

# **WOMEN DEPRIVED OF LIBERTY IN THE AMERICAS**



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# **Women deprived of liberty in the Americas**

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Commissioner Carlos Bernal Pulido issued his reasoned and partially dissenting opinion regarding the report. That opinion is available at the Executive Secretariat of the IACHR.

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# EXECUTIVE SUMMARY

## EXECUTIVE SUMMARY

1. In its report on *Measures to Reduce Pretrial Detention in the Americas*, the Commission analyzed the adverse impacts of drug crime policies on incarceration and, specifically, on women. In this regard, it pointed out that although women in prison continue to represent a small percentage of the total number of persons deprived of liberty, 8% in the region, their incarceration rates have risen in recent years. This is due primarily to tougher criminal policies with respect to drugs, the lack of a gender perspective in addressing the issue, and thus a failure to consider factors such as: i) women's low level of participation within criminal networks; ii) the absence of violence in their commission of such offenses; iii) the disproportionate impact of their incarceration on persons in their care; iv) the absence of a focus on social reintegration in corrections policies; and v) the situation of violence and exclusion that women face in the region. In addition, the IACHR noted that women incarcerated in the Americas endure disproportionately serious effects due to the lack of attention given to their gender-specific needs.
2. In this context, the purpose of this study is to analyze the causes leading to female incarceration; the disproportionate impact that their deprivation of liberty has on those in their care, considering that it is generally women who assume care-giving tasks and most incarcerated women are mothers; the particularly at-risk situation faced by women deprived of liberty in the context of their imprisonment; challenges and good practices in the area of alternative measures; and the major obstacles that women face when re-entering society. The focus here will be primarily on the situation of women in the northern Central American countries. In addition, the report develops standards and makes recommendations on the same topics. In this regard, the IACHR hopes that this report will be useful in enabling the States to develop governmental policies with a gender-perspective focused on respect for the rights of women who come into contact with the criminal justice system.
3. The Commission underscores that this study emphasizes the adoption of measures to reduce female incarceration as well as to incorporate a gender perspective in prison policies that aim to guarantee the rights of women in the context of their imprisonment. Similarly, the report emphasizes the importance of applying alternative measures to imprisonment that allow both women defendants and convicts to remain at liberty, in view of the disproportionate effects of their imprisonment and the differentiated impact that their imprisonment has on those in the care, considering that most incarcerated women are mothers and are usually the primary caregivers. Finally, this study emphasizes how important it is for the States to adopt policies or programs that are respectful of the gender perspective and are directed to facilitating women's reintegration into society upon their release.



## ***Imprisonment***

4. The Commission notes that the increase in the number of women in prison in the region is primarily due to the toughening of crime policies in the area of drugs and the lack of a gender perspective to address the issue. In the northern Central American countries specifically, policies designed to combat organized crime and that characteristically lack a gender perspective emerge as the cause for the increase in female incarceration, particularly for the crimes of extortion and other crimes linked to drugs. In this context, most incarcerated women in the region are involved in the commission of crimes as the consequence of various factors primarily linked to reduced economic and educational opportunities due to poverty, financial responsibility for those in their care, violent contexts, and drug use. There are also other situations of concern that lead to female incarceration; these are linked to specific risk factors such as being women human rights defenders, belonging to afro-descendant or indigenous communities, or suffering complications during pregnancy.
5. Specifically, both drug policies and policies adopted to combat organized crime are characterized by: i) disproportionate treatment of these crimes; i) excessive use of pre-trial detention; and iii) restrictions on benefits limiting the use of prison. Added to this is justice operators' failure to consider the circumstances surrounding the commission of crimes by women, which is characterized by a low level of participation in the criminal network, as well as personal factors that lead to their involvement in such activities. In this scenario, women are more likely to be subject to a criminal proceeding and to be imprisoned than men. This is because a high percentage of incarcerated women in the Americas have been deprived of liberty for non-violent crimes linked to drugs, and a significant number of these women are subject to pretrial detention.
6. The Commission also emphasizes that female incarceration has differentiated effects and disproportionate consequences both for the women themselves and for those who are in their care, particularly in terms of their being mothers and primary caregivers. In this regard, the failure to adopt prison policies with a gender perspective that include proposals for maintaining family ties results in: i) separation from their children and loss of family ties; ii) obstacles to maintaining adequate contact with those in their care due to the remoteness of women's prisons, difficulties when seeking to visit them, the lack of appropriate spaces, and the lack of resources to ensure that children are able to travel to the centers; iii) loss of parental responsibility under certain circumstances; and iv) prejudicial effects on the lives of children whose mothers are in custody, which impacts the children's well-being and overall development.

## ***Situation of women deprived of liberty in the region***

7. The Commission notes that women have historically faced discrimination and exclusion, which results in the possibility of their being the victims of disproportionate or prejudicial impacts from standards or practices – including their deprivation of liberty – that while

apparently neutral and without discriminatory intent are in fact discriminatory given their effects. This makes women more susceptible to indirect discrimination, because the treatment they receive in custody is generally the same as that provided to the rest of the prison population. In this scenario, women deprived of liberty face serious impacts due to the failure to adopt prison policies and diligent measures that consider their special needs. These impacts notably include: i) the lack of a gender perspective in the compilation of data related to the deprivation of their liberty; ii) inadequate prison infrastructure; iii) submission to acts of violence; and iv) the lack of health care with a gender perspective.

8. Added to this and more specifically, some women deprived of liberty belong to groups in particularly at-risk situations, as reflected in multiple special needs and greater obstacles to accessing their rights under conditions equal to those of other women. The result is that the disproportionate impacts of their incarceration are exacerbated. Specifically, pregnant, post-partum, and nursing mothers face: i) limited suitable programs and spaces; ii) deficient health care; iii) inadequate food; and iv) the use of coercive measures. Added to this are the lack of access to appropriate clothing for pregnant women and the challenges of labor when giving birth. For their part, children who live in prison with their mothers face: i) submission to procedures when entering and staying in prison that are inconsistent in terms of the standards that should be applied and do not take into consideration the child's best interest; ii) obstacles to enjoying family life with their parent outside of prison; iii) barriers to community integration and establishing ties with the outside; iv) risks to their health; v) inadequate nutrition; vi) challenges in accessing quality education; and vii) obstacles to ensuring as much as possible their overall development.

### ***Alternative measures to prison and benefits allowing release from prison***

9. In general terms, the Commission notes that several States in the region have made efforts to incorporate the gender perspective in regulating and applying alternative measures to prison on a priority basis for the benefit of women, particularly women who are pregnant, mothers, or are caring for others. However, it is concerned about information received indicating that, despite the existence of some alternatives, incarceration continues to be the priority response to certain crimes, particularly those linked to drugs and organized crime. Added to this, the available data indicate that regulations that provide alternatives with a gender perspective do not include this perspective comprehensively. In this regard, most of the measures implemented are based solely on women's reproductive function or traditional caretaker role, leaving aside those women who do not meet these conditions.
10. In this scenario, the principal alternative measures with a gender approach established by the countries in the Americas include: i) house arrest; ii) electronic monitoring devices; iii) community-based care programs; and vi) drug tribunals or courts. In addition, some States in the region, such as Bolivia and Costa Rica, have adopted post-sentencing measures designed to release women from prison. Specifically, house arrest is the main alternative

that provides for a gender perspective; nonetheless, the IACHR has been informed of various criticisms regarding its application related to: i) application focused on women's reproductive or caregiver role; ii) frequent use to the detriment of other less restrictive measures; iii) the need to have a fixed and suitable domicile; and, iv) social stigmatization when the measure is accompanied by electronic monitoring devices. Added to this are obstacles to the exercise of rights that, in addition to violating the rights of women under house arrest, may affect those who live with them or are in their care.

11. In general terms, in the context of the use of alternative measures to prison, women face numerous obstacles in accessing such measures, primarily linked to gender stereotypes on women's role in court decisions limiting the use of alternatives, and material obstacles, particularly given the need to have roots, limited economic resources to cover the cost of the measures and, in the specific case of house arrest, the lack of someone who shares in daily tasks or the lack of a suitable home. Added to these are challenges in the implementation of alternative measures given the lack of mechanisms with a gender perspective both in the supervision of measures and the monitoring of women while these measures are being applied.
12. Specifically with regard to legislation in the northern Central American States, although there are laws that govern alternative measures and prison privileges limiting the use of incarceration, only some of these alternatives provide for a gender perspective and are temporary and only take women's reproductive function into account. Regarding specific obstacles to the implementation of these measures, in addition to the general priority assigned to the use of incarceration in cases of crimes linked to drugs or organized crime, in Honduras there are no policies benefitting women. For its part, in Guatemala, inadequate training of justice operators and material obstacles of a financial nature would make it difficult for women to benefit from alternatives to prison. In addition, none of the three countries provides support for women subject to these measures. With respect to monitoring their application, only El Salvador has a specific mechanism although it lacks a gender perspective, while Honduras and Guatemala present challenges for monitoring the application of alternative measures.

### ***Social reintegration of women***

13. The Commission notes the following challenges in the implementation of programs for the social reintegration of women: i) general obstacles linked to the limited number of policies on social reintegration and a lack of resources allocated to the operation of these programs; ii) few programs with a gender perspective; iii) programs that reinforce gender stereotypes; and iv) restrictions making it difficult for women to participate, particularly material challenges linked to requirements for admission and specific obstacles facing certain groups of women.

14. In this scenario, there are very few social reintegration programs with a gender perspective in the region, given that most States do not adopt programs providing for women's specific needs. In addition, frequently offered reintegration activities likely reflect traditionally assigned gender roles, limiting women's ability to develop new skills. The result is that women who are released face numerous difficulties in transitioning between life in prison and life outside. The main difficulties include: i) loss of family ties and lack of support networks; ii) social stigma; iii) discrimination based on a criminal record; iv) limited employment opportunities given limited training; v) economic disadvantages; vi) lack of housing; and vii) loss of personal identification documents. Trans women, in view of their condition, also face specific barriers to social reintegration.
15. As for practices identified in the region, the IACHR appreciates the efforts made by some States, civil society organizations, and academia designed to implement certain programs and actions to promote women's social reintegration. In this regard, such programs primarily target the approach to: i) employment; ii) education and training; iii) gender violence; iv) drug use; and v) cultural and recreational activities. Moreover, countries like Argentina, Costa Rica, Guatemala, Mexico, and Uruguay have policies to facilitate the social reintegration of women who are released, focusing on: i) general reintegration; ii) gender violence; and iii) care for women subject to a criminal proceeding for crimes linked to drug use.
16. Added to the above, the Commission appreciates the initiatives undertaken by various civil society organizations to monitor and support the social reintegration of women who have been released from prison. Such programs aim to: i) provide general monitoring; ii) support workplace reintegration; and iii) provide social assistance. Finally, the Commission notes with concern that with the exception of Argentina, Guatemala, Honduras, Mexico, Nicaragua, and Uruguay most States did not provide data confirming the existence of mechanism to evaluate the effectiveness of programs to ensure the social reintegration of persons released from prison. However, of these countries, only Uruguay and Mexico include a gender perspective in monitoring social reintegration.

## ***Conclusions and recommendations***

17. The final section of this report presents the conclusions of the study and offers recommendations on the subject. In particular, the recommendations are intended to provide the States with more detailed tools for guaranteeing the human rights of women who are subject to proceedings in criminal justice systems and consequently incarcerated, in accordance with international obligations in this area.
18. The list of recommendations focuses on the following major areas: i) incarceration of women, specifically measures of a general nature, and incorporation of the gender perspective in prosecution; ii) the situation of women deprived of liberty, particularly the incorporation of the gender perspective in corrections policy, the compilation of data

focused on gender, the adaptation of prison infrastructure, actions to promote the maintenance of ties, the duty to act with enhanced due diligence in response to gender violence, health care with a gender perspective; and protection for groups particularly at risk; iii) alternative measures to prison, specifically the implementation of alternatives with a gender perspective, actions to address challenges in the application of measures, adoption of monitoring and support mechanisms, and an approach to factors leading to involvement in the commission of crimes; and v) social reintegration of women, in the area of general measures, actions with a gender perspective, individualization of reintegration plans, measures to facilitate the transition between life in prison and life on the outside, and program monitoring.

19. Finally, the Commission and its Rapporteurship on the Rights of Persons Deprived of Liberty will continue strict and constant follow-up on the situation faced by women deprived of liberty in the Americas, paying particular attention to measures adopted by the States in the region to implement the recommendations made in this report. In this sense, the IACHR urges the States, civil society organizations, and subject specialists to use their various mechanisms to continue providing the information they deem relevant to compliance with these recommendations. Both the Rapporteurship on the Rights of Persons Deprived of Liberty and the Inter-American Commission emphasize and reiterate that they are entirely willing to cooperate with the States in the implementation of these recommendations.







# INTRODUCTION

## I. INTRODUCTION

### A. *Background and purpose of the report*

20. In its report on Measures to Reduce Pretrial Detention in the Americas, the Commission analyzed how criminal policies on drugs impact incarceration and women in particular. In this regard, it pointed out that although incarcerated women in the region continue to represent a small percentage of the total number of persons deprived of liberty – about 8%<sup>1</sup> – women’s incarceration rates have risen in recent years by 56.1%,<sup>2</sup> primarily due to a toughening of criminal policies in the area of drugs and the lack of a gender perspective to address the issue, based on the failure to consider factors such as: i) women’s limited participation in criminal networks; ii) the lack of violence in the commission of these offenses; iii) the disproportionate effect of women’s incarceration with regard to those in their care; iv) the lack of a social reintegration approach in corrections policies; and v) the situation of violence and social and workforce exclusion this population faces in the region. In this scenario, the IACHR indicated that the deprivation of women’s liberty produces differentiated impacts and disproportionate consequences both for the women themselves and for those in their care, such as their children, the disabled, and the elderly.<sup>3</sup>
21. In addition, this Commission noted that women imprisoned in the region face differentiated effects and impacts, including: i) the lack of their own detention centers; ii) inadequate penitentiary infrastructure; iii) lack of medical treatment according to their gender; iv) greater difficulties when seeking social reintegration; v) lack of a gender perspective in the compilation of data related to the deprivation of their liberty; and vi) submission to forms of violence committed by prison staff. Similarly, the IACHR referred to efforts made by the States to incorporate the gender perspective in measures related to pretrial detention, which primarily included: i) actions taken to respect and guarantee the rights of incarcerated women, such as incorporating a gender perspective during their imprisonment; and ii) priority application of alternative measures to prison for the benefit of women, considering their at-risk situation when in prison and the effects on persons in their care.<sup>4</sup>
22. In this context, through the preparation and publication of this thematic report, the IACHR will expand on its observations regarding the situation faced by women deprived of liberty

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<sup>1</sup> Institute for Criminal Policy Research at Birkbeck (University of London), [World Prison Brief: World Female Imprisonment List, 5th edition](#), October 19, 2022, p. 2.

<sup>2</sup> Institute for Criminal Policy Research at Birkbeck (University of London), [World Prison Brief: World Female Imprisonment List, 5th edition](#), October 19, 2022, p. 2.

<sup>3</sup> In this regard, IACHR, [Report on Measures to Reduce Pretrial Detention in the Americas](#), OEASer/V/II.163. Doc. 105, 3 July 2017, [hereinafter “Report on Measures to Reduce Pretrial Detention in the Americas”], paras. 200 and 201.

<sup>4</sup> See, IACHR, Report on Measures to Reduce Pretrial Detention in the Americas, paras. 196, 205, 206, and 209.

in the region, with an approach ranging from the factors leading to their incarceration to the challenges they face when seeking reintegration society once they are released.

23. The specific purpose of this report is to analyze the causes leading to the detention of women, the serious impact that their incarceration has on those in their care, the particularly at-risk situation faced by women deprived of liberty in the context of their imprisonment, challenges and best practices in the area of alternative measures, and the main obstacles that women face in seeking reintegration in society. The specific focus is on the situation of women in the northern Central American countries, in view of the decision adopted by the IACHR in its Strategic Plan for 2017–2022 to prioritize attention to this subregion, through three strategic lines targeting technical cooperation, the dissemination of human rights, and special projects focused both on groups historically subject to discrimination and the cross-cutting themes established in the Plan.
24. In addition, this report develops standards and provides recommendations on these same themes. In this regard, the IACHR hopes that this report will be useful to the States and enable them to have governmental policies with a gender perspective focused on respect for the rights of women in contact with the criminal justice system.
25. By preparing and publishing this report, in addition to triggering other monitoring mechanisms, the Inter-America Commission underscores its commitment to the treatment of this theme. In this sense, the IACHR hopes that this report will be able to contribute to the visibility of the general situation faced by women deprived of liberty in the region, and to the resulting protection of women's rights through the development of protection standards based on a human rights approach and a gender perspective.

