed had been accused or convicted of drug related crimes.

It is beyond the scope of this presentation to analyze in depth the many reasons that led to the massive and sudden increase in the female prison population in Latin America in general and in Argentina in particular, but we should at least refer to legislative policies in recent years, which have been developed under the logic of emergency. These policies have significantly modified the social control techniques and their rationality, which combined with high levels of poverty and exclusion, only resulted in a criminal policy designed to fit

¹ "Women in Prison in Argentina: causes, conditions and consequences," May 2013, Cornell Law School International Human Rights Clinic, Avon Global Center for Women and Justice, University of Chicago Law School International Human Rights Clinic, Defensoría General de la Nación Argentina.

those included. Those who were left out only found prison as an alternative. In this framework lies the increase on female prison population.

To understand the causes that led to the increase of women in prison, we must especially consider the performance of transnational trafficking networks and the distribution of drugs that affect men and women differently. Drug-related crime, and trafficking in particular, is usually organized through complex and hierarchical structures and networks beyond geopolitical boundaries. The lowest ranked roles within the networks are more vulnerable and more exposed to punitive power of the State. It is precisely in these secondary tasks and roles where women's participation is concentrated.

Often they have been tricked into being drug-couriers for small sums of money and sometimes do not understand the risks involved and the implications of the act.² These women are highly vulnerable from an economic and social perspective. Moreover, the high profitability of drug trafficking versus the low profitability of other job options available appears as a crucial factor in drug trafficking, because it is an activity which generates incomes unobtainable through other means, be they formal or informal work.

In Argentina, the 1990s were marked by the implementation of economic policies and structural reforms that modified the general conditions of households' economic support and, in particular, the social organization of labor. This process led to unemployment, job insecurity and occupational segmentation which affected in particular women of poor households.

In addition to this socio-occupational change, there are also gender issues that have an impact on the vulnerability of people to poverty. The concept of the "*feminization of poverty*" served to highlight the need to recognize that men and women experience poverty differently, and that gender is a factor, as well as age, ethnicity and geographical location, among others, that affects poverty and increases women's vulnerability.

Another phenomenon seen in recent decades in Argentina is the rapid growth of single-parent families that correspond specially to single mothers with their children. The group of female-headed single-parent families is a particularly vulnerable universe by itself. It imposes restrictions on the ability to generate income because usually the mother is the only one who works, does the housework and the child care.

The context of impoverishment and unemployment in Latin America, as well as the limited employment opportunities and the greatest impact of poverty on women, lead to diversification of and the search for new strategies of survival of women with limited financial resources. These factors are useful in order to understand the high level of vulnerabilities of most incarcerated women.

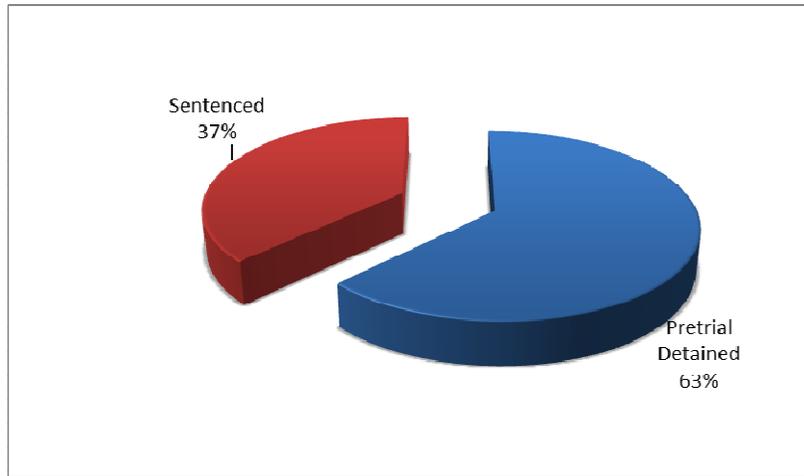
In Argentina, women run almost 82% of single-headed households, and the majority of these households are poor. Vulnerable and economically disadvantaged, women are increasingly likely to be detained pre-trial, despite the principle set out in international instruments that "*pre-trial detention shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offense and for the protection of society and the victim.*"³ Official information in December 2013 showed that