## **B. Structure**

26. In view of the purpose of this report, it consists of five chapters in addition to the Introduction.
27. In Chapter II “Women’s Incarceration,” the Commission addresses the growth of the female prison population in recent decades and the factors that lead to women’s incarceration. It also analyzes criminal policies adopted by the States in the region on the subject of drugs and their impact on the incarceration of women involved in drug-related activity. Additionally, the Commission analyzes the disproportionate effect that incarceration has on women and on those in their care, with emphasis on their children’s situation. Finally, the IACHR presents the specific situation of women imprisoned in the northern Central American countries, particularly the increase in such women in recent years, the factors that induced them to become involved with organized crime, governmental policies adopted to combat organized crime, and the impact of those policies on women’s incarceration.
28. In Chapter III on “The Situation of Women Deprived of Liberty in the Region,” the Commission analyzes the particularly at-risk situation and serious impacts faced by women

in the context of the deprivation of their liberty, given the failure to adopt measures that respond to their specific needs, based both on their gender and other discriminatory factors. In this regard, the IACHR addresses the lack of a gender perspective in the compilation of prison data, inadequate prison infrastructure, women's greater exposure to being the victims of violence, and the obstacles they face when seeking access to health services. In addition, more specifically, and in view of a more in-depth examination of the differentiated impacts of incarceration due to their particular at-risk situation, the Commission examines the specific challenges faced by pregnant, post-partum, and nursing women. Finally, it develops the impact of the deprivation of liberty on children who live in prison along with their incarcerated mothers.

29. In Chapter IV on “Alternative Measures to the Deprivation of Liberty,” the Commission analyzes practices identified in the area of applying alternative measures to the deprivation of liberty with respect to women. Specifically, it addresses the context surrounding the implementation of these measures, wherein incarceration is characteristically the priority response to certain crimes and fails to consider all the specific gender-based needs. It also examines the main and post-sentencing alternatives used by the States for the benefit of women. In addition, the IACHR addresses the major obstacles women face when seeking access to alternative measures, particularly in response to judicial decisions influenced by gender stereotypes and to material obstacles, as well as obstacles due to the lack of mechanisms with a gender perspective for the supervision of such measures and the monitoring of women during their application. The Commission also presents a specific analysis related to the application of alternative measures in northern Central America.
30. In Chapter V on the “Social Reintegration of Women,” the Commission examines the obstacles that women face when seeking to re-enter society. It specifically addresses the inadequate implementation of social reintegration programs due to general obstacles in establishing these programs, the failure to adopt programs with a gender perspective, entrenched gender stereotypes in these policies, and restrictions on women's participation. In this context, the IACHR reports on some of the more significant challenges women face when transitioning between life in prison and life on the outside. In this regard, it examines the lack of support networks, social stigma, and obstacles to the exercise of their economic and social rights. It also analyzes the specific situation that trans women face. In addition, the Commission presents the main practices seen in the region for promoting the social reintegration of incarcerated women, subject to alternative measures, and released. Finally, the IACHR refers to women's social reintegration in the northern Central American countries.
31. The final section of the report presents the conclusions reached in the study and, pursuant to its powers under the Convention, the IACHR offers recommendations on the subject. The framework for the recommendations is based on the instruments of the inter-American human rights system and its case law, as well as the international *corpus juris* on the human rights of persons deprived of liberty. In particular, the list of recommendations covers four main areas intended to provide the States with more detailed tools for

guaranteeing the human rights of women who are subject to criminal proceedings under criminal justice systems and incarcerated as a result, consistent with international obligations in this area. The specific areas are as follows: i) the incarceration of women; ii) the situation of women deprived of liberty; iii) alternative measures to imprisonment; and iv) the social reintegration of women.

### C. *Methodology*

32. The information presented in this report is based on primary and secondary sources. With regard to the primary sources, the Commission received information from the States in the region, civil society organizations, and subject specialists. In addition, the following activities were carried out in the preparation of this report: i) sending and publishing consultation questionnaires; ii) sending Art. 41 letters seeking information from the northern Central American countries; iii) holding three meetings of experts on women deprived of liberty; iv) holding two technical meetings with women who have been released from prison; v) holding a meeting with the United Nations Working Group on Arbitrary Detention (WGAD); and vi) holding an additional four technical meetings with civil society organizations specializing on the topic. In particular, on March 18, 2021, the IACHR published the consultation questionnaire, which was sent to all the OAS Member States. The States that responded to the questionnaire were: Argentina, Bolivia, Brazil, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Suriname, and Uruguay. In addition, the following autonomous entities sent their responses to the questionnaire: the Office of the Public Defender of the Nation (MPD), Argentina; the Office of the Federal Ombudsperson for the Rights of Prisoners (PPN), Argentina; and the Provincial Criminal Defense Public Service of the Judicial Branch of the Province of Santa Fe, Argentina.
33. The following civil society organizations submitted their responses to the consultation questionnaire: Citizens' Group for the Decriminalization of Abortion in El Salvador, El Salvador; Human Rights Legal Assistance (AsiLegal), Mexico; Costa Rican Association for Research and Intervention in Drugs (ACEID), Costa Rica; *Asociación Paz de Superación por Honduras* (ASOPAZH), Honduras; Center for Women's Studies in Honduras (CEMH), Honduras; Center for Legal and Social Studies (CELS), Argentina; LGBTTTI and Sex Workers Coalition, Colombia; Colombia Diversa, Colombia; Civil Society Commission to Monitor Judgment T-388 of 2013 (CSS), Colombia; Latin America and Caribbean Committee for Defense of Women's Human Rights (CLADEM), Bolivia; Human Rights Community, Bolivia; International Drug Policy Consortium (IDPC); Women's Coordinating Office, Bolivia; *Corpora en Libertad*, Mexico; Humanas Corporation, Colombia; Dejusticia, Colombia; International Law without Borders (DISF), Brazil; Equal Justice for Women, Mexico; Seed Action Foundation, Bolivia; CONSTRUIR Foundation, Bolivia; Hope, Development, and Dignity Foundation, Bolivia; Foundation for Due Process, Bolivia; Constitutional Court Foundation, Bolivia; Therapy and Research Institute on the Sequelae


of State Torture and Violence, Bolivia; Observatory on Institutional Violence in Chile (OVIC), Chile; Venezuelan Observatory of Prisons (OVP), Venezuela; Washington Office for Latin America (WOLA); Realities NGO, Bolivia; Citizen Platform for Access to Justice and Human Rights, Bolivia; Program for America and the Caribbean of the Center for Reproductive Rights (CRR), regional; World Justice Project, office in Mexico; LGBT Litigants Network of the Americas, Colombia; Latin American Network of Free Women, Colombia, El Salvador, and Mexico; Reset, Drug Policy and Human Rights, Argentina; Synergy, initiatives for human rights, Colombia; and A Window on Liberty, Venezuela.

34. In addition, human rights specialists sent their responses to the questionnaire.<sup>5</sup> Additionally, the IACHR received more specific information from the Association for the Prevention of Torture (APT), of the Colectivo Artesana of Guatemala, and from the Working Group on Women Deprived of Liberty of Uruguay. This Commission emphasizes that all the information provided proved to be invaluable in the preparation of this study and expresses its appreciation for the participants' contributions.
35. In addition, the Commission held three meetings of experts on the subject of women deprived of liberty. The purpose of the first meeting, held on April 27, 2021, was to discuss topics related to female incarceration and the situation of women deprived of liberty. The second meeting, held on June 4, 2021, addressed matters relating to alternative measures to prison applicable to women. The third meeting, held on March 23, 2022, discussed the social reintegration of women. In addition, in preparing this report, the IACHR took into account information received in public hearings held before the Commission, as well as through the cases and precautionary measures system, and in other related activities, such as requests for information. In particular, the IACHR considered specific information on alternative measures with a gender perspective and social reintegration of women contributed by Guatemala and Honduras, in response to the Art. 41 letters sent on July 15, 2022.
36. With regard to secondary sources, the report took the following into account: i) official public information obtained from government sources; ii) reports, resolutions, and statements from inter-governmental agencies; iii) studies from both national and international non-governmental organizations; iv) academic research; and v) press articles.
37. The preparation of this Report on Women Deprived of Liberty in the Americas was possible thanks to financial support from the Pan American Development Foundation (PADF), in the context of a regional project implemented by the Rapporteurship on the Rights of Persons Deprived of Liberty, as well as other areas of the IACHR Executive Secretariat.

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<sup>5</sup> In particular, María Elena Attard Bellido of Bolivia and specialists from Brazil's Mattos Filho, Veiga Filho, Marrey Jr. and Quiroga law firm.





# **WOMEN'S INCARCERATION**

## II. WOMEN'S INCARCERATION

38. In this chapter, the Commission addresses the growth of the female prison population in recent decades and the factors leading to women's incarceration. It also analyzes criminal policies adopted by the States in the area of drugs and their impact of those policies on the incarceration of women involved in this activity. Similarly, the Commission explores the disproportionate effect that the deprivation of liberty has on women and on those who depend on them. Finally, the IACHR presents the specific situation of women incarcerated in the northern Central American countries, particularly their growing numbers in recent years, the factors that led to their involvement in organized crime, and government policies adopted to combat organized crime and their impact on female incarceration.

### A. *Growth of the female prison population*

39. In its report on Measures to Reduce Pretrial Detention in the Americas, the Commission pointed out that although incarcerated women continue to represent a small percentage of the total number of persons deprived of liberty – close to 6.9% globally according to the Institute for Criminal Policy Research<sup>6</sup> – in recent years women's incarceration rates have increased.<sup>7</sup> The United Nations Office on Drugs and Crime (UNODC) has even noted that in some countries the number of women in prison is increasing more rapidly than the rate for men.<sup>8</sup> In addition, the IACHR notes that the increase in the number of incarcerated women has been twice that of the general prison population. In this regard, according to the most recent data from the Institute for Criminal Policy Research, globally, between the year 2000 and mid- 2022, the number of women in prison increased by approximately 60%, while the general population increased by 30%.<sup>9</sup> This trend is also present in the Americas. According to the same source, over the same period, the number of women in prison increased by 56.1%, while the general prison population increased by 24.5%. Moreover, that increase exceeds that of Africa, where the number of women deprived of liberty increased by 55.5%, and the number in Europe where it increased by 12.6%.<sup>10</sup>

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<sup>6</sup> Institute for Criminal Policy Research at Birkbeck (University of London), World Prison Brief: World Female Imprisonment List, 5th edition, October 19, 2022, p. 2.

<sup>7</sup> IACHR, Measures to Reduce Pretrial Detention in the Americas, para. 200.

<sup>8</sup> UNODC, Handbook on Women and Imprisonment. Criminal Justice Handbook Series, 2nd edition, 2014, [hereinafter "Handbook on Women and Imprisonment"], p. 3.

<sup>9</sup> Institute for Criminal Policy Research at Birkbeck (University of London), World Prison Brief: World Female Imprisonment List, 5th edition, October 19, 2022, p. 2.

<sup>10</sup> Institute for Criminal Policy Research at Birkbeck (University of London), World Prison Brief: World Female Imprisonment List, 5th edition, October 19, 2022, p. 14.

40. Specifically, the Commission notes that in recent years there has been a marked increase in the female prison population, at least in the countries of Argentina,<sup>11</sup> Brazil,<sup>12</sup> Colombia,<sup>13</sup> El Salvador,<sup>14</sup> the United States,<sup>15</sup> Guatemala,<sup>16</sup> Honduras,<sup>17</sup> Mexico,<sup>18</sup> Nicaragua,<sup>19</sup> Paraguay,<sup>20</sup> and Uruguay.<sup>21</sup> Added to this, according to data from the Institute for Criminal Policy Research, incarcerated women in the region represent 8% of the total number of persons deprived of liberty. This figure shows that with a rate of 30 for every 100,000 persons, the female prison population rate in the region<sup>22</sup> is the highest in the world. Specifically, of the ten countries in the world with the highest rates of female incarcerations,

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<sup>11</sup> In Argentina, from 2002 to 2019, the female prison population nearly doubled. In this regard, see, MPD, Argentina, Ref.: Consultation Questionnaire, Women Deprived of Liberty, April 9, 2021, p. 3.

<sup>12</sup> In Brazil, from 2000 to 2017, the female prison population increased by more than six times. In this regard, see DEPEN, Brazil, Thematic Report on Women Deprived of Liberty, June 2017, p. 9.

<sup>13</sup> In Colombia, from 2000 to February 2021, the female prison population more than doubled. In this regard, see Government of Colombia, Diplomatic Note No. MPC/OEA No. 530-2021 – Questionnaire on Women Deprived of Liberty in the Americas [hereinafter “Diplomatic Note No. MPC/OEA No. 530-2021”], April 12, 2021, p. 1.

<sup>14</sup> In El Salvador, from 2004 to 2019, the female prison population increased by ten times. See, IACHR, Press release No. 335/20, IACHR presents its preliminary observations following its *in loco* visit to El Salvador, December 27, 2019.

<sup>15</sup> In the United States, from 1980 to 2019, the female prison population increased more than eight times. In this regard, see The Sentencing Project, Incarcerated Women and Girls, November 24, 2020.

<sup>16</sup> In Guatemala, from 2014 to 2019, the female prison population multiplied nearly five times. In this regard, see Government of Guatemala, Diplomatic Note No. DAJCC-Seprem 003-2021, April 14, 2021, p. 3.

<sup>17</sup> In Honduras, the female prison population increased between 2000 and April 2021 by nearly three times. In this regard, see ASOPAZH and CEMH, Consultation Questionnaire on Women Deprived of Liberty, April 10, 2021, p. 3.

<sup>18</sup> In Mexico, the female prison population nearly doubled between 2000 and February 2021. See Government of Mexico, Diplomatic Note No. OEA1121 – Consultation Questionnaire on Women Deprived of Liberty [hereinafter “Diplomatic Note No. OEA1121”], April 12, 2021, pp. 1-2.

<sup>19</sup> In Nicaragua, from 1999 to 2014, this population more than doubled. In this regard, see Institute for Criminal Policy Research at Birkbeck (University of London), World Prison Brief data – Nicaragua, 2022.

<sup>20</sup> In Paraguay, from 2000 to April 2021, the female prison population increased more than four times. In this regard, see Government of Paraguay, Diplomatic Note No. 495-21/MMP/OEA, Ref.: Questionnaire IACH hereinafter “Diplomatic Note No. 495-21/MMP/OEA”], April 27, 2021, p. 3.

<sup>21</sup> In Uruguay, from 2000 to 2020, the female prison population nearly quadrupled. In this regard, see Government of Uruguay, Diplomatic Note No. 041/2021 - Annex 2 – Contributions from the Parliamentary Commissioner for the Prison System [hereinafter “Diplomatic Note No. 041/2021 -Annex 2”], April 20, 2021, pp. 2-3.

<sup>22</sup> In this regard, the prison population rate in a region or country is found by calculating how many persons deprived of liberty there are for every 100,000 inhabitants in that region or country. For example, if there are 10,000 persons detained within a population of 10 million inhabitants, the rate would be 100:100.000. On this item, see: UNODC, Custodial and Non-Custodial Measures – Criminal Justice Assessment Toolkit, 2010, p. 6.

the United States is in first place with a rate of 64; El Salvador is in third place with a rate of 42; and Uruguay is in eighth place with a rate of 29<sup>23</sup>.

41. Regarding the reasons for this trend, the IACHR has pointed out that the increase in the number of women incarcerated in the region is primarily due to tougher criminal policies in the area of drugs, the lack of a gender perspective to address the issue, and thus a failure to consider factors such as: i) the limit level of women's participation in criminal activity; ii) the lack of violence in the commission of these crimes; iii) disproportionate impact of women's incarceration on those in their care; iv) the lack of a social reintegration focus in corrections policy; and v) the violence and social and workplace exclusion that this population faces in the region. In this context, a high percentage of incarcerated women in the Americas have been deprived of liberty for non-violent crimes linked to drugs and a considerable number of them are subject to pretrial detention.<sup>24</sup> In particular, the available information indicates that in most countries in the Americas drug crimes are one of the five main causes for female incarceration.<sup>25</sup> In this scenario, according to the International Drug Policy Consortium (IDPC), nearly 46% of the women in prison are there for drug-related crimes<sup>26</sup>.
42. In addition, the excessive use of pretrial detention for women is one of the factors that has contributed to the increase in the female prison population. In particular, based on official data, the Commission notes that in some countries the percentage use of this measure is higher for women than for men. For example, in Argentina, the rates at which pretrial detention is applied<sup>27</sup> are 58.9% for women and 52.8% for men;<sup>28</sup> in Bolivia, these rates are 70.9% for women and 63.3% for men;<sup>29</sup> in Colombia, they are 34.16% for women and 21% for men;<sup>30</sup> in Costa Rica, they are 56.9% for women and 18.9% for men;<sup>31</sup> in Mexico, they

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<sup>23</sup> Institute for Criminal Policy Research at Birkbeck (University of London), World Prison Brief: World Female Imprisonment List, 5th edition, October 19, 2022, p. 2.

<sup>24</sup> On this item, see subsection on "Excessive Use of Pretrial Detention and the Failure to Apply Alternative Measures."

<sup>25</sup> On this item, see the subsection on "Impact of Drug Policies on Women's Incarceration."

<sup>26</sup> IDPC, Punitive Drug Laws: 10 Years Undermining the Bangkok Rules, March 2021 [hereinafter "Punitive Drug Laws: 10 Years Undermining the Bangkok Rules"], p. 6.

<sup>27</sup> The term "pretrial detention application rates" is used to reflect how many detained persons are subject to the precautionary measure of pretrial detention of the total population deprived of liberty.