² Tomris Atabay, *Handbook for Prison Managers and Policymakers on Women and Imprisonment*, United Nations Office on Drugs and Crime, 2008, p. 90, available at www.unodc.org/documents/justice-and-prison-reform/women-and-imprisonment.pdf

³ UN Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules). Rule 6.1

the total percentage of pre-trial incarcerated women was 63% while the percentage of pre-trial detained men was 55%.

Women in Detention in Argentinian Federal Penitentiary Service, December 2013



In most of the cases there is no need for these women to be in prison at all. Most are charged with minor and non-violent offences and do not pose a risk for society. Many are imprisoned due to their poor condition and inability to pay fines. Almost six in ten are involved in minor drug related crimes and this percentage rises alarmingly in the case of foreign women. Almost 80% of them are charged with or convicted of drug-trafficking.

Over 85% of women surveyed for the research were convicted on economically motivated crimes, which include drug crimes and minor theft crimes. The study showed that more than 75% of those women who committed economically motivated crimes were the primary breadwinner. Community sanctions and alternative measures would serve the social reintegration requirements of a vast majority much more effectively than imprisonment.

At this point we have to remember that the Bangkok Rules encourage States to use gender-specific non-custodial measures and sanctions, supplementing the Tokyo Rules as alternatives to imprisonment.

III.- THE ACCESS TO LEGAL AID

The adoption in December 2012, of the *UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems* sets new standards and obligations for States to provide for legal assistance to anyone detained.

Furthermore, in her annual report to the Human Rights Council, the Special Rapporteur on the Independence of Judges and Lawyers drew attention to the obligations of States in relation to legal aid. She highlighted existing international human rights standards related to legal aid and focused on the normative content of the right to legal aid, reviewing the jurisprudence of human rights treaty bodies and regional courts on this issue.⁴ “*Legal aid is an essential component of a fair and efficient justice system founded on the rule of*

⁴ A/HRC/23/43; “Report of the Special Rapporteur on the independence of judges and lawyers,” Gabriela Knaul, Human Rights Council, 15 March 2013.

*law. It is also a right in itself and an essential precondition for the exercise and enjoyment of a number of human rights, including the right to a fair trial and the right to an effective remedy. Access to legal advice and assistance is also an important safeguard that helps to ensure fairness and public trust in the administration of justice”.*⁵

In Argentina there exists a very strong and comprehensive system of public defense that has been in place for more than one hundred years. Particularly in the federal system, the Public Defense has been autonomous and independent from the Judiciary Power since 1994. This model has strengthened the official and public legal aid system and constitutes a best practice, which could be considered by other countries.

In the case of women in prison, more than 85% of them are assisted for free by the Public Defense Office. The service is granted to every person who asks for it, independently of their economic condition.

Additionally, in the office there is a prison monitoring department which monitors every prison all around the country. It works as an independent mechanism which carries out inspection visits, gives recommendations to the authorities and takes different actions to ensure that human rights are respected for detained persons.

At this point it is worth mentioning that the PRI Toolkit⁶ is a very valuable tool to support the monitoring activity and the legal aid activity in women prisons to assist in the implementation and promotion of the Bangkok Rules.

IV.- WOMEN IMPRISONED IN ARGENTINA

Notwithstanding all that was said, the fact is that women continue to be in prison and they constitute a vulnerable group due to their gender. Although there are considerable variations in their situation in different countries, a number of factors are common to most of them. These include, among others:

- Disproportionate victimization from sexual or physical abuse prior to imprisonment;
- Extreme distress imprisonment causes to women, which may create mental health problems or exacerbate existing mental disabilities;
- Being responsible for their children, families and others;
- Housing in a prison system that has been conceived for men;
- Gender-specific healthcare needs that cannot be met adequately. The fact that the proportion of male prisoners has always been vastly larger than that of women in the prison system has resulted in a general disregard for gender-specific needs of women, as well as a denial of many services and opportunities accessible to male prisoners;
- Post release stigmatization, victimization and abandonment by their families.

It would be too extensive to elaborate on each of these characteristics but I would like to especially comment on certain issues.

a) History of victimization.

⁵ Ibid

⁶ www.penalreform.org/themes/women-prison

Widespread domestic violence against women and their sexual or physical abuse prior to imprisonment have been documented. Of the women surveyed in Argentinian federal prisons, 39% had experienced violence by a partner or a family member prior to their imprisonment.

Women who are admitted to prison are more likely to suffer from mental disabilities than men, often as a result of physical or sexual domestic violence.

Imprisonment generates new mental health problems or exacerbates existing ones. The surveys showed that the majority of women were carers, sometimes the sole carers, of their families and the sudden change of their role from caretaker to “criminal” usually had an intensely adverse effect on their mental wellbeing.

b) Prevention of new violence

In order to prevent violence against women in prison, women’s prisons should be managed by women. In Argentina, since it was decided that only female guards could be in contact with female prisoners, the levels of violence decreased considerably.

At this point, it is important to remember that there are two kinds of violence in prison: guards against prisoners and prisoners against other prisoners. It is not uncommon for women with a history of trouble to be grouped together deliberately, in which case, the State is responsible for the violence this generates. Women can be hurt both by government action and by inaction.

Another important measure that should be taken to prevent violence is having free access to telephones to make possible the contact with defenders or human rights organizations immediately when a violent incident occurs. This would dramatically increase the possibility for such incidents to be adequately addressed.

c) Gender-specific healthcare needs

All women have gender-specific medical requirements and need to have regular access to specialists in women’s healthcare.

Women’s prisons require a gender-specific framework for healthcare which emphasizes reproductive and sexual health, mental healthcare, treatment for substance abuse, and counseling victims on physical and sexual abuse.

Imprisonment provides a good opportunity to inform women about preventive healthcare measures, including sexually transmitted diseases. Female prisoners should receive education and booklets about preventive healthcare measures, including HIV and other forms of STDs, as well as health conditions specific to women.

Preventive healthcare measures of particular relevance to women, such as pap smears and screening for breast and cervical cancer, that are available in the outside community, should also be offered to women deprived of their liberty. Contraception should be available in prison on an equal basis as in the community.

The maintenance of sanitary conditions in prison is important for preventing illnesses and diseases while maintaining human dignity. In this context, female prisoners have special hygiene requirements which prison authorities are obliged to provide for.

Dormitories and rooms used for accommodation of female prisoners must have facilities and materials required to meet women’s special hygiene needs. Hot water should be available for the personal care of children and women, in particular women involved in

cooking, those who are pregnant, breast feeding and menstruating. Ready access to sanitary and washing facilities, safe disposal arrangements for blood-stained articles, as well as provision of hygiene items are of particular importance. These should be available on demand to women in a way that is not embarrassing.⁷ More than 26% of the women surveyed reported not having sufficient access to hygienic towels while in prison.

The research found that the medical staff at Argentine Federal Penitentiary Service women's prisons is aware of the specific healthcare and reproductive needs, but the procedures and the policies are not always implemented. For example, 73% of the women surveyed reported to never have received breast cancer screening.

Finally, it is worth mentioning one consequence of incarceration that is rarely considered: women with long sentences face an extra punishment. They may lose the possibility of becoming mothers, which should be considered at the time of sentencing. Otherwise punishments would be disproportionate, or even more disproportionate than they already are.

The loss of reproductive opportunity is not avoided with policies, like the ones that exist in Argentina, which allow conjugal visits with partners inside prisons, due to the high number of requirements necessary to approve the petitions.

d) Family contact

According to Bangkok Rule 4, women prisoners “*should be allocated, when possible, to prisons close to their home or place of social rehabilitation, taking account of their caretaking responsibilities...*”

The low number of female prisoners worldwide and the economic implications of building sufficient women's prisons to ensure that women are imprisoned close to their homes implies that women are often housed in women's prisons which are at a long distance from home, which reduces the possibility of family contact.