<sup>28</sup> In this regard, the Government of Argentina, Diplomatic Note No. IF-2021-34330903-APN-DCIMD#MRE, IACHR, April 20, 2021, p. 2.

<sup>29</sup> In this regard, Government of Bolivia, Diplomatic Note No. MPB-OEA-NV116-21- Annex: Questionnaire, Women Deprived of Liberty in the Americas [hereinafter Diplomatic Note No. MPB-OEA-NV116-21"], June 1, 2021, p. 1.

<sup>30</sup> In this regard, Government of Colombia, Diplomatic Note No. MPC/OEA No. 530-2021, April 12, 2021, p. 2.

<sup>31</sup> In this regard, Government of Costa Rica, Diplomatic Note No. CROEA-AA-576-21 – Costa Rica's Input regarding the Questionnaire on Women Deprived of Liberty in the Americas [hereinafter "Diplomatic Note No. CROEA-AA-576-21"], April 9, 2021, p. 1.

are 52.2% for women and 42% for men.<sup>32</sup> These figures show that although most women are detained for non-violent crimes, they are more likely than men to be held in pretrial detention.

## ***B. Factors leading to female incarceration***

43. Based on the available data, the IACHR notes that most women incarcerated in the region are in prison due to criminal conduct committed as a result of various factors. These factors are primarily linked to limited economic and educational opportunities based on situations of poverty, financial responsibilities for those in their charge, prior violence, coercion, threats, and influences forcing women to become involved in the commission of crimes, as well as drug use. In this regard, the IACHR emphasizes that these factors limit women's options in life by keeping them from making decisions freely and putting them in situations that lead to their incarceration. On this subject, the Commission has pointed out that poverty and social exclusion may foster a propensity to commit crimes. In this regard, the combination of socioeconomic factors and low levels of development, precarious employment, lack of opportunities, persistent inequity and insufficient social mobility result in vulnerable scenarios that limit the legitimate possibilities for social advancement. In these scenarios, some people may be forced to embark on a criminal path as a way of life<sup>33</sup>.
44. Added to the above, the Commission notes that there are other situations of concern that lead to female incarceration and are reflected in the deprivation of liberty of female human rights defenders, afro-descendant women, indigenous women, and those who face barriers in seeking to access comprehensive healthcare services.

### **1. Limited economic and educational opportunities and situations of poverty**

45. The IACHR notes that women's limited economic and educational opportunities due to discrimination and workplace exclusion frequently result in situations of poverty, which represents one of the main factors leading to women's involvement in crime and their subsequent incarceration. In particular, the Commission has indicated that poverty, the lack of opportunities, and barriers to access to education put women in vulnerable situations and make them easy targets of organized crime, after putting them at greater risk of being used in criminal operations. In addition, poverty pushes women to work, setting aside their studies, which increases their chances of becoming involved in the commission of crimes to support their needs.<sup>34</sup> In addition, according to the UN Working Group on the Issue of Discrimination against Women in Law and Practice (hereinafter the Working Group on the issue of discrimination against women), women are more likely to live in poverty than men

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<sup>32</sup> In this regard, Government of Mexico, Diplomatic Note No. OEA1121, April 12, 2021, p. 1.

<sup>33</sup> In this regard, IACHR, Poverty and Human Rights, OEA/Ser.LV/II.164 Doc. 147, September 7, 2017 [hereinafter "Poverty and Human Rights"], paras. 408-410.

<sup>34</sup> In this regard, see: IACHR, Poverty and Human Rights, paras. 276, 320, 409.

because, worldwide and on average, they earn up to 23% less than men. In addition, they are more likely to be unemployed, have less ability to access assets in the home based on inequities in the distribution of resources, and are less able to generate income due to uncompensated care-giving tasks that primarily fall to them<sup>35</sup>.

46. Along these lines, the information gathered by the IACHR indicates that a large portion of incarcerated women come from the most disadvantaged sectors of society, characterized by poverty or extreme poverty and limited access to resources. In addition, they face long-term unemployment or are employed in the informal, characteristically low-wage sector.<sup>36</sup> For example, in Nicaragua, according to official data, women deprived of liberty generally have limited economic income, lack compensated work, or are self-employed.<sup>37</sup> In Argentina, of the total number of women in prison, 68% have no trade or profession at the time of their arrest.<sup>38</sup> In addition, in the case of women detained for drug crimes, it has been documented that they lack alternatives due to the lack of means or social or workplace exclusion. According to the United Nations Entity for Gender Equality and Women's Empowerment (hereinafter UN Women), women's participation in drug use and trafficking reflects limited economic opportunities and limited political status [...] in their daily lives.<sup>39</sup> In addition, the UNODC has established that said participation is attributed to the vulnerability and oppression women face.<sup>40</sup> For example, in Colombia, a study revealed that of the total number of women detained for drug crimes who were surveyed, <sup>41</sup>.
47. Additionally, women's limited educational opportunities also contribute to their involvement in the commission of crimes. In this regard, available information indicates that most women deprived of liberty lack complete educational training, as they have

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<sup>35</sup> In this regard, the Working Group on the Issue of Discrimination against Women in Law and Practice. Women Deprived of Liberty, Resolution AHRC/41/33, May 15, 2019, [Hereinafter "Working Group on the issue of discrimination against women. Women Deprived of Liberty, para. 49.

<sup>36</sup> See: Government of Argentina, Diplomatic Note No. IF-2021-34330903-APN-DCIMD#MRE, IACHR, April 20, 2021, p. 3; Government of Costa Rica, Diplomatic Note No. CROEA-AA-576-21, April 9, 2021, p. 3; Government of Ecuador, Diplomatic Note No. 4-2-1022021–Questionnaire on Women Deprived of Liberty in the Americas [hereinafter "Diplomatic Note No. 4-2-1022021"], April 12, 2021, p. 2; Government of Mexico, Diplomatic Note No. OEA1121, April 12, 2021, pp. 2-3; IACHR, Information provided to the IACHR by Equis: Justice for Mexican Women and the APT during the first meeting of experts on women deprived of liberty, April 27, 2021; and OVIC, Consultation questionnaire on women deprived of liberty, April 9, 2021, p. 1.

<sup>37</sup> Government of Nicaragua, Diplomatic Note No. MPN-OEA/LAR/21-00097, April 7, 2021, p. 8.

<sup>38</sup> MPD, Argentina, Ref.: Consultation Questionnaire Women Deprived of Liberty, April 9, 2021, p. 5.

<sup>39</sup> UN Women, "A Gender Perspective on the Impact of Drug Use, the Drug Trade and Drug Control Regimes." 2014.

<sup>40</sup> UNODC, World Drug Report. Summary, Conclusions, and Policy Implications, 2018, pp. 14 and 15.

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characteristically have had limited opportunities to access education.<sup>42</sup> For example, according to official data, incarcerated women in Nicaragua generally have only primary education.<sup>43</sup> According to civil society, in Brazil, 44% have not completed primary school, and only 14% have secondary studies.<sup>44</sup> In Colombia, 70% have only primary education (incomplete in some cases), 20% have secondary education, and only 5.7% have technical, technological, or professional degrees.<sup>45</sup> In Venezuela, close to 40% of women deprived of liberty have only primary studies.<sup>46</sup> These data indicate that exclusion from the labor market, poverty, and limited educational opportunities faced by women in the region lead to their involvement in the commission of crimes and their subsequent incarceration.

## 2. Caregiving responsibilities and financial limitations

48. The IACHR finds a close link between women's caregiving responsibilities and the commission of crimes motivated by the lack of financial resources to meet the basic needs of their families. In particular, many women are still primarily responsible for raising their children, act as heads of family, and have people in their care.<sup>47</sup> Despite the lack of information on this subject due to the States' failure to compile information, the available data indicate that this situation also holds true for incarcerated women.<sup>48</sup> In this scenario, considering that most incarcerated women are mothers<sup>49</sup> and primarily responsible for family finances, insufficient means to cover expenses to care for those in their care constitutes an essential factor contributing to their involvement in the commission of crimes. In this regard, according to data from the Working Group on the issue of discrimination against women, women deprived of liberty have indicated that their family responsibilities and their financial limitations have led them to become involved in illegal economic activities, which represent their only opportunity to support their families<sup>50</sup>.

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<sup>42</sup> See, Government of Argentina, Diplomatic Note No. IF-2021-34330903-APN-DCIMD#MRE, IACHR, April 20, 2021, p. 3; Government of Paraguay, Diplomatic Note No. 495-21/MMP/OEA, April 27, 2021, p. 5; IACHR, Information provided to the IACHR by the Construir Foundation of Bolivia during the first meeting of experts on women deprived of liberty of the IACHR, April 27, 2021; Mattos Filho, Memorandum - inputs, April 10, 2021, p. 12; CSS, Response to consultation questionnaire on Women Deprived of Liberty, Colombia, April 10, 2021, p. 6; OVIC, Consultation questionnaire on women deprived of liberty, April 9, 2021, p. 1; OVP, Informe Mujeres privadas de la libertad en Venezuela: Las voces de las mujeres detrás de las rejas, 2021, p. 35.

<sup>43</sup> Government of Honduras, Diplomatic Note No. DNDDHH-LI-316-2021, May 19, 2021, p. 8.

<sup>44</sup> Mattos Filho, Memorandum - inputs, April 10, 2021, p. 12.

<sup>45</sup> In this regard, CSS, Response to the consultation questionnaire on Women Deprived of Liberty, Colombia, April 10, 2021, p. 6.

<sup>46</sup> OVP, Informe Mujeres privadas de la libertad en Venezuela: Las voces de las mujeres detrás de las rejas, 2021, p. 35.

<sup>47</sup> IACHR, Measures to Reduce Pretrial Detention in the Americas, para. 201.

<sup>48</sup> On this subject, see the section "Impact of incarceration on women and those in their care."

<sup>49</sup> In particular, a study done by the Inter-American Development Bank indicates that nearly 87% of women deprived of liberty have daughters and sons. In this regard, see Inter-American Development Bank (IDB), Incarcerated Women in Latin America, Characteristics and Risk Factors Associated with Criminal Behavior - Technical Note No. IDB-TN- 1409, April 2018, p. 17.

<sup>50</sup> Working Group on the Issue of Discrimination against Women, Women Deprived of Liberty, para. 61.

49. In the specific case of women tied to drug crimes, the available information indicates that they are engaged in this activity because they see it as a job option for obtaining income while at the same time performing their caregiving responsibilities – for example, by selling from their homes<sup>51</sup> – or to gain income in addition to what other family members earn.<sup>52</sup> As an example, a study in Mexico concluded that most women in prison referred to their responsibilities as mothers as the primary reason for their involvement in drug trafficking.<sup>53</sup> In Colombia, of the total number of women incarcerated for drug crimes who were interviewed, 58.6% indicated that their motivation to commit the crime is linked to the lack of resources to meet the needs of their household.<sup>54</sup> Along the same lines, official data from Uruguay indicate that “micro level drug dealing” is primarily used as a survival strategy by women who have others in their charge<sup>55</sup>.

### 3. Violence, coercion, threats, or influence

50. The Commission has identified various structural factors that perpetuate discrimination and gender-based violence against women, including male chauvinism (*machismo*), patriarchy, the prevalence of sexist stereotypes, and historic discrimination connected to the social fabric, combined with society’s tolerance for violence against women in all its dimensions. Specifically, it has emphasized the relationship existing between situations of violence and women’s involvement in the commission of crimes. In this regard, it has pointed out that many women participate in criminal activities after being forced to do so through threats made against them or their families, and punishments including acts of violence based on their gender.<sup>56</sup> In addition, the then UN Special Rapporteur on violence against women, Rashida Manjoo (hereinafter former UN Special Rapporteur on violence against women) has noted the existence of a strong link between prior violence against women and the

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<sup>51</sup> In this regard, see IACHR, Information provided to the IACHR by the WOLA organization during a technical meeting on women deprived of liberty, February 10, 2022; and IACHR, Information provided to the IACHR by representatives of the “Roundtable on women deprived of liberty” of Uruguay during a technical meeting held on April 1, 202.

<sup>52</sup> In this regard, see Equis: Justice for Women, Mexico, Humanas Corporation of Colombia, and Humanas Corporation of Chile, La situación particular de las mujeres reclusas por delitos de drogas, September 2015, p. 4.

<sup>53</sup> Equis: Justice for Women, Políticas de drogas, género y encarcelamiento en México: Una Guía para Políticas Pública Incluyentes, 2018, p. 24.

<sup>54</sup> UNODC and Ministry of Justice of Colombia, Caracterización de condiciones socioeconómicas de mujeres relacionadas con problemas de drogas, 2019, p. 17.

<sup>55</sup> Parliament of Uruguay – Parliamentary Commissioner for the Prison System, Mujeres en proceso penal, con hijos a cargo, pueden ir a prisión domiciliaria asistida según normas nacionales e internacionales, October 28, 2021.

<sup>56</sup> In this regard, IACHR, Violence and Discrimination against Women and Girls: Best Practices and Challenges in Latin America and the Caribbean, OAS/Ser.L/V/II. Doc. 233, 14 November 2019 [hereinafter “Violence and Discrimination against Women and Girls”], paras. 94, 194-197.

commission of crimes resulting in their incarceration.<sup>57</sup> Along the same lines, according to data from the UN Working Group on the issue of discrimination against women, the percentage of incarcerated women who were victims of violence during childhood is at least twice the percentage for men<sup>58</sup>.

51. In this regard, the IACHR received information indicating that a large percentage of women deprived of liberty in the region have been the victims of various acts of gender-based violence prior to their detention, including economic, physical, sexual, and psychological violence.<sup>59</sup> For example, in Chile, 65% of incarcerated women suffered violence throughout their lives, and their partners or former partners were the main abusers.<sup>60</sup> In Uruguay, 52% of incarcerated women who are mothers or pregnant were the victims of gender violence before they were imprisoned.<sup>61</sup> In addition, in the specific case of women linked to drug crimes, the Working Group on the issue of discrimination against women has documented that violence is frequently used to force women to participate in drug trafficking networks.<sup>62</sup> For example, in Colombia, according to an UNODC study, 48.1% of women in prison for drug crimes who were surveyed reported having been the victim of violence, primarily at the hands of their partners<sup>63</sup>.
52. In addition, the Commission notes that threats, coercion, and influence appear as others forms of violence used to involve women in the commission of crimes. On this subject, the then UN Special Rapporteur on violence against women pointed out that many women are deprived of liberty “for illegal activities they carried out in response to threats made by a partner who mistreats them.”<sup>64</sup> In addition, women imprisoned for drug crimes become involved in drug use and trafficking through their male partners or other family members

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<sup>57</sup> Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, Report on “Pathways to, conditions, and consequences of incarceration for women.” Resolution A/68/340, August 21, 2013, [hereinafter “Special Rapporteur on violence against women, Report on “Pathways to, conditions and consequences of incarceration for women””], para. 6.

<sup>58</sup> On this subject, see: Working Group on the discrimination against women, Women deprived of liberty, para. 66.

<sup>59</sup> In this sense, Government of Argentina, Diplomatic Note No. IF-2021-34330903-APN-DCIMD#MRE, IACHR, April 20, 2021, p. 3; OVIC, Consultation questionnaire on women deprived of liberty, April 9, 2021, p. 12; CSS, Response to consultation questionnaire on Women Deprived of Liberty, Colombia, April 10, 2021, p. 12; Government of Costa Rica, Diplomatic Note No. CROEA-AA-576-21, April 9, 2021, p. 15; Government of Ecuador, Diplomatic Note No. 4-2-102/2021, April 12, 2021, p. 9; Government of Guatemala, Diplomatic Note No. DAJCC-Seprem 003-2021, April 14, 2021, p. 12; Government of Honduras, Diplomatic Note No. DNDDHH-LI-316-2021, May 19, 2021, p. 6; and Government of Mexico, Diplomatic Note No. OEA1121, p. 6.

<sup>60</sup> OVIC, Consultation questionnaire on women deprived of liberty, April 9, 2021, p. 12.

<sup>61</sup> Parliament of Uruguay – Parliamentary Commissioner for the Prison System, Informe especial: prisión domiciliaria asistida para madres con hijos a su cargo en el proceso penal, October 28, 2021, p. 9.

<sup>62</sup> Working Group on the issue of discrimination against women, Women deprived of liberty, para. 69.

<sup>63</sup> UNODC and Ministry of Justice of Colombia, Caracterización de condiciones socioeconómicas de mujeres relacionadas con problemas de drogas Las mujeres privadas de la libertad por delitos de drogas, 2019, p. 16.

<sup>64</sup> Special Rapporteur on violence against women, Report on Pathways to, conditions and consequences of incarceration for women, para. 9.

involved in these crimes because they threaten, coerce, or induce them to become part of crimes they commit as a “favor” – which are known as “love crimes.” In this scenario, many women also face investigations that could lead to their incarceration based on their position as relatives or partners of men who have committed crimes<sup>65</sup>.

#### 4. Drug use

53. The IACHR notes that drug use is sometimes a factor that leads women to become subject to criminal proceedings and incarceration. In this regard, the UNODC has asserted that many women deprived of liberty for drug crimes are problem drug users themselves and may be involved with this crime in order to support their own habit.<sup>66</sup> In addition, the UN Working Group on Arbitrary Detention (WGAD) has determined that women drug users, in addition to committing crimes for their own use, also face greater stigmatization based on their use, which may lead to their incarceration, particularly in contexts where discrimination predominates because they are women, commit crimes, and use drugs<sup>67</sup>.