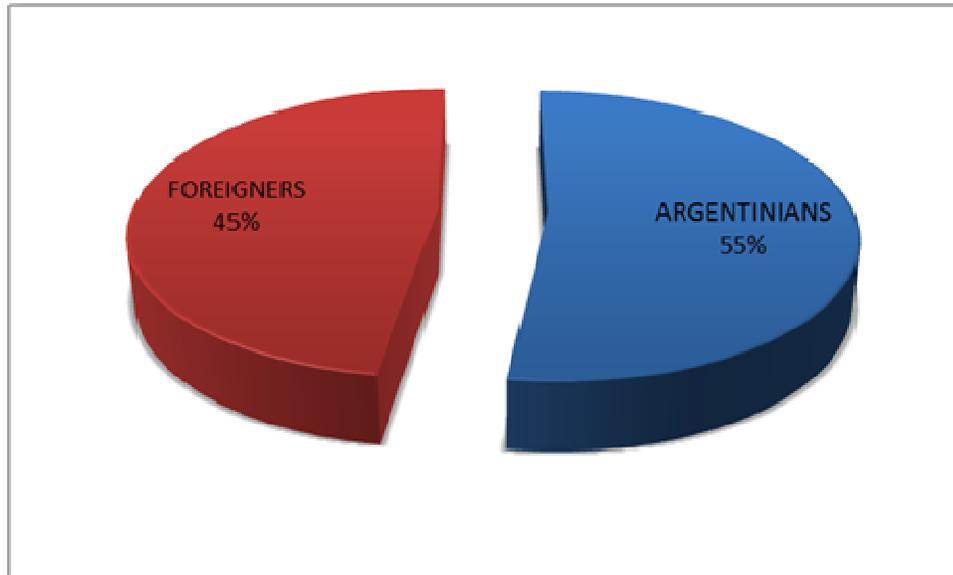
The situation is particularly problematic in large countries, like Argentina, where huge distances need to be covered to reach women's prisons. There are only four federal prisons for women in Argentina. This means that women are often imprisoned very far away from their homes. The distance and costs involved are important obstacles to regular visits. More than half of all women are detained in excess of 100 km from their home and family. More than 80% of women surveyed stated they would resume responsibility of at least one child upon their release.

The disruption of family links has extremely harmful emotional consequences for women prisoners, especially if they are mothers, with a detrimental impact on their resettlement prospects.

Foreign national prisoners face particular difficulties to keep contact with their families. In these cases, prison authorities should provide additional means to compensate for the disadvantage. These may include increasing foreign national's rights to use the telephone, enabling them to call at hours that consider time differences or allowing for longer visits.

⁷ Tomris Atabay, *Ibid*, pg. 57

Percentage of Foreign Women Imprisoned in Argentinian Federal Penitentiary Service



Regarding family contact, a new project is being developed in Argentina. It consists in using videoconference technology to improve the contact between detained women and their families, in case they are far away.

e) Women with children in prison

One of the most difficult challenges involving the imprisonment of women is the question of how it is best to deal with women with babies and children. The separation of women from their children due to imprisonment has a traumatic and long-term effect on the mothers and their sons and daughters. Children, often traumatized and unable to comprehend the reasons for separation, are likely to suffer from acute emotional and developmental problems, as well as being at risk of inadequate care in under-resourced state institutions or by alternative carers.

Prisons, on the other hand, do not provide an appropriate environment for children to grow up in. The harsh, punitive environment of prisons can permanently damage the psychological and mental wellbeing of children.

Nevertheless, there is a general consensus that, in trying to resolve the difficult question of whether to separate a mother from her child during imprisonment, the interest of the child should be the primary consideration.

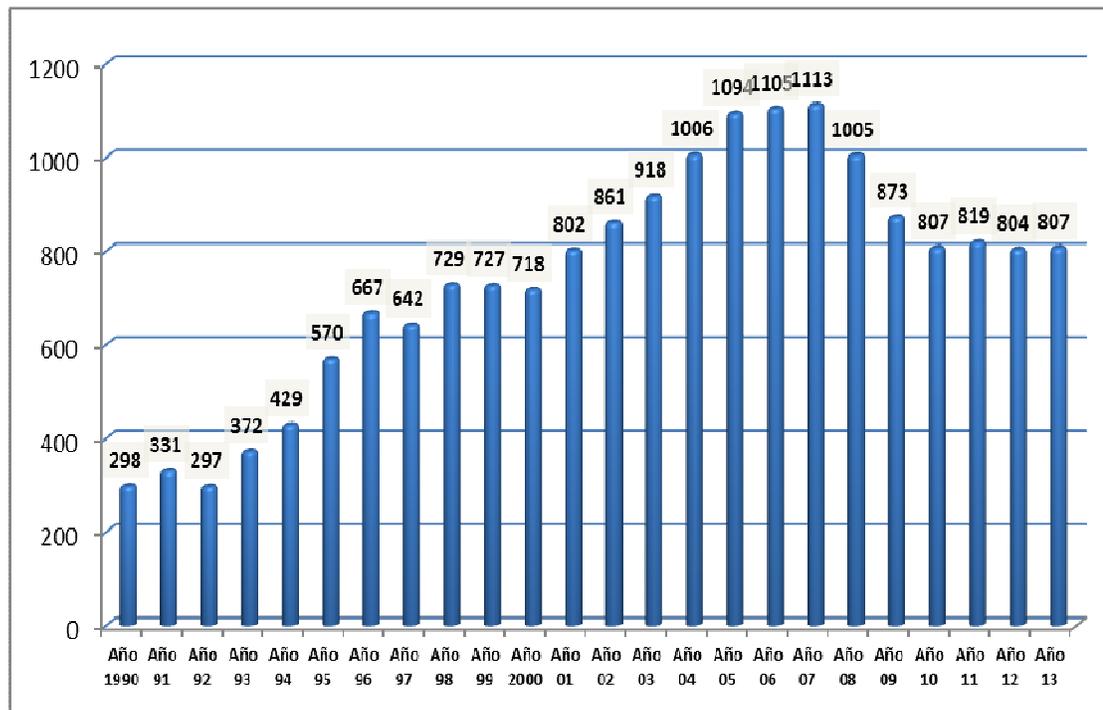
Argentina allows children up to the age of four to reside with their mothers in prisons with special facilities for children. Initially, the mother is the one who decides whether to have her child living with her in prison.

However, according to Bangkok Rules, in sentencing primary caretakers of children, it should prefer non-custodial sentences such as house arrest or any other alternative to incarceration.

In Argentina, house arrest is allowed for mothers who have children up to five years old or with any disability, but despite this, lots of children continue living with their mothers in prison resulting in them being in prison too. This is because their mothers have violated the terms of a previous home imprisonment or because they are foreigners and do not have an address in Argentina in which to comply with house arrest.

That said, since the new Law of House Arrest (2008) went into force, the number of women with children in prison has significantly decreased. And lately, although the law only provides for mothers as beneficiaries of the house arrest, in several cases it has also been awarded by judges to fathers that proved to be the only carer for the children.

Women in Prison in Argentinan Federal Penitenciary Service, 1990-2013



It is important to call attention to the need to apply alternative means of imprisonment for women that are primary caretakers of their children and to expand this policy in order to include fathers in case they are the primary caretakers of the children.

A document published by The Quaker United Nations Office⁸ concludes that parental incarceration has such a severe impact on children that it could damage their physical or psychological health. The magnitude and severity found vary from study to study, but among the problems identified are: changes in sleeping or eating patterns; drug abuse, alcohol and snuff; stress, depression and symptoms of disorders PTSD; as well as experiencing repeated visions of events related to the crimes or arrests.