#### 5. Other situations of concern

54. The Commission has learned of other at-risk situations that lead to women’s incarceration. These are linked with specific factors of vulnerability such as being female human rights defenders or belonging to afro-descendant or indigenous communities. Additionally, the IACHR has been informed that, in scenarios characterized by poverty and barriers to access to reproductive health services, some women undergoing obstetrical emergencies face the risk of being imprisoned.

##### A) Female human rights defenders

54. The Commission notes that in institutional crisis contexts, the work of women as human rights defenders is a factor that may contribute to their detention. In particular, the IACHR has monitored the detention of women defenders in Nicaragua and Guatemala. Specifically with regard to Nicaragua, the Commission has learned of tens of women who have been deprived of liberty due to performing their human rights defense work. The main causes leading to their incarceration include: i) participating in groups or initiatives that have an

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<sup>65</sup> In this regard, see: IACHR, Information provided to the IACHR by the National Mechanism for the Prevention of Torture of Honduras during the first meeting of experts on women deprived of liberty, April 27, 2021; IACHR, Information provided to the IACHR by expert member of the UN Working Group against Arbitrary Detention (WGAD) during a technical meeting held with the WGAD and the IDPC on women deprived of liberty in the region, May, 25, 2022; and WOLA, IDPC, Dejusticia, and the CIM, Women, Drug Policies, and Incarceration, 2016, p. 10; and CIM, Women and Drugs in the Americas. A policy working paper, January 2014, p. 3.

<sup>66</sup> UNODC, Handbook on Women and Imprisonment, pp. 14, 103, and 107.

<sup>67</sup> In this regard, IACHR, Information provided to the IACHR by an expert member of the WGAD during a technical meeting held with the WGAD and the IDPC on women deprived of liberty in the region, May 25, 2022. See also: WOLA, IDPC, Dejusticia and CIM, Women, Drug Policies, and Incarceration, 2016, p. 17.

important role in the situation through which the country is going;<sup>68</sup> ii) attempting to appear in defense of persons detained for political reasons;<sup>69</sup> iii) working in journalism and reporting government repression against demonstrators;<sup>70</sup> and iv) being part of student movements and participating in protests.<sup>71</sup> Similarly, through a report sent to the IACHR on February 13, 2019, the State of Nicaragua acknowledged that 27 women had been deprived of liberty “due to the failed coup d’état.” In this scenario, they had been accused of committing various crimes such as organized crime, terrorism, obstructing public services, conspiracy, threats, and endangering people, among others<sup>72</sup>.

55. With regard to Guatemala, since 2021 the IACHR has received information on intensified criminalization of women justice operators, female attorneys, women defenders of former justice operators, and former female government officials, in a scenario characterized by the weakening of judicial independence. In particular, criminalization consists, among other actions, of arrests as a form of harassment in response to women’s work of investigating or prosecuting criminal structures linked to political and economic powers or, in emblematic cases of serious human rights violations during the armed conflict or because at the time they supported the work of the International Commission against Impunity in Guatemala (ICIG). For example, in this context, in February 2022, five female attorneys were arrested who had participated in investigations against businessmen, public officials, applicants seeking high positions in the courts, drug traffickers, legislators, and military personnel. Two of them were working in the Office of the Special Prosecutor against Impunity (FECI) and one was a former leader of the CICIG<sup>73</sup>.

## B) Afro-descendant women

56. The Commission has determined that afro-descendant women face specific risks based on the intersection of multiple factors of vulnerability such as gender and ethnic-racial origin. It

<sup>68</sup> On this subject, see IACHR, Resolution 70/2018, MC 939/18 and 1067/18 - Yerling Marina Aguilera Espinoza et al. (Seventeen Human Rights Defenders), Nicaragua.

<sup>69</sup> IACHR, Annual Report, Chapter IV. B “Nicaragua,” 2019, para. 162.

<sup>70</sup> On this subject, see IACHR, Resolution 52/2019, MC 873/18 - Lucía Pineda Ubau and her nuclear family (Extension), Nicaragua.

<sup>71</sup> On this subject, see IACHR, Resolution 84/2018, MC 1133/18 - Amaya Eva Coppens Zamora et al. (Women Deprived of Liberty at the La Esperanza Prison Facility), Nicaragua.

<sup>72</sup> On this subject, Permanent Mission of Nicaragua to the Organization of American States, Note MPN-OEA-00013, State of Nicaragua’s Report to the Inter-American Commission on Human Rights with respect to the Hearing convened to address the subject of the “Human Rights Situation of Women Deprived of Liberty in Nicaragua,” during its 171<sup>st</sup> Session to be held in Sucre, Bolivia, February 13, 2019.

<sup>73</sup> On this subject, see: IACHR, Press release 37/22 - IACHR Expresses Concern over New Violations of Judicial Independence in Guatemala. Washington DC, February 22, 2022; IACHR, Press release 203/21 - The IACHR expresses Concern over Actions that Weaken Judicial Independence in Guatemala. Washington DC, August 6, 2021; and IACHR, Press release 65/21 - The IACHR Expresses Concern over Impeachment Proceedings against Members of Guatemala’s Constitutional Court. Washington DC, March 18, 2021. See also: Ocote Agency, Castigar a las que luchan, March 7, 2022.

has also emphasized that the situation of poverty and extreme poverty of afro-descendant persons hampers their ability to fully and effectively access justice, setting up obstacles to their enjoyment of human rights and putting them at a disadvantage compared to the rest of the population due to their more frequent exposure to crime and institutional violence.<sup>74</sup> In this scenario, afro-descendant women are more likely to be subject to criminal proceedings, which is reflected in their being over-represented in the criminal justice systems. Specifically, the Office of the United Nations High Commissioner for Human Rights has indicated that the over-representation of afro-descendant women in the criminal justice system could reflect the sum of underlying factors, notably structural racial discrimination, police control with ethnic-racial bias, poverty, and the lack of educational and employment opportunities<sup>75</sup>.

57. Thus, for example, according to official data, between January and June 2022, afro-descendant (brown and black) women in Brazil represented 59% of the total female prison population.<sup>76</sup> In the United States, according to United Nations data, in 2013 Afro-American women represented 21% of the total female prison population, which amounted to an incarceration rate for afro-descendant women that was 2.1 times higher than the rate for white women.<sup>77</sup> Along the same lines, the Just Security Forum reports that in the United States that, despite representing approximately 6% of the United States population, afro-descendant women represent 22% of the incarcerated female population.<sup>78</sup> In Panama, during its visit to the country in 2013, the Working Group of Experts on People of African Descent observed that afro-descendant women were “over-represented in the prisons,” and most of them had been convicted for drug-related crimes or street crimes<sup>79</sup>.

### C) Indigenous women

58. The Commission has noted that the result of discrimination and barriers to accessing justice is that, like women of African descent, incarcerated indigenous women are over-represented in certain countries.<sup>80</sup> For example, in Canada, according to available data,

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<sup>74</sup> IACHR, Economic, Social, Cultural and Environmental Rights of Persons of African Descent, OEA/Ser.LV/II. Doc. 109, March 16, 2021, paras. 100 and 125.

<sup>75</sup> Office of the United Nations High Commissioner for Human Rights, Women and Girls of African Descent: Human Rights Achievements and Challenges, 2018, p. 21.

<sup>76</sup> On this subject, see: National Secretariat on Criminal Policies, Government of Brazil, Mulheres e Grupos Específicos- Composição da População por Cor/Raça no Sistema Prisional - Período de Janeiro a Junho de 2022, 2023.

<sup>77</sup> United Nations, Report of the Working Group of Experts on People of African Descent on its mission to the United States of America, AHRC/33/61/Add.2, August 18, 2016.

<sup>78</sup> Just Security, The New Jane Crow: Women's Mass Incarceration, June 30, 2020.

<sup>79</sup> United Nations, Report of the Working Group of Experts on People of African Descent on its 12<sup>th</sup> period of sessions – Mission to Panama, AHRC/24/52/Add.2, August 21, 2013.

<sup>80</sup> On this subject, IACHR, Report on Indigenous Women and their Human Rights in the Americas, OEA/Ser.LV/II. Doc. 44/17, April 17, 2017, para. 149.



indigenous women who are deprived of liberty represent nearly 50% of the female prison population in federal prisons. This is despite the fact that indigenous persons represent only 5% of the total population<sup>81</sup>.

59. In this regard, despite this population's general situation of invisibility due to the lack of official reports on incarcerated indigenous women<sup>82</sup> and the limited compilation of prison data on the ethnic origin of women,<sup>83</sup> the IACHR notes that the causes that lead to their incarceration notably include two groups of factors. On the one hand, there are personal circumstances that include situations of poverty and socioeconomic exclusion in particular and that may lead to their involvement with the commission of crimes. On the other hand, there are factors present during their prosecution linked to the imposition of criminal penalties in the ordinary systems of justice, in particular, discrimination on the part of authorities based on ethnic origin and barriers to access to justice, particularly due to the lack of interpreters in criminal proceedings<sup>84</sup>.

#### D) Women imprisoned for obstetrical emergencies

60. The Commission emphasizes that in contexts characterized by poverty and barriers to access to reproductive health services, women who suffer complications during pregnancy that lead them to lose the pregnancy face the risk of being imprisoned and convicted based on the suspicion that they have induced an abortion. Specifically, in its report on violence and discrimination against women and girls, the IACHR reiterated the negative impact that laws that fully criminalize abortion have on women's rights to life, humane treatment, health, and to live lives free of violence and discrimination in the event of a risk to their health, a non-viable fetus, and pregnancies resulting from sexual violence or incest. Criminalization of abortion under all circumstances and the resulting lack of legal, safe, and timely options for accessing this practice causes many women with obstetrical

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<sup>81</sup> On this subject, World Socialist Web Site, [Indigenous women account for almost half of Canada's female federal inmate population](#), October 14, 2022; The Globe and Mail, [‘Shocking and shameful’: For the first time, Indigenous women make up half the female population in Canada’s federal prisons](#), May 5, 2022; and CBC, [Indigenous women make up almost half the female prison population, ombudsman says](#), December 18, 2021.

<sup>82</sup> On this subject, see: Association for the Prevention of Torture (APT), [Opening the Door to Justice for Indigenous Women Deprived of Liberty](#), August 9, 2021.

<sup>83</sup> On this subject, see: Debates indígenas, [Premature Deaths and Prison Violences in Mexico: Imprisoned Indigenous Women and Structural Racism](#), April 1, 2021.

<sup>84</sup> On this subject, IACHR, [Report on Indigenous Women and their Human Rights in the Americas](#), OEA/Ser.LV/II. Doc. 44/17, April 17, 2017, paras. 149 and 158. Also, along similar lines, see: Debates indígenas, [Premature Deaths and Prison Violences in Mexico: Imprisoned Indigenous Women and Structural Racism](#), April 1, 2021; Debates indígenas, [Indigenous Women Deprived of their Liberty in Guatemala](#), April 1, 2021; World Socialist Web Site, [Indigenous women account for almost half of Canada's female federal inmate population](#), October 14, 2022; The Globe and Mail, [‘Shocking and shameful’: For the first time, Indigenous women make up half the female population in Canada’s federal prisons](#), May 5, 2022; CBC, [Indigenous women make up almost half the female prison population, ombudsman says](#), December 18, 2021; Debates indígenas, [Racist and Patriarchal Justice in Argentina: The Reina Maraz Case](#), April 1, 2021.

emergencies without the needed medical care to choose not to seek medical services or to submit to dangerous or even fatal practices, among other consequences<sup>85</sup>.

61. Specifically, the IACHR has also monitored women's deprivation of liberty under these circumstances in El Salvador.<sup>86</sup> In this regard, the data indicate that since the 1998 reform of El Salvador's Penal Code, which penalized the interruption of a pregnancy under all circumstances, El Salvador systematically criminalizes women who suffer obstetrical emergencies and sentences them to terms of up to 50 years in prison for the crimes of aggravated homicide or abortion.<sup>87</sup> In this scenario, between 1998 and 2019, at least 181 women were prosecuted for having suffered an obstetrical emergency.<sup>88</sup> Of these women, according to civil society, at least 67 were convicted.<sup>89</sup> In addition, as of February 2023, two women were still incarcerated for obstetrical emergencies, despite meeting the requirements for benefiting from alternatives to prison as provided in the Prison Act<sup>90</sup>.
62. In this regard, the IACHR notes that incarceration of this group of women is closely linked to situations of poverty based on the social exclusion, lack of economic resources, and limited educational opportunities that women face. This is frequently reflected in barriers to regular access to reproductive health services, leading to complications during their pregnancies. Specifically, in the *Manuela et al. v. El Salvador* case, the Inter-American Court indicated that most women prosecuted in El Salvador for abortion or aggravated homicide are characterized by having limited or no income, coming from rural or marginal urban areas, and having limited schooling.<sup>91</sup> Along the same lines, according to data from civil society, of the total number of women deprived of liberty for crimes related to

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<sup>85</sup> IACHR, *Violence and Discrimination against Women and Girls*, para. 202.

<sup>86</sup> See: *Report on the Situation of Human Rights in El Salvador*, OEA/Ser.L/V/II. Doc. 278, October 14, 2021, para. 198.

<sup>87</sup> On this subject, see, *Report on the Situation of Human Rights in El Salvador*, OEA/Ser.L/V/II. Doc. 278, October 14, 2021, para. 199. Also see: Citizen Group for the Decriminalization of Abortion (Agrupación Ciudadana por la Despenalización del Aborto) and Center for Reproductive Rights, *Women Deprived of Liberty-Summary of report submitted by the Citizen Group for the Decriminalization of Abortion and the Center for Reproductive Rights to the Inter-American Commission on Human Rights*, February 1, 2023 [hereinafter "Citizen Group for the Decriminalization of Abortion and Center for Reproductive Rights, Women Deprived of Liberty-Summary, February 1, 2023"], p. 1.

<sup>88</sup> *Report on the Situation of Human Rights in El Salvador*, OEA/Ser.L/V/II. Doc. 278, October 14, 2021, para. 199.

<sup>89</sup> On this subject, the Citizen Group for the Decriminalization of Abortion, *From the Hospital to Jail*, 2019, p. 47. See also: El Salvador, *Criminal Code - Decree No. 1030 of 1997*, Art. 409.

<sup>90</sup> Citizen Group for the Decriminalization of Abortion and the Center for Reproductive Rights, *Women Deprived of Liberty-Summary*, February 1, 2023, p. 1.

<sup>91</sup> I/A Court H.R. *Manuela et al v. El Salvador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 2, 2021. Series C No. 441, paras. 46 and 253.

obstetrical emergencies in El Salvador, 42% are illiterate or have completed no more than junior high,<sup>92</sup> and 53% have no stable or permanent sources of income<sup>93</sup>.

63. On this point, the Commission reiterates that absolute criminalization of abortion, by imposing a disproportionate burden on the exercise of women's rights, is ultimately contrary to the State's international responsibilities to respect, protect, and guarantee women's rights to life, health, and integrity. In this regard, the IACHR repeats its call for moratoria on the application of provisions that provide for total criminalization of abortion and for review of cases of women convicted under these provisions<sup>94</sup>.

### C) Drug Policies

64. Starting in the 1990s, various countries in the region adopted the policy known as the "war on drugs."<sup>95</sup> In this scenario, legal reforms were implemented that toughened criminal policies in the area of drugs after adopting a prohibitionist and repressive approach focused on eradication of the illegal drug market by prioritizing incarceration as a response.<sup>96</sup> In particular, this model used criminal law to criminalize, prohibit, and penalize all conduct linked to all phases of the drug trade.<sup>97</sup> As a result, this toughening of drug policies led to higher rates of incarceration as a solution to the problems of citizen insecurity, as reflected in the high number of people arrested for these crimes, particularly women.<sup>98</sup> This was due to: i) the lack of proportionality in the treatment of drug crimes; ii) excessive use of pretrial detention and the failure to apply alternative measures; and iii) restrictions on procedural benefits limiting imprisonment. In this context, there is increased female incarceration, also due to the failure to consider the circumstances surrounding the commission of crime by women.

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<sup>92</sup> Citizen Group for the Decriminalization of Abortion, *From the Hospital to Jail*, 2019, p. 37.

<sup>93</sup> Citizen Group for the Decriminalization of Abortion and the Center for Reproductive Rights, *Women Deprived of Liberty-Summary*, February 1, 2023, p. 2. See also: Working Group on Arbitrary Detention, *Opinion*, March 4, 2020, para. 100; and *Opinion*, June 25, 2020, paras. 56 and 64.

<sup>94</sup> IACHR, *Violence and Discrimination against Women and Girls*, paras. 202 and 210.

<sup>95</sup> For example, see: Cornell Law School's Avon Global Center for Women, Office of the Attorney General of Argentina, and University of Chicago Law School International, *Women in Prison in Argentina: Causes, Conditions, and Consequences*, May 2013, p. 7.

<sup>96</sup> In this regard, see IACHR, *Report on Measures to Reduce Pretrial Detention in the Americas*, para. 85; CIM, *Women and Drugs in the Americas. A Policy Working Paper*, January 2014, p. 47; and WOLA, IDPC, Dejusticia, and CIM, *Women, Drug Policies, and Incarceration*, 2016, p. 11.

<sup>97</sup> In this regard, see: Dejusticia, *Women, Drug Policies, and Incarceration: A Guide for Reforming Policy in Colombia*, 2016, p. 7; CIM, *Women and Drugs in the Americas. A Policy Working Paper*, January 2014, pp. 12, 47; and WOLA, IDPC, Dejusticia, and CIM, *Women, Drug Policies, and Incarceration*, 2016, p. 3.

<sup>98</sup> On this subject, IACHR, *Report on Measures to Reduce Pretrial Detention in the Americas*, para. 85.

## 1. Lack of proportionality in the treatment of drug-related offenses

65. In the context of the toughening of criminal policies in the area of drugs, crimes linked to these substances are frequently treated as “serious offenses” without making any type of distinction.<sup>99</sup> This is inconsistent with the principle of proportionality in sentencing, which requires that penalties be in proportion to the seriousness of the offense, its impact on society, and the personality and conditions of the person charged.<sup>100</sup> In particular, the IACHR has made note of criticisms regarding drug policies in that they violate the principle of proportionality since laws adopted in this scenario would punish these conditions with extended prison terms without making distinctions between: i) highly serious and less serious offenses; ii) violent and non-violent offenses; iii) different levels of participation; and iv) different types of drugs.<sup>101</sup> This means that although there are regulations covering various types of crime, generally no distinctions are made according to the level of participation, so that all contacts with the substance are subject to the same range of penalty. Thus, different treatment for drug crimes would be limited to increasing the sentence under certain circumstances.<sup>102</sup> In this context, the lack of proportionality in the treatment of drug crimes results in: i) punishment with extended prison terms for all drug-linked conduct; ii) punishment for using and carrying drugs for personal use; and iii) submission to criminal proceedings of persons, particularly women, whose level of participation within the criminal network is low.

### A) Punishment with extended prison terms

66. The Commission notes that, according to the available data, laws adopted in the region in the context of the “war on drugs” were accompanied by a sharp increase in the length of prison terms, including for crimes involving small amounts. In this scenario, sentences for drug crimes – even though they do not entail the use of violence – would be equal to or longer than those applicable to violent crimes in which life or personal safety is put at risk, such as homicide or rape.<sup>103</sup> For example, in Bolivia, the maximum punishment for drug trafficking is

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<sup>99</sup> In this regard, see IACHR, Report on Measures to Reduce Pretrial Detention in the Americas, para. 28.

<sup>100</sup> UNODC ROPAN, *De víctimas a victimarias: el uso del brazalete electrónico de monitoreo y los derechos de las mujeres en la justicia criminal*, p. 18. Also, see: Dejusticia, Women, Drug Policies, and Incarceration: A Guide for Reforming Policy in Colombia, 2016, p. 14 citing Uprimny, R., Guzmán, D., & Parra, J., *Penas alucinantes. La desproporción en la penalización de las drogas en Colombia*, 2013, pp. 24-25.

<sup>101</sup> In this regard, see: Transnational Institute (TNI) and WOLA, Systems Overload: Drug Laws and Prisons in Latin America, 2010, p. 92; and WOLA, IDPC, Dejusticia and CIM, Women, Drug Policies, and Incarceration, 2016, p. 18.

<sup>102</sup> Including, those linked to the number of persons involved, the nature of some perpetrators or participants, commercial purposes, or some criminal modalities. In this regard, ver MPD, Argentina, Consultation Questionnaire on Women Deprived of Liberty, April 9, 2021, pp. 11-12. For example, see: Uruguay, Decree Law 14.294, October 31, 1974, Arts. 30-38.

<sup>103</sup> In this regard, WOLA, et al., *Regional Response to Consultation Questionnaire on Women Deprived of Liberty*, 2021, April 23, 2021, p. 5; TNI and WOLA, Systems Overload: Drug Laws and Prisons in Latin America, 2010, p. 92; and WOLA, IDPC, Dejusticia, and CIM, Women, Drug Policies, and Incarceration, 2016, p. 18. Also see Working Group on the Issue of Discrimination, *Women Deprived of Liberty*, para. 32; and Dejusticia, *Women, Drug Policies, and Incarceration*, pp. 7 and 13.

25 years, while it is 20 years for homicide – unless the victim is a child, in which case the sentence increases to 25 years.<sup>104</sup> In Colombia, the maximum sentence for drug trafficking is 30 years, while it is 20 years for “violent sexual intercourse.”<sup>105</sup> Along the same lines, the then Special Rapporteur on Violence against Women found that stricter sentences have been imposed for drug crimes than for crimes related to rape or homicide.<sup>106</sup> This situation leads to gender-based inequities in the use of detention in that, in percentage terms, more women than men are subject to criminal proceedings for drug crimes.

## B) Punishment for using or carrying drugs for personal use

67. In some countries, the lack of proportionality in the treatment of drug crimes leads to the imposition of punishment for drug possession for personal use. The Commission notes in particular that although some States in the region have decriminalized possession of marijuana or cannabis for personal use, for example, Uruguay<sup>107</sup> and twenty one states in the United States,<sup>108</sup> there are still regulatory provisions in the region that criminalize holding or carrying drugs for personal consumptions or use, as in Argentina,<sup>109</sup> Chile,<sup>110</sup> and Ecuador.<sup>111</sup> In this regard, the Commission is concerned by the lack of visibility given to the situation faced by persons detained for using or carrying drugs for personal use, since the statistics are not broken down and such conduct is classified like more serious offenses.
68. Specifically, the official information received indicates that prison statistics in Colombia, Costa Rica, Ecuador, Guatemala, Mexico, and Nicaragua differentiate the type of drug offense for which persons are detained, while most States usually refer to “infringement” of the narcotics

<sup>104</sup> In this regard, see: Bolivia, Penal Code, adopted August 23, 1972, Article 251; and Bolivia, Law No. 1008, adopted on July 19, 1988, Article 48.

<sup>105</sup> In this regard, see: Colombia, Penal Code, updated January 12, 2023, Articles 376 and 205.

<sup>106</sup> In this regard, see: Special Rapporteur on Violence against Women, Report on Pathways to, Conditions, and Consequences of Incarceration for Women, para. 26.

<sup>107</sup> See: Uruguay, Decree Law No. 14294, October 30, 1974, most recently amended by Law No. 19.889 of July 9, 2020.

<sup>108</sup> In particular, the following: Alaska, Arizona, California, Colorado, Connecticut, District of Columbia, Illinois, Maine, Massachusetts, Maryland, Michigan, Missouri, Montana, Nevada, New Jersey, New York, New Mexico, Oregon, Vermont, Virginia, and Washington. In this regard, see: Virginia’s Legislative Information System, Senate Bill 1406, approved April 7, 2021; WOLA, The Catastrophic Consequences of Drug Prohibition in the Americas, July 2022; Marijuana Policy Project’s Action, Policy – State Policy, 2022; USA Today, In what states is weed legal? Here is the list, November 9, 2022; Voice of America, Maryland y Missouri aprueban legalizar la marihuana, November 9, 2022; and CNN, La legalización de la marihuana fue sometida a votación en cinco estados: estos son los resultados, November 9, 2022.

<sup>109</sup> In Argentina, Law No. 23.737 criminalizes possession for personal use. However, many of the country’s courts overlook or absolve persons accused of possession for personal use, applying the finding in “Arriola,” whereby the Supreme Court of Justice (CSJN) found it unconstitutional to punish personal possession. See: Argentina, Law 23.737, September 21, 1989, Art. 14; and CSJN, Arriola Ruling, Sebastián et al. on appeal, case No. 9080, August 25, 2009.

<sup>110</sup> In this regard, OVIC, Consultation Questionnaire on Women Deprived of Liberty, April 9, 2021, p. 9.

<sup>111</sup> In this regard, Government of Ecuador, Diplomatic Note No. 4-2-102/2021, April 12, 2021, p. 3.

or health law without differentiating the conduct charged.<sup>112</sup> In addition, the IACHR has been informed that on occasion the invisibility or low number of persons incarcerated for possession for personal use or carrying is likely because these persons are prosecuted or convicted for more serious criminal offenses, such as possession for purposes of sale or micro-trafficking.<sup>113</sup> This situation is of particular concern to the IACHR in that it contributes to the increase in the number of persons incarcerated, primarily women<sup>114</sup>.

69. In view of this, the IACHR again encourages the States in the region to create drug policies that avoid prosecuting and incarcerating those who have been detained for using or possessing drugs for personal use or who have committed minor crimes due to their problematic or dependent drug use and treating such conduct from a repressive or criminal perspective rather than using a public health approach. In particular, the States should promote other alternatives to deprivation of liberty to include outpatient treatments that avoid institutionalizing persons and make it possible to address these problems using a health and human rights approach. To do this, sufficient resources must be allocated to ensure that the treatment provided is based on scientific evidence and developed within a public health setting. In addition, the IACHR reiterates its call for studying less restrictive approaches through the decriminalization of drug use and possession for personal use<sup>115</sup>.

### C) Prosecuting persons with a low level of participation in the criminal network

70. The result of the failure to make distinctions among different levels of participation is that individuals who have committed non-violent crimes and have had limited participation in the illegal network are prosecuted, convicted, and sentenced to several years in prison. The IACHR notes that this situation has a differentiated impact on women, who are generally characterized by their low level of participation in the drug trafficking network.<sup>116</sup> In particular, women do not use violence in the commission of these crimes, so that they do not represent a risk to society<sup>117</sup> or their role is minimal.<sup>118</sup> Most of them occupy the lowest links in the criminal network, acting as drug carriers or “human couriers,” small-scale

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<sup>113</sup> In this regard, IACHR, Information provide to the IACHR by WOLA and IDPC representative during a technical meeting on women deprived of liberty, February 10, 2022.

<sup>114</sup> In this regard, see IACHR, Report on Measures to Reduce Pretrial Detention in the Americas, para. 90.

<sup>115</sup> IACHR, Report on Measures to Reduce Pretrial Detention in the Americas, paras. 153-155.

<sup>116</sup> In this regard, IACHR, Report of Measures to Reduce Pretrial Detention in the Americas, para. 200.

<sup>117</sup> UNODC, Handbook on Women and Imprisonment, p. 4.

<sup>118</sup> Special Rapporteur on Violence against Women, Report on “Pathways to, conditions, and consequences of incarceration for women, para. 85.



“micro-traffickers,” or small sellers.<sup>119</sup> Although women engage in activities that entail a high personal risk and for which they receive very low compensation, they face a greater likelihood of being incarcerated for drug crimes than men.<sup>120</sup> On this aspect, the then Special Rapporteur on Violence against Women noted that despite the fact that women commit non-violent crimes related to small quantities of drugs, they end up being sentenced to prison terms, while those who commit more serious crimes often evade incarceration or are sentenced to shorter terms after reaching agreements with the prosecution by offering relevant information on the crime. Women generally cannot provide this type of collaboration because they do not know about the business or who leads the organization, or because of the low rank they occupy within criminal networks<sup>121</sup>.

## 2. Excessive use of pretrial detention and failure to apply alternative measures

71. The Commission reiterates that toughened criminal policies on drugs have resulted in the automatic use of pretrial detention and the failure to apply alternative measures. In this scenario, even though some countries in the region, such as Panama and the Dominican Republic, have adopted regulations prohibiting the application of pretrial detention to pregnant or nursing mothers,<sup>122</sup> women are generally more likely than men to be subject to pretrial detention. In particular, the IACHR has indicated that the implementation of criminal policies and legal reforms that propose longer prison terms as a solution to the problems of citizen insecurity constitute one of the major factors impacting the non-exceptional use of pretrial detention. This is achieved by expanding the grounds for the admissibility of pretrial detention beyond its mere precautionary logic by means of legal formulas that, among other purposes, establish mandatory remand offenses and greater restrictions on procedural mechanisms for release. In this scenario, drug-related crimes are frequently characterized as “serious offenses” without making any distinctions and overlooking the principles on which the application of pretrial detention is based. This leads to the measure being applied automatically to those accused of committing drug crimes, who are unable to benefit from alternatives to incarceration<sup>123</sup>.

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<sup>119</sup> In this regard, see CIM, Women and Drugs in the Americas, A Policy Working Paper, January 2014, p. 27; and WOLA, IDPC, Dejusticia and CIM, Women, Drug Policies, and Incarceration, 2016, p. 10. Also: IACHR, Report on Measures to Reduce Pretrial Detention in the Americas, para. 200; and Parliament of Uruguay – Parliamentary Commissioner for the Prison System, Informe especial: prisión domiciliaria asistida para madres con hijos a su cargo en el proceso penal, October 28, 2021, p. 28.

<sup>120</sup> In this regard, see the subsection “Impact of drug policies on the incarceration of women” in this Chapter.

<sup>121</sup> In this regard, see Special Rapporteur on Violence against Women, Report on “Pathways to, conditions, and consequences of incarceration for women.” para. 26. For example, Argentina has Law No. 27.304 called the “Repentant Law,” which allows reducing sentences for those accused of certain crimes, including drug trafficking, when they provide information that helps in the investigation. See. See Argentina, Law 27.304, adopted October 19, 2016.

<sup>122</sup> In this regard, Panama, Code of Criminal Procedure of the Republic of Panama: Law No. 63, August 28, 2008, Art. 238; and the Dominican Republic, Code of Criminal Procedure of the Dominican Republic, August 2007, Art. 234.

<sup>123</sup> See, IACHR, Report on Measures to Reduce Pretrial Detention in the Americas, paras. 4, 28, 48, 85, and 90.



72. Specifically, the Commission notes that this situation occurs as the consequence of two factors: i) *de iure*, when the law orders the use of pretrial detention on a mandatory basis or prohibits replacing this measures with alternatives for these crimes; or ii) *de facto*, based on the practice of courts that apply it automatically without assessing compliance with the requirements for its admissibility. In particular, some legal systems in the region establish the automatic and mandatory application of pretrial detention in the case of persons accused of committing drug crimes as in Nicaragua,<sup>124</sup> Mexico,<sup>125</sup> and Uruguay.<sup>126</sup> For example, in Nicaragua, Law No. 952 establishes that cases of crimes related to “narcotics, psychotropics, and other controlled substances where the penalty is classified as serious by nature,” shall be subject to pretrial detention “as long the process lasts until the sentence is issued.”<sup>127</sup> Additionally, legislation that prohibits replacing pretrial detention with alternative measures with respect to specific drug crimes is found in El Salvador, Guatemala, and Honduras.<sup>128</sup> On this issue, the IACHR recalls that pretrial detention must be justified in each specific case, and that legal systems that provide for the application of precautionary measures based on the type of offense overlook the principle of proportionality enshrined in the American Convention<sup>129</sup>.
73. In addition to the above, a matter of concern for IACHR is the automatic application of pretrial detention by judicial officers without assessing compliance with the requirements for its admissibility – flight risk or obstruction of the investigation – even though laws do not provide for the mandatory use of this precautionary measure. In these cases, the courts associate the notion of procedural risks with the anticipated penalty, which leads to increased use of pretrial detention for drug crimes because they are usually punished with long prison terms.<sup>130</sup> According to the available information, this occurs at least in

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<sup>124</sup> Government of Nicaragua, Diplomatic Note No. MPN-OEALAR/21-00097, April 7, 2021, pp. 9- 10.

<sup>125</sup> In particular, Mexico’s Political Constitution establishes that the judge shall order *ex officio* pretrial detention (also known as “informal pretrial detention”) in cases of organized crime offenses and serious offenses determine by law against health, which encompasses drug-related crimes, among other crimes. See: Mexico, Political Constitution of the United Mexican States, most recently amended as of March 11, 2021, Art. 19.

<sup>126</sup> In Uruguay, according to Article 224 of Law No. 19.293, in the case of the offenses contained in Decree-Law No. 14.294 on Narcotics – among others – with minimum prison terms, there is the presumption of a flight risk, concealment, obstruction of the investigation, and the safety of the victim and of society. Consequently, the Prosecutor’s Office must seek pretrial detention. In this regard, see Government of Uruguay, Diplomatic Note No. 041/2021- Annex 1 – Report on the Rights of Persons Deprived of Liberty, Consultation Questionnaire on Women Deprived of Liberty, Contributions from Uruguay [hereinafter “Diplomatic Note No. 041/2021- Annex 1], April 20, 2021, p. 2.

<sup>127</sup> Government of Nicaragua, Diplomatic Note No. MPN-OEALAR/21-00097, April 7, 2021, pp. 9- 10.

<sup>128</sup> On this point, see the section “Excessive Use of Pretrial Detention” in the part on “Deprivation of Women’s Liberty in the Context of the Actions of Organized Criminal Groups in northern Central America.”

<sup>129</sup> IACHR, Report on Measures to Reduce Pretrial Detention in the Americas, para. 90.

<sup>130</sup> In this regard, MPD, Argentina, Ref.: Consultation Questionnaire on Women Deprived of Liberty, April 9, 2021, p. 3.