Regarding the co-residence programs, our report suggests that a third-party decision maker should carefully evaluate each child to determine if a co-residence program is suitable for the child’s best interest.

⁸ ROBERTSON Oliver (2007) “El impacto que el encarcelamiento de un(a) progenitor(a) tiene sobre sus hijos,” Quaker United Nations Office

In Argentina the law allows the co-residence programs for mothers of children up to 4 years old that want to have their sons and daughters with them. And beyond that, given the separation of mother and child and all the negative effects it entails on children, these programs are a valid option, but we always have to consider that the placement of children in prison is also detrimental to their development. In other words, this kind of program increases contact between mothers and children but raises new problems, which must be addressed.

In this sense, several researches all around the world have shown the detrimental effects of imprisonment on kids. In Argentina, some important research was developed by the main Children's Hospital in one of the federal prisons that houses children with their mothers. The report showed that 39% of the children that live with their mothers in prison suffer from social integration and emotional disorders.⁹

In 2005, researchers at Harvard University have shown that exposing children to extremely stressful situations can affect the development of brain architecture enough to make them likely to suffer from certain disorders throughout their lives.¹⁰

Some years later, researchers from the same university said that the environment and early life experiences can state which functions of the genetic load is performed and which is not; and this seriously affects the growth of the developing person.¹¹

These studies highlight the need to re-examine the way we think about the circumstances and experiences to which children are exposed.

Additionally, Bangkok Rule 64 mandates that, where possible and appropriate, it is preferable to impose non-custodial sentences on pregnant women and women with children in care, and to only impose custodial sentences if the offense is serious or violent or if the woman represents a permanent danger to society, but in the best interests of the child and ensuring, at the same time, that appropriate arrangements for their care are adopted.

V.- BY WAY OF CONCLUSION

In conclusion, it is necessary to aim States, policymakers, prison managers, and non-governmental organizations at increasing awareness about the profile of female offenders and suggest ways in which to reduce their unnecessary imprisonment, by rationalizing legislation and criminal justice policies, and providing a wide range of alternatives to prison at all stages of the criminal justice process.

Respecting the rights and needs of women in prison should be cause for special attention because they are part of a minority in a prison universe designed for men and, in the case of mothers, for the particular consequences that their imprisonment has on their children.

Some key recommendations for policy reform, among others, could be:

- Bangkok Rules should be known and applied as a guide in all policies and decisions involving female inmates.

⁹ "Growth, development, social integration and parenting practices on children living with their mothers in prison", Horacio Lejarraga and others, Arch Argent Pediatr 2011; 109 (6):485-491.

¹⁰ National Scientific Council on the Developing Child (2005) "Excessive Stress Disrupts the Architecture of the Developing Brain." <http://developingchild.harvard.edu>

¹¹ National Scientific Council on the Developing Child (2010) "Early Experiences Can Alter Gene Expression and Affect Long Term Development." <http://developingchild.harvard.edu>

- Reducing the sentence imposed for drug trafficking for women who are at the bottom of the drug-trafficking hierarchy and sentencing these women to alternatives to incarceration where appropriate.
- Reducing the use and length of pre-trial detention.
- Making efforts to address the economic needs of people to change people's incentives to commit crimes.
- Ensuring that all women prisoners have timely access to a free defense, comprehensible and of good quality.
- Ensuring that prison staff complies with articulated policies.
- Reducing violence by ensuring that supervision and physical registrations are exclusively in charge of by female guards.
- Reducing inmate violence through increased supervision. The guards should be sufficiently trained in gender issues.
- Ensuring that all efforts are made to house prisoners as geographically close to their homes as possible and introducing measures to encourage and facilitate women's contact with their families such as assistance with transportation or extension of the length of visits
- Ensuring that all women prisoners receive timely access to medical care and gender-specific hygiene products.
- Expanding the application of the policy allowing judges to sentence mothers to house arrest and giving them the possibility to include fathers if they are the primary caretaker of children.
- Ensuring that for the cases when co-residence programs are unavoidable, prisons have special facilities to address the needs of children.