Honduras,<sup>131</sup> Argentina,<sup>132</sup> Chile,<sup>133</sup> Costa Rica,<sup>134</sup> and Ecuador.<sup>135</sup> For example, Honduras informed the IACHR that “criminal behaviors that result in the automatic application of pretrial detention are related to drug crimes<sup>136</sup>”

74. In this scenario, the IACHR notes a differentiated impact on women, most of whom are accused of committing drug crimes and, consequently, face an excessive use of pretrial detention.<sup>137</sup> In particular, although it is usually men who lead the illegal drug trade, due to the lack of proportion in the treatment of this type of conduct, the total number of persons subject to pretrial detention for drug crimes includes a higher percentage of women than men who are subject to this measure. For example, in Nicaragua, in the cells of the National Police, of the total number of persons subject to pretrial detention for drug crimes, 83% are women and 71% are men.<sup>138</sup> In Brazil, the figures are 62% for women and 26% for men.<sup>139</sup> In Argentina, the figures are 59% for women and 44% for men; and in Mexico, the figures are 54% for women and 34% for men.<sup>140</sup> Similarly, in Peru, the figures are 55% for women and 19% for men; in Uruguay, the figures are 23% for women and 7% for men; and in Colombia, the figures are 45% for women and 20% for men.<sup>141</sup> These figures indicate that women accused of committing drug crimes are more likely to be held in pretrial detention than men.

### 3. Inability to access procedural benefits limiting the use of prison

75. The Commission expresses its concern regarding the existence of legal systems in the region that prevent or make it difficult for persons convicted of drug-linked crimes to benefit from procedural measures that limit the use of imprisonment, in particular, those that: i) replace detention; ii) propose alternatives to total incarceration; and iii) reduce time in

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<sup>131</sup> Government of Honduras, Diplomatic Note No. DNDDHH-LI-316-2021, May 19, 2021, p. 3.

<sup>132</sup> MPD, Argentina, Ref.: Consultation Questionnaire on Women Deprived of Liberty, April 9, 2021, p. 3.

<sup>133</sup> IDPC, Punitive Drug Laws: 10 Years Undermining the Bangkok Rules, p. 9.

<sup>134</sup> IDPC, Punitive Drug Laws: 10 Years Undermining the Bangkok Rules, p. 9.

<sup>135</sup> IACHR, Report on the Situation of Persons Deprived of Liberty in Ecuador, OEA/Ser.L/V/II, approved February 21, 2022, [hereinafter the Report on the Situation of Persons Deprived of Liberty in Ecuador], para. 110.

<sup>136</sup> Government of Honduras, Diplomatic Note No. DNDDHH-LI-316-2021, May 19, 2021, p. 3.

<sup>137</sup> In this regard, see: IACHR, Report on Measures to Reduce Pretrial Detention in the Americas, para. 200.

<sup>138</sup> Government of Nicaragua, Diplomatic Note No. MPN-OEALAR/21-00097, April 7, 2021, pp. 5-6.

<sup>139</sup> Giacomello, C. and Youngers, C., Women Incarcerated for Drug-related Offences: A Latin American Perspective in Buxton, J., Margo, G. and Burger, L., The Impact of Global Drug Policy on Women: Shifting the Needle, Emerald Publishing Limited, 2020, p. 105.

<sup>140</sup> IDPC, Punitive Drug Law: 10 Years Undermining the Bangkok Rules, p. 9.

<sup>141</sup> WOLA, Women Behind Bars for Drug Offenses in Latin America: What the numbers make clear, November 2020, p. 19.

prison. The result of this situation is that people convicted of these crimes must serve the entirety of their sentences in prison, which has a differentiated impact on women who, according to the UNODC, on a percentage basis are convicted of drug crimes more than men.<sup>142</sup> Similarly, the IACHR notes that most of these regulations also fail to consider a gender perspective given that they do not establish exceptions that benefit women in view of the special situation of risk they face when detained<sup>143</sup> or their caregiving responsibilities for those in their charge,<sup>144</sup> with the exception – for example – of Chilean legislation which does consider a provision along these lines<sup>145</sup>.

76. In this regard, some regulations in the region that restrict the application of procedural benefits promoting alternatives to prison to the detriment of those convicted for drug crimes include those in Mexico<sup>146</sup> and Uruguay.<sup>147</sup> In addition, examples of legislation that prevents persons convicted for drug crimes from accessing benefits proposing alternatives to total incarceration,<sup>148</sup> are regulations in Argentina,<sup>149</sup> Ecuador,<sup>150</sup> and Mexico.<sup>151</sup> In addition to these regulations, legal systems that prevent persons convicted of drug crimes from enjoying the application of procedural benefits that reduce prison terms – such as pre-release benefits, conditional release, and early or assisted release – include those of

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<sup>142</sup> UNODC, *World Drug Report. Summary, Conclusions, the Policy Implications*, 2018, p. 21.

<sup>143</sup> On this point, see the section “Special situation of risk in the context of the deprivation of liberty” in Chap. III.

<sup>144</sup> In this regard, see the section “Impact of incarceration on women and persons in their care,” in this Chapter.

<sup>145</sup> OVIC, Consultation Questionnaire on Women Deprived of Liberty, April 9, 2021, p. 8.

<sup>146</sup> Mexican legislation excludes those convicted for organized crime offenses – which includes drug trafficking – from the ability to benefit from a substitute penalty. See, Mexico, *National Criminal Enforcement Law*, adopted June 16, 2016, Arts. 137, 141, and 144.

<sup>147</sup> In Uruguay, those convicted for certain drug crimes linked to the manufacturing, transportation, trafficking, and selling of drugs cannot benefit from probation. In this regard, see Government of Uruguay, Diplomatic Note No. 041/2021 - Annex 1, April 20, 2021, pp. 3-6; and Uruguay, *Code of Criminal Procedure*, published December 19, 2014.

<sup>148</sup> Including: day release, housing in open or semi-open facilities, and temporary release systems.

<sup>149</sup> In particular, Argentina’s legal system excludes from the benefits of the probationary period those convicted for committing crimes related to the manufacture or production of narcotics, particularly housing in open or semi-open facilities, temporary releases, and day release system. In this regard, see: Argentina, *Law No. 24.660 on Enforcement of the Prison Term*, June 19, 1996, Article 56 bis; and *Law No. 23.737*, September 21, 1989.

<sup>150</sup> In Ecuador, those convicted for unlawful trafficking of catalogued controlled substances under high or low-scale conditions cannot access the open or semi-open housing system. In this regard, Government of Ecuador, Diplomatic Note No. 4-2-102/2021, April 12, 2021, p. 4.

<sup>151</sup> In Mexico, the legislation excludes those convicted of organized crime offenses – including drug trafficking – from the ability to enjoy pre-release benefits and early release. In this regard, Mexico, *National Criminal Enforcement Law*, adopted June 16, 2016, Articles 137, 141, and 144.

Colombia,<sup>152</sup> Costa Rica,<sup>153</sup> and Uruguay.<sup>154</sup> The IACHR also notes with concern the existence of legislation that imposes on persons convicted of drug crimes increased requirements for accessing procedural benefits. For example, Chile's legislation requires that in order to access conditional release persons convicted for manufacturing and trafficking narcotics must complete two-thirds of the sentence, while those convicted for other crimes must complete half of their sentence. The only exception established by the law is that it allows women convicted for committing such crimes who are pregnant or mothers of minor children under the age of three to benefit from conditional release once they complete half their sentence<sup>155</sup>.

77. In this regard, the IACHR recalls that the Inter-American Court has established that States should refrain from taking any type of action designed directly or indirectly to create *de jure* or *de facto* situations of discrimination. It also pointed out that in the event that the discriminatory treatment refers to unequal protection under domestic legislation or its application, this could be analyzed in the light of Article 24 of the American Convention in relation to the categories protected by Article 1.1 of the Convention. Along the same lines, it recalled that different treatment is discriminatory when it has no objective and reasonable justification, i.e., when it does not pursue a legitimate end and there is no reasonable proportional relationship between the means used and the end pursued<sup>156</sup>.
78. In view of the above, the Commission notes that regulations of this kind violate the principle of equality and non-discrimination by preventing a specific group of persons from accessing benefits based on the type of crime for which they were convicted. Consequently, it calls upon the States to repeal any provision that prohibits the application of prison benefits based on the type of crime. In addition, in no case should States

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<sup>152</sup> In Colombia, the legal system excludes the application of pre-release or release for "crimes related to narcotics trafficking and other offenses." In this regard, Government of Colombia, Note MPC/OEA No. 530-2021, April 12, 2021, p. 6; and Colombia, Law 599 of 2000 (Penal Code), July 24, 2000, Article 68 (a).

<sup>153</sup> In Costa Rica, those convicted of drug crimes are barred from benefitting from conditional release because the applicable sentences for those offenses range from eight to fifteen years, and said benefit is only applicable to sentences not exceeding three years in prison. In this regard, Government of Costa Rica, Diplomatic Note No. CROEA-AA-576-, April 9, 2021, pp. 8-9; and Costa Rica, Penal Code, Articles 57 bis and 58.

<sup>154</sup> In Uruguay, those convicted of drug-related offenses may not benefit from early release. In this regard, see Government of Uruguay, Diplomatic Note No. 041/2021 - Annex 1, April 20, 2021, pp. 3-6; and Uruguay, Code of Criminal Procedure, published December 19, 2014.

<sup>155</sup> OVIC, Consultation Questionnaire on Women Deprived of Liberty, April 9, 2021, p. 8.

<sup>156</sup> I/A Court H.R. Case of *Jenkins v. Argentina*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 26, 2019. Series C No. 397, para. 91. See also: I/A Court H.R. *Juridical Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 103; Case of *Ramírez Escobar et al. v. Guatemala*. Merits, Reparations, and Costs. Judgment of March 9, 2018. Series C No. 351, para. 270; Case of *Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of August 5, 2008. Series C No. 182, para. 209; *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 46; and Case of *Flor Freire v. Ecuador*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of August 31, 2016. Series C No. 315, para. 125.

establish greater restrictions on procedural mechanisms and possibilities for replacing a sentence with alternative measures, nor on mechanisms that reduce the terms for enforcement of penalties or offer alternatives to total incarceration. In particular, the law should not provide that any type of crime is excluded from the system established for prison benefits that helps to reduce incarceration or that specific crimes receive different treatment in terms of enforcement of the penalty without being based on objective and legitimate criteria for discrimination, merely because they reflect standards such as “social repercussion,” “social alarm,” or some other standard<sup>157</sup>.

#### 4. Impact of drug policies on women’s incarceration

79. The Commission reiterates its concern regarding drug policies adopted in the context of the “war on drugs” that have led to a sharp increase in the levels of female incarceration both for women defendants and women who have been convicted.<sup>158</sup> In particular, the IACHR notes that this situation occurs in a context that, in addition to the lack of proportionality in the treatment of these crimes, excessive use of pretrial detention, and restrictions on procedural benefits, is characterized by judicial officials’ failure to consider the circumstances surrounding the commission of crimes by women and the personal factors that lead to their involvement in these activities. In this regard, according to the UNODC, the marked increase in the female incarceration rate compared to the male rate could be attributed to the much higher proportion of non-violent crimes committed by women “for which they would not have been imprisoned in the past”<sup>159</sup>.
80. Specifically, as has been noted, women do not generally use violence in the commission of drug crimes and have a low level of participation within criminal networks. In addition, they become involved in the commission of crimes as a consequence of factors related primarily to limited economic and educational opportunities arising from situations of poverty, financial responsibilities, contexts of discrimination and violence, and drug use, among other situations of concern.<sup>160</sup> However, these circumstances are not taken into account by the courts when women are prosecuted. In this regard, the available data indicate that legal considerations are not usually assigned to the context of risk faced by women, as a result

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<sup>157</sup> Along similar lines, see [Report on Measures to Reduce Pretrial Detention in the Americas](#), para. 91.

<sup>158</sup> In this regard, see IACHR, [Report on Measures to Reduce Pretrial Detention in the Americas](#), para. 90.

<sup>159</sup> UNODC, [Handbook on Women and Imprisonment](#), p. 113.

<sup>160</sup> On this subject, see the section “Factors leading to female incarceration” in Chap. II.

of which the grounds for inculpability are not applied to absolve them and women face being subject to a criminal proceeding and possibly sentenced to long prison terms<sup>161</sup>.

81. In this context, in some countries, the incarceration rates for drug crimes are higher for women than for men. According to data from the Working Group on the Issue of Discrimination against Women, in 2018, nearly 35% of women deprived of liberty in the world were convicted for these crimes, while in the case of men, the figure is 19%.<sup>162</sup> Along the same lines, according to information available to the IACHR, in several countries in the Americas the incarceration rates for drug crimes are higher for women than for men. For example, according to official information, in Argentina nearly 63% of incarcerated women are deprived of liberty for drug-related crimes, while this rate falls to 35% for men.<sup>163</sup> In Brazil, these percentages are 58% for women and 31% for men.<sup>164</sup> In Colombia, they are 48% for women and 17% for men.<sup>165</sup> In Costa Rica, they are 38% for women and 22% for men.<sup>166</sup> In Ecuador, they are 57% for women and 25% for men.<sup>167</sup> In Nicaragua's penitentiary system, the figures are 48% for women and 14% for men.<sup>168</sup> In Uruguay, they are 26% for women and 8% for men.<sup>169</sup> These figures would indicate that women are more likely than men to be deprived of liberty for drug crimes.
82. Such conduct relates primarily to carrying, supplying, micro-trafficking, or transporting narcotics. According to the available information, this situation occurs, at least, in Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, the United States, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay, and

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<sup>161</sup> On this point, see the subsection "Punishment with extended prison terms" in this Chapter. See also: MPD, Argentina, Ref.: Consultation Questionnaire on Women Deprived of Liberty, April 9, 2021, pp. 12-13; MPD, Argentina, Women charged in contexts of violence or vulnerability, Eurosocietal Collection No.14, 2020; Parliament of Uruguay – Parliamentary Commissioner for the Prison System, Informe especial: prisión domiciliaria asistida para madres con hijos a su cargo en el proceso penal, October 28, 2021, p. 28; and WOLA, et al., Regional response to the Consultation Questionnaire on Women Deprived of Liberty, 2021, April 23, 2021, p. 10.

<sup>162</sup> Working Group on the Issue of Discrimination against Women, Women Deprived of Liberty, para. 32.

<sup>163</sup> Data updated as of March 23, 2021. In this regard, Government of Argentina, Diplomatic Note No. IF-2021-34330903-APN-DCIMD#MRE, IACHR, April 20, 2021, pp. 1 and 3.

<sup>164</sup> Government of Brazil, Diplomatic Note No. 120 Questionnaire on Women Deprived of Liberty in the Americas, April 9, 2021, p. 5.

<sup>165</sup> In this regard, Government of Colombia, Nota MPC/OEA No. 530-2021, April 12, 2021, p. 4.

<sup>166</sup> In this regard, Government of Costa Rica, Diplomatic Note No. CROEA-AA-576-21, April 9, 2021, p. 3.

<sup>167</sup> In this regard, Government of Ecuador, Diplomatic Note No. 4-2-102/2021, April 12, 2021, pp. 1 and 3.

<sup>168</sup> In this regard, Government of Nicaragua, Diplomatic Note No. MPN-OEA/LAR/21-00097, April 7, 2021, pp. 8-9.

<sup>169</sup> Government of Uruguay, Diplomatic Note No. 041/2021 - Annex 3 – Judicial Branch Statistics, April 20, 2021 [hereinafter "Diplomatic Note No. 041/2021 - Annex 3"], p. 2.



Venezuela.<sup>170</sup> Specifically, the IACHR notes that in some countries, more women than men are incarcerated for crimes classified by law as “serious.” For example, according to official data, of the total number of women incarcerated for drug crimes in Nicaragua, 45% are deprived of liberty for trafficking, while in the case of men, this figure falls to 34%.<sup>171</sup> In Ecuador, of that total, 99% of women are detained for illegal trafficking of these substances, while in the case of men, the figure falls to 91%.<sup>172</sup> In Mexico, of the total number of women incarcerated for “crimes against health related to narcotics in the form of small-scale trafficking,” 76% corresponds to “possession for purposes of sale or supply of narcotics,” while in the case of men, this figure falls to 52%.<sup>173</sup> These percentages would indicate that although women generally occupy the lowest levels in the criminal network, they are more likely than men to have their conduct categorized as “serious crimes.”

83. In addition to the above, the Commission notes that in some cases women are punished with long prison terms because discretionary and discriminatory judicial criteria are used against them. In particular, the available data indicate that male and female judges’ decisions are influenced by gender stereotypes on the role of women, according to which a woman who commits a crime merits greater judicial reproach because she is a “bad girl.”<sup>174</sup> On this subject, the expert witness Rebeca Cook in the case of Espinoza González v. Peru stated that the characteristics usually attributed to women defendants include “being assertive, manipulative, lacking credibility, and with a tendency to challenge authority.” Thus it is that these gender stereotypes can lead to decisions regarding women that are not

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<sup>170</sup> In this regard, Government of Argentina, Diplomatic Note No. IF-2021-34330903-APN-DCIMD#MRE, IACHR, April 20, 2021, p. 2; Cladem Bolivia, et al., Contributions from Civil Society to the Report on the Rights of Persons Deprived of Liberty for developing the “Report on Women Deprived of Liberty in the Americas,” April 2021 [hereinafter “Contributions from Civil Society to the Report on the Rights of Persons Deprived of Liberty Libertad”], pp. 6 and 9; SISDEPEN, Brazil, Quantidade de incidências por tipo penal- Período de julho a dezembro de 2020, 2021; OVIC, Consultation Questionnaire on Women Deprived of Liberty, April 9, 2021, p. 4; Government of Colombia, Nota MPC/OEA No. 530-2021, April 12, 2021, p. 1; Government of Costa Rica, Diplomatic Note No. CROEA-AA-576-21, April 9, 2021, p. 3; Government of Ecuador, Diplomatic Note No. 4-2-102/2021, April 12, 2021, p. 2; Working Group on Arbitrary Detention, Report on “Arbitrary detention relating to drug policies”: Resolution AHRC/47/40, May 18, 2021, para. 57; Government of Guatemala, Diplomatic Note No. DAJCC-Seprem 003-2021, April 14, 2021, pp. 3-4; ASOPAZH and CEMH, Consultation Questionnaire on Women Deprived of Liberty, April 10, 2021, p. 3; Government of Mexico, Diplomatic Note No. OEA1121, April 12, 2021, p. 1; Government of Nicaragua, Diplomatic Note No. MPN-OEALAR/21-00097, April 7, 2021, pp. 7-8; Government of Paraguay, Diplomatic Note No. 495-21/MMP/OEA, April 27, 2021, p. 1; Government of Surinam, Diplomatic Note No. PVOAS-SUR/285/21, April 9, 2021, p. 1; Government of Uruguay, Diplomatic Note No. 041/2021 - Annex 3, April 20, 2021, p. 2; WOLA, Women Behind Bars for Drug Offenses in Latin America: What the numbers make clear, November 2020, p. 19; and OVP, Informe Mujeres privadas de la libertad en Venezuela: Las voces de las mujeres detrás de las rejas, 2021, p. 41.

<sup>171</sup> Government of Nicaragua, Diplomatic Note No. MPN-OEALAR/21-00097, April 7, 2021, p. 9.

<sup>172</sup> In this regard, Government of Ecuador, Diplomatic Note No. 4-2-102/2021, April 12, 2021, p. 3.

<sup>173</sup> Government of Mexico, Diplomatic Note No. OEA1121, April 12, 2021, p. 3.

<sup>174</sup> In this regard, IACHR, Information provided to the IACHR by the representative of the Colectivo Artesana of Guatemala and Equis: Justice for Women of Mexico during the first meeting of experts on women deprived of liberty, April 27, 2021.

based on appropriate evidence or even the imposition of more severe punishments on them than those imposed on women “who submit to male authority”<sup>175</sup>.

84. In view of the above, the IACHR emphasizes that the information submitted demonstrates that the toughening of drug policies leads to a differentiated impact on the situation of women so that they face a greater possibility of being subjected to a criminal proceeding, imprisoned, and convicted to long prison terms for drug crimes in comparison with men. In this regard, and in order to prevent discriminatory effects detrimental to women due to the implementation of these policies, the IACHR urges the States to adopt measures to ensure that drug policies incorporate a gender perspective that allow for the consideration of the specifics that surround the commission of these crimes by women as attenuating circumstances to be considered by judicial officers in the prosecution of women.
85. In this regard, the gender perspective should be understood as a method for analyzing reality that makes it possible to visualize the differentiated social assessment of persons by virtue of their assigned or assumed gender, and indicates the unequal power relationships that derive from these differences. Thus, the gender perspective represent a key tool for combatting discrimination and violence against women. Thus it is that the incorporation of this perspective in criminal policies should be accompanied by the adoption of measures to ensure that when women are judged the courts are able to consider attenuating factors, allowing for the application of penalties in proportion to the seriousness of the crime committed, including – when appropriate – the imposition of prison terms shorter than the amounts established in the legislation, or ordering dismissal or acquittal. This would be based on the methods women generally use to commit these crimes – characterized by a low level of threat, the lack of violence, and a low level of participation within the criminal network, as well as the personal circumstances that lead to their involvement in the commission of these crimes, such as the lack of economic and educational opportunities, poverty, financial responsibilities, discrimination, exclusion, violence, and drug use<sup>176</sup>.

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<sup>175</sup> See: I/A Court H.R. *Espinoza González v. Peru*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 20, 2014. Series C No. 289, [hereinafter “Espinoza González v. Peru”], para. 272.

<sup>176</sup> Along similar lines, see UN, Bangkok Rules, Rule 61; and International Centre on Human Rights Policy, UNAIDS, WHO, UNDP, International Guidelines on Human Rights and Drug Policy, March 2019, p. 19. Also on this point, the Commission emphasizes as good practices the criminal law adopted by Costa Rica that incorporates the gender perspective in the area of setting penalties, Mexican judicial practice that considers gender violence when determining the responsibility of a woman who has committed a crime, and Bolivia’s adoption of measures to judge using a gender perspective. In this regard, see: Costa Rica, Penal Code, updated as of June 30, 2019, Articles 71.g) and 72; Government of Mexico, Diplomatic Note No. OEA1121, April 12, 2021, pp. 6-7; and Cladem Bolivia, et al., Contributions from Civil Society to the Report on the Rights of Persons Deprived of Liberty, April 12, 2021, p. 27.

Added to this, by way of example, the IACHR emphasizes and values the judgment of the Neuquén Federal Court for Criminal Matters adopted on July 7, 2021, that acquitted a women who had been charged for attempted “export smuggling aggravated by the involvement of narcotics.” In particular, both the Prosecution and the Court took into consideration that the women was in an at-risk situation, characterized by poverty, exclusion, and the need to tend to her son’s health situation, as well as her low level of participation within the criminal network. In this regard, see: Prosecutors, Government of Argentina, Absuelven a una mujer que intentó transportar estupefacientes, July 19, 2021.

## D) Impact of incarceration on women and those in their care

86. Women's deprivation of liberty produces differentiated impacts and disproportionate consequences both for the women themselves and for those in their care. In particular, as indicated, women are more often in charge of single parent households and are consequently the only caregivers for their children. This means that when women are incarcerated their children's care is generally taken up by the closest relative and sometimes requires the intervention of social services to support their well-being. Consequently, the rupture of the ties of protection due to women's incarceration means that those in their care are exposed to poverty, marginalization, and abandonment, which may in turn result in long-term consequences such as involvement with criminal organizations or institutionalization.<sup>177</sup> In this context, the IACHR notes with concern that although most incarcerated women are mothers, there is a widespread failure to compile data on the composition of their family group, which prevents the adoption of prison policies that are respectful of the gender approach and include proposals to maintain family ties. This results in: i) separation from their children and loss of family ties; ii) obstacles to maintaining adequate contact with those in their care; iii) loss of parental responsibility; and iv) detrimental effects on the life of children whose mothers are in prison.

### 1. Lack of data on women's family groups

87. Although the large majority of incarcerated women are responsible for the care of persons in at-risk situations – as nearly 87% are mothers<sup>178</sup> – the States do not disclose data on the composition of their family group prior to their detention. In this regard, the States sometimes compile information on women who have children outside the prison. In particular, the States that indicated including such data are Argentina,<sup>179</sup> Brazil,<sup>180</sup>

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<sup>177</sup> In this regard, IACHR, Report on Measures to Reduce Pretrial Detention in the Americas, paras. 200 and 201.

<sup>178</sup> Inter-American Development Bank (IADB), Mujeres en contextos de encierro en América Latina Características y factores de riesgo asociados a determinados comportamientos delictivos- Technical Note No. IDB-TN- 1409, April 2018, p. 17. Also, specifically, the IACHR has received information indicating that in Honduras, 98% of women in detention are mothers; in Mexico, close 97%; in Colombia, 90%; in Costa Rica, close to 90%; and in Panama at least 70%. In this regard, IACHR, Information provided to the IACHR by the National Mechanism for the Prevention of Torture of Honduras, April 27, 2021; AsiLegal, Rapporteurship on the Rights of Persons Deprived of Liberty - Consultation Questionnaire on Women Deprived of Liberty, April 2021, p. 5; y WOLA, et al., Regional Response to the Consultation Questionnaire on Women Deprived of Liberty, 2021, April 23, 2021, pp. 23-24.

<sup>179</sup> Government of Argentina, Diplomatic Note No. IF-2021-34330903-APN-DCIMD#MRE, IACHR, April 20, 2021, p. 9.

<sup>180</sup> Government of Brazil, Diplomatic Note No. 120 Questionário – Mulheres Privadas de Liberdade nas Américas [en adelante "Diplomatic Note No. 120"], April 9, 2021, p. 8.

Bolivia,<sup>181</sup> Honduras,<sup>182</sup> Nicaragua,<sup>183</sup> and Suriname.<sup>184</sup> However, the official contributions for the preparation of this report indicate that, with the exception of Bolivia<sup>185</sup> and Suriname,<sup>186</sup> most countries lack data regarding other at-risk persons for whose care these women were responsible at the time of their detention, such as disabled persons or adults.<sup>187</sup> In view of this, the Commission notes that this widespread failure to compile data makes it impossible for the States to adequately address the specific situation of persons for whose care women were responsible prior to their incarceration, which is reflected in the failure to adopt prison policies respectful of the gender perspective that give preference to the maintenance of family ties and continuity in the performance of caregiving and parenting tasks<sup>188</sup>.

## 2. Separation from children and loss of family ties

88. The Commission emphasizes that in response to the separation and loss of affective ties that incarceration entails, when women are sent to prison they are not only deprived of their personal liberty but also of the development of their family life. This situation seriously affects the emotional health both of the women themselves and those in their care, which is why separation has been considered by the UNODC to be one of the detrimental aspects of female incarceration.<sup>189</sup> In this regard, it has been determined that women may suffer the psychological burden of not fulfilling their caregiver function.<sup>190</sup> For example, in Colombia, a civil society has documented testimony from incarcerated women who refer to their extreme concern due to the failure to support their children because of their detention, causing them to be emotionally frustrated<sup>191</sup>.

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<sup>181</sup> Government of Bolivia, Diplomatic Note No. MPB-OEA-NV116-21, June 1, 2021, p. 7.

<sup>182</sup> Government of Honduras, Diplomatic Note No. DNDDHH-LI-316-2021, May 19, 2021, p. 8.

<sup>183</sup> Government of Nicaragua, Diplomatic Note No. MPN-OEA/LAR/21-00097, April 7, 2021, p. 22.

<sup>184</sup> Government of Surinam, Diplomatic Note No. PVOAS-SUR285/21, April 9, 2021, p. 4.

<sup>185</sup> Government of Bolivia, Diplomatic Note No. MPB-OEA-NV116-21, pp. 7-8.

<sup>186</sup> Government of Surinam, Diplomatic Note No. PVOAS-SUR285/21, April 9, 2021, p. 4.

<sup>187</sup> In particular, specific information was received indicating the failure to compile these data in Argentina, Paraguay, and Uruguay. The remaining countries that responded to the questionnaire, except for those mentioned, did not answer this question. In this regard, MPD, Argentina, Ref.: Consultation Questionnaire on Women Deprived of Liberty, April 9, 2021, p. 5; Government of Paraguay, Diplomatic Note No. 495-21/MMP/OEA, April 27, 2021, p. 10; and Government of Uruguay, Diplomatic Note No. 041/2021 - Annex 2, April 20, 2021, p. 2.

<sup>188</sup> On this subject, see the section “Challenges for maintaining contact with person in their care,” in this chapter, and the section on “Lack of gender perspective in data collection,” in Chap. III.

<sup>189</sup> UNODC, Women and Drugs. Drug use, drug supply and their consequences. Booklet 5, World Drug Report, 2018, [hereinafter “Women and Drugs. Drug use, drug supply and their consequences”], p. 36.

<sup>190</sup> UNODC, Informe Mundial sobre las Drogas. Resumen, Conclusiones y Consecuencias en Materia de Políticas, 2018, p. 21.

<sup>191</sup> Dejusticia, Mujeres, Políticas de Drogas y Encarcelamiento: una Guía para la Reforma de Políticas en Colombia, 2016, p. 38.

89. In addition, the loss of contact with their emotional ties is exacerbated when it involves separation from their children at very young ages, which in certain places like some states in the United States and in Suriname may occur at birth or up to three days later<sup>192</sup> while in others this may occur between the ages of 12-18 months and seven years.<sup>193</sup> For its part, with respect to children, the Inter-American Court has noted that separation from parents, primary caregivers and/or adult role models may have an impact on children's rights and overall development, particularly during early childhood, a stage in life that is crucial for development of a child's brain and abilities. In particular, reference was made to what was pointed out by the Committee on the Rights of the Child to the effect that young children are particularly vulnerable to the adverse consequences of separation due to their physical dependence and emotional ties to their parents or guardians<sup>194</sup>.
90. In this regard, the Court considered that all decisions regarding a child's separation from his or her mother, parent, or primary caregiver who is deprived of liberty and the corresponding outsourcing of their care, including questions related to alternative care, must always be adopted based on the concrete situation and in view of the best interests of the child involved. In particular, it pointed out that such decisions must satisfy the following requirements: i) must be adopted on an individualized basis, considering the specific circumstances of each case; ii) must obtain the child's opinion concerned according to their age and level of maturity and these opinions must be taken into account when a decision is made; iii) an evaluation and determination of the child's best interest must be performed; and iv) if the child's care is undertaken by someone else, the continuity of the relationship between the mother, parent, or primary caregiver who remains imprisoned and her children must be guaranteed, when appropriate for the best interest of the children. Additionally, the States must establish protocols and procedures to ensure adequate preparation for the transition and the child's separation from the incarcerated caregiver, including the provision of psychological care and social support<sup>195</sup>.

### 3. Challenges in maintaining contact with persons in their care

91. The Commission notes that the failure to implement prison policies respectful of the gender approach and designed to maintain family ties results in challenges to incarcerated women's ability to maintain contact with those in their care. In the specific case of children, the IACHR has noted that the effects on mothers as well as on their children are primarily due to the fact that prison systems in the region lack special measures that would allow adequate contact between them, even though that link is crucial for their well-being and for

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<sup>192</sup> In this regard, Government of Surinam, Diplomatic Note No. PVOAS-SUR/285/21, April 9, 2021, p. 4; y The Lily, Minnesota will be the first state to stop separating incarcerated moms and newborns, June 7, 2021.

<sup>193</sup> On this point, see the section on "Children who live in detention centers with their mothers," in Chap. III.

<sup>194</sup> In this regard, I/A Court H.R. Differentiated Approaches to Persons Deprived of Liberty. Advisory Opinion OC-29/22 of May 30, 2022. Series A No. 29, [hereinafter "Differentiated Approaches to Persons Deprived of Liberty"], para. 184.

<sup>195</sup> See, I/A Court H.R. Differentiated Approaches to Persons Deprived of Liberty, paras. 204-205.

preventing the long-term traumatic effects that separation has on both the mother and her children.<sup>196</sup> In particular, that contact is affected primarily by: i) the remote location of women's prisons; ii) difficulties encountered when making visits; iii) lack of adequate space and favorable conditions;<sup>197</sup> iv) the lack of a person who can accompany the children during visits;<sup>198</sup> and v) the lack of resources to ensure travel to centers.<sup>199</sup> In this scenario, according to information received, most incarcerated women are not visited by family members or people close to them<sup>200</sup>.

92. In particular, both the IACHR and the Inter-American Court have indicated that female prisons are generally located in remote or inaccessible areas, or at great distances from the families' households.<sup>201</sup> This is due to the lack of enough detention centers for women<sup>202</sup> as well as the lack of consideration for women's family life when making decision on their housing.<sup>203</sup> In addition, the IACHR has noted factors that make visits difficult, notably including: i) overly strict requirements; ii) excessive red tape and high costs; and iii) complications arising from searches.<sup>204</sup> For example, in Honduras, although the State has adopted measures to encourage visits – including eliminating costs for issuing the pass – there are still challenges to people's ability to obtain their visitor pass due to stringent requirements. In addition, the issuing process might take up to a year.<sup>205</sup> With regard to Nicaragua, the IACHR has been informed of the authorities' constant refusal to ensure family contact between incarcerated persons and their children due to absolute restriction on visits by minor children. In this scenario, in 2021 and 2022, children did not visit their mothers for periods of more than six months.<sup>206</sup> In addition, the lack of adequate spaces

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<sup>196</sup> IACHR, Request for Advisory Opinion from the Inter-American Court of Human Rights - Differentiated Approaches to Persons Deprived of Liberty, November 25, 2019 [hereinafter "Request for Advisory Opinion from the Inter-American Court of Human Rights"], paras. 17 and 20.

<sup>197</sup> IACHR, Request for Advisory Opinion, para. 12.

<sup>198</sup> WOLA, et al., Regional Response to the Consultation Questionnaire on Women Deprived of Liberty, 2021, April 23, 2021, P. 31.

<sup>199</sup> Parliament of Uruguay – Parliamentary Commissioner for the Prison System, Informe especial: prisión domiciliaria asistida para madres con hijos a su cargo en el proceso penal, October 28, 2021, p. 26.

<sup>200</sup> In this regard, IACHR, Information provided to the IACHR by representatives of APT and CELS of Argentina during the third meeting of experts on women deprived of liberty, March 23, 2022.

<sup>201</sup> In this regard, IACHR, Request for Advisory Opinion, para. 49; and I/A Court H.R. Differentiated Approaches to Persons Deprived of Liberty, para. 136.

<sup>202</sup> In this regard, IACHR, Report on Measures to Reduce Pretrial Detention in the Americas, para. 196.

<sup>203</sup> IACHR, Information provided to the IACHR by Mujeres Libres Colombia during the first meeting of experts on women deprived of liberty, April 27, 2021.

<sup>204</sup> In this regard, see: IACHR, Request for Advisory Opinion, para. 12.

<sup>205</sup> IACHR, Annual Report – Chap. V on Honduras, 2021, paras. 204-205.

<sup>206</sup> IACHR, Press releases 103/22 - IACHR urges Nicaragua to Guarantee that Political Prisoners Have Regular Contact with their Families in Conditions of Dignity. Washington DC, May 13, 2022.



and other conditions favorable for holding visits also prevents adequate contact. In particular, the information received indicates that children often do not want to visit their mothers, presumably due to the lack of inclusive spaces for children of different ages, and the characteristics of the enclosure, which include hostility<sup>207</sup>.

93. On this point, the IACHR reiterates that in view of the specific mandate on protecting the family and the best interests of the child, the States have a duty to adopt measures to ensure that incarcerated women who are mothers have ample opportunity to maintain contact with their children. In this regard, it recalls that a parent's deprivation of liberty should not be considered a reason for undue restriction on direct and regular contact.<sup>208</sup> To that end, the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (hereinafter, the "Bangkok Rules") stipulate that the States are required: i) to guarantee a propitious environment; ii) to permit open contact between a mother and her children; iii) to encourage extended visits; and iv) to refrain from imposing disciplinary sanctions that prevent a mother's contact with her children.<sup>209</sup> Additionally, the Commission emphasizes that it is essential for mothers to be housed in prisons close to where their children and others in their care live. To this end, when deciding on where a mother will be housed, the competent authorities must take into consideration where her family's residence is located and the availability of transportation allowing them to reach the center<sup>210</sup>.
94. Specifically, in its Advisory Opinion No. OC-29/22, the I/A Court H.R. indicated that so as not to violate children's rights to family visits and to maintain contact with their mothers or primary caregivers who are deprived of liberty, it is essential to: i) provide clear and accurate information on the organization of visits and to make it possible for children to come on days and schedules that interfere as little as possible with their daily activities; ii) to facilitate the entry of toys and recreational items that promote ties; iii) to guarantee that children are not subjected to intrusive body searches and offenses to their dignity; iv) to guarantee adequate physical and hygienic conditions in waiting rooms and visiting rooms; and v) to promote family ties in areas outside of prisons<sup>211</sup>.

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<sup>207</sup> WOLA, et al., Regional Response to the Consultation Questionnaire on Women Deprived of Liberty, 2021, April 23, 2021, p. 31.

<sup>208</sup> In this regard, see: IACHR, Observations on the Advisory Opinion to the Inter-American Court of Human Rights - Differentiated Approaches to Persons Deprived of Liberty, November 14, 2020 [hereinafter "Observations on the Advisory Opinion to the Inter-American Court of Human Rights"], paras. 35 and 36. See also: I/A Court H.R. Case of the Miguel Castro Castro Prison v. Peru. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160 [hereinafter, Case of the Miguel Castro Castro Prison v. Peru], para. 330.

<sup>209</sup> UN, Bangkok Rules, Rules 23 and 28.

<sup>210</sup> In this regard, see African Committee of Experts on the Rights and Welfare of the Child (ACERWC), General Comment No. 1 on Article 30 of the ACRWC: Children of Incarcerated and Imprisoned Parents and Primary Caregivers, November 8, 2013, para. 3.1.6; and UN, Bangkok Rules, Rules 4 and 26.

<sup>211</sup> I/A Court H.R. Differentiated Approaches to Persons Deprived of Liberty, para. 167.

#### 4. Loss of parental responsibility

95. The IACHR notes with concern that in some countries in the region, a prison sentence may entail the loss of parental responsibility for minor children, which may also involve their being adopted. In particular, some legal systems order the loss or extinction of parental responsibility or “parental authority” based on: i) repeat offenses by the person convicted; or ii) the crime victim’s status. These laws include those in Bolivia,<sup>212</sup> Brazil,<sup>213</sup> Colombia,<sup>214</sup> Honduras,<sup>215</sup> and Nicaragua.<sup>216</sup> For example, in Honduras, the legislation establishes that parental authority is lost when someone is convicted “two or more times for ordinary offenses, if the sentence exceeds three years in each case” or if a person is convicted for an offense against their child’s other parent, among others.<sup>217</sup> In Nicaragua, convicted persons lose parental responsibility when the crime was committed against, inter alia, the other parent or the person exercising “parental authority” over the children<sup>218</sup>.
96. In addition, the IACHR received disturbing information indicating that in the absence of another person who assumes responsibility, the children of incarcerated women may even be declared available for adoption. This happens at least in Colombia, the United States, and Honduras. In particular, in Honduras, when a child has no family member who is responsible for their upbringing, the Directorate of Children, Adolescents, and Family (DINAF) looks for an adoptive family to assume the child’s care. If this is not possible, the DINAF makes arrangements with a civil society organization dedicated to the protection of children to assume their care.<sup>219</sup> In Colombia, despite the existence of judicial resolutions allowing the maintenance of parental responsibility, many children of incarcerated women have been adopted by others due to the absence of someone responsible for their upbringing as well as the failure to use alternative measures for benefit of women. This occurs without the mothers’ consent, even in cases where they demonstrate continued communication with their children and work in prison to continue supporting them economically<sup>220</sup>.
97. On this subject, the IACHR recalls that based on State obligations contained in Articles 17.1 and 19 of the American Convention, children have the right to live with their family, primarily

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<sup>212</sup> In this regard, Bolivia, Code on Children and Adolescents, adopted July 17, 2014, Article 47.

<sup>213</sup> Mattos Filho, Memorandum-inputs to the Rapporteurship on the Rights of Persons Deprived of Liberty, April 10, 2021, p. 23.

<sup>214</sup> CSS, Response to the Consultation Questionnaire on Women Deprived of Liberty, Colombia, April 10, 2021, p. 13.

<sup>215</sup> In this regard, Government of Honduras, Diplomatic Note No. DNDDHH-LI-316-2021, May 19, 2021, p. 8.

<sup>216</sup> On this point, Government of Nicaragua, Diplomatic Note No. MPN-OEALAR21-00097, April 7, 2021, pp. 24-25.

<sup>217</sup> In this regard, Honduras, Family Code, adopted in 1984, Article 200.

<sup>218</sup> On this subject, Nicaragua, Family Code, adopted June 24, 2014, Article 295.

<sup>219</sup> Government of Honduras, Diplomatic Note No. DNDDHH-LI-316-2021, May 19, 2021, p. 8.

<sup>220</sup> See, CSS, Response to Consultation Questionnaire on Women Deprived of Liberty, Colombia, April 10, 2021, pp. 13-14.

their biological family, and for State protective measures, recognized in Article 19, to prioritize the strengthening of the family as a principal component in the protection and care of children. In this regard, the States should favor as much as possible the development and strengthening of the family nucleus as a measure for protecting children.<sup>221</sup> Along the same lines, the Inter-American Court has stated that children have a right to live with their families, who are called upon to satisfy their material, emotional, and psychological needs. Thus, the right of everyone to receive protection against arbitrary or illegal interference in their family is implicitly a part of the right to protection of the family and childhood<sup>222</sup>.

## 5. Effects of female incarceration on children

98. Deprivation of the liberty of women who are mothers, along with the lack of policies supporting their children outside of prison, are factors that may have serious effects on the well-being of children in addition to leading to their institutionalization. In this regard, the IACHR appreciates the implementation of programs for the children of incarcerated women as in Argentina<sup>223</sup> and Uruguay.<sup>224</sup> However, it was informed that in most countries in the Americas there is a widespread lack of programs targeting the well-being of an incarcerated woman's children who live outside prison.<sup>225</sup> On this subject, the Commission has emphasized that the children of incarcerated parents suffer stigmatization and discrimination,<sup>226</sup> have fewer opportunities to fully develop, suffer more violations of their rights, and accordingly, if they do not receive the support they need they may themselves eventually commit crimes or become involved in organized crime. Such children also have a lower life expectancy than other children and are six to seven times more likely to be

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<sup>221</sup> IACHR, The Right of Boys and Girls to a Family. Alternative Care. Ending Institutionalization in the Americas," OEA/Ser.LV/II. Doc. 54/13, October 17, 2013, para. 64.

<sup>222</sup> I/A Court H.R. Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 71.

<sup>223</sup> In Argentina, the "Program for Comprehensive Protection of the Rights of Children with Mothers Deprived of Liberty," under the National Directorate for the Promotion and Comprehensive Protection of the National Secretariat for Children, Adolescents and Family (SENNAF), is directed to children who graduate from living with their mothers in detention. In this regard, Government of Argentina, Diplomatic Note No. IF-2021-34330903-APN-DCIMD#MRE, April 20, 2021, p. 9.

<sup>224</sup> In Uruguay, the Gender Department of the National Institute of Rehabilitation (INR) adopted the "Program of Care for Mothers and Children" (PAMHI), created to care for children when their mothers are detained and monitor them during confinement. In this regard, Government of Uruguay, Diplomatic Note No. 041/2021 - Annex 2, p. 13.

<sup>225</sup> IACHR, Information provided to the IACHR by the representative of the Colectivo Artesana of Guatemala during the first meeting of experts on women deprived of liberty, April 27, 2021.

<sup>226</sup> On this point, the I/A Court of H.R. in its Advisory Opinion No. OC-29/22, cited the statements made by adolescent representatives of the Regional Platform for the defense of children and adolescents with adult role models deprived of liberty (NNAPES), who in a hearing before the Court in the context of a consultative proceeding stated: "we have not committed any crime and, nonetheless, they treat us like delinquents; we are the voices of more than two million children and adolescents in Latin America and the Caribbean who live in this situation." On this subject, see: I/A Court H.R. Differentiated Approaches to Persons Deprived of Liberty, para. 178.

incarcerated.<sup>227</sup> Additionally, according to the UNODC, these children may experience various psychosocial problems, including depression, hyperactivity, aggressive conduct, retardation, tendency to cling, sleep and eating disorders, escapes, school absence, and low grades in school<sup>228</sup>.

99. Furthermore, women's incarceration may lead to the institutionalization of their children in shelters and protection centers.<sup>229</sup> In this regard, the information received indicates that children who do not live with their mothers in prison – including those who are graduates<sup>230</sup> – and have no one else to care for them, are institutionalized or subject to forms of alternative care such as foster families. Specifically, their care is assumed by public institutions, at least in Argentina,<sup>231</sup> Bolivia,<sup>232</sup> Brazil,<sup>233</sup> Ecuador,<sup>234</sup> El Salvador,<sup>235</sup> the United States,<sup>236</sup> Honduras,<sup>237</sup> Mexico,<sup>238</sup> and Nicaragua<sup>239</sup> or – sometimes – they are subject to alternative care in Argentina<sup>240</sup> and Uruguay.<sup>241</sup> For example, in Nicaragua, care is assumed by the Shelter Centers for the Protection of Minors of the Ministry of the Family.<sup>242</sup> In Honduras, care is assumed by the DINAF.<sup>243</sup> On this subject, the IACHR

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<sup>227</sup> IACHR, Violence, Children, and Organized Crime, OEA/Ser.LV/II. Doc. 40/15, November 11, 2015 [hereinafter Violence, Children, and Organized Crime], para. 482.

<sup>228</sup> UNODC, Handbook for Prison Managers and Policymakers on Women and Imprisonment, p. 16.

<sup>229</sup> In this regard, IACHR, Report on Measures to Reduce Pretrial Detention in the Americas, paras. 200 and 201; and IACHR, Violence, Children, and Organized Crime, para. 479.

<sup>230</sup> In this regard, see the subsection on “Submission to procedures on entering and staying” in Chap. III.

<sup>231</sup> Federal Ombudsman for the Rights of Prisoners (PPN), Argentina, PPN Report to the Rapporteurship on the Rights of Persons Deprived of Liberty IACHR, April 2021, p. 37.

<sup>232</sup> In this regard, Government of Bolivia, Diplomatic Note No. MPB-OEA-NV116-21.

<sup>233</sup> Mattos Filho, Memorandum-inputs, April 10, 2021, p. 23.

<sup>234</sup> In this regard, Government of Ecuador, Diplomatic Note No. 4-2-102/2021, April 12, 2021, p. 12.

<sup>235</sup> Citizens' group for the decriminalization of abortion in El Salvador and CRR Program for Latin America and the Caribbean, April 9, 2021, p. 6.

<sup>236</sup> Open Society Foundations, The Impact of Drug Policy on Women, 2016, p. 9.

<sup>237</sup> Government of Honduras, Diplomatic Note No. DNDDHH-LI-316-2021, May 19, 2021, p. 8.

<sup>238</sup> AsiLegal, Rapporteurship on the Rights of Persons Deprived of Liberty – Consultation Questionnaire on Women Deprived of Liberty, April 2021, p. 13.

<sup>239</sup> In this regard, Government of Nicaragua, MPN-OEA/LAR/21-00097, April 7, 2021, p. 23.

<sup>240</sup> Government of Argentina, Diplomatic Note No. IF-2021-34330903-APN-DCIMD#MRE, IACHR, April 20, 2021, p. 9.

<sup>241</sup> Government of Uruguay, Diplomatic Note No. 041/2021 - Annex 2, April 20, 2021, p. 12.

<sup>242</sup> In this regard, Government of Nicaragua, Diplomatic Note No. MPN-OEA/LAR/21-00097, April 7, 2021, p. 23.

<sup>243</sup> Government of Honduras, Diplomatic Note No. DNDDHH-LI-316-2021, 19 de mayo de 2021, p. 8.

reiterates that institutionalization exposes children to greater risks of suffering violence, abuse, negligence, and exploitation. In view of this, when these children have no one to assume their care, the States should prioritize the use of alternative measures for the mother's benefit, based on respect for children's right to live with their families and to be cared for and brought up by their parents within the bosom of the family<sup>244</sup>.

## **E) Women's deprivation of liberty in the context of the actions of organized criminal groups in northern Central America**

**100.** The Commission notes that most incarcerated women in northern Central America are deprived of liberty for being linked to organized crime groups, with which they became involved in contexts characterized primarily by poverty and violence. In particular, the IACHR determined that these groups – known as gangs – represent a significant security problem in these countries, where acts of extreme violence and most crimes are attributed to them. They are engaged in various criminal activities that include illegal drug trafficking, extortion, human trafficking, and theft. In this scenarios, States in this subregion have adopted policies to combat organized crime, which have led to a sharp increase in female incarceration<sup>245</sup>.

### **1. Growth of the female prison population**

**101.** The Commission notes that although incarcerated women in the countries of northern Central American represent a much lower percentage compared to men – averaging 8.5%<sup>246</sup> – in recent days there has been a marked increase in female detention, particularly in El Salvador and Guatemala. According to available data,<sup>247</sup> in El Salvador between 2000 and 2021, the female prison population multiplied more than seven time, increasing from 371 to 2,710 incarcerated women.<sup>248</sup> In Guatemala between 2001 and 2021, their numbers

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<sup>244</sup> On this point, see: IACHR, *The Right of Boys and Girls to a Family, Alternative Care, Ending Institutionalization in the Americas*, OEA/Ser.LV/II. Doc. 54/13, October 17, 2013, paras. 11, 54, 317.

<sup>245</sup> In this regard, see IACHR, *Violence and Discrimination against Women and Girls*, paras. 194-195 and 197; IACHR, *Violence, Children, and Organized Crime*, paras. 3, 7, and 162; IACHR, *Situation of Human Rights in Guatemala*, OEA/Ser.LV/II. Doc. 208, December 31, 2017, para. 337; IACHR, *Situation of Human Rights in Honduras*, OEA/Ser.LV/II. Doc. 146, August 27, 2019, para. 52; and IACHR, *Situation of Human Rights in El Salvador*, OEA/Ser.LV/II. Doc. 278, October 14, 2021, para. 30.

<sup>246</sup> In particular, i El Salvador, incarcerated women make up 8.5% of the total prison population; In Guatemala, 11.2%; and in Honduras, 5.7%. In this regard, Government of El Salvador, Diplomatic Note No. MPOEA-OEA-106/2021 – State's Report to the Inter-American Commission on Human Rights for the Thematic Report on "Women Deprived of Liberty in the Americas" [hereinafter "Diplomatic Note No. MPOEA-OEA-106/2021"], September 21, 2021, p. 1; Cantidad de personas privadas de libertad a cargo de la @Dgspg al día de hoy. Twitter account of the General Directorate of the Penitentiary System (@DGSP). Publication of September 13, 2021; and Institute for Criminal Policy Research at Birkbeck (University of London), *World Prison Brief data– Honduras*, data updated to 2018.

<sup>247</sup> In this regard, the IACHR emphasizes that information published in databases was used because in their responses the States did not provide sufficient data for analyzing the evolution of growth in the female penitentiary population.

<sup>248</sup> Institute for Criminal Policy Research at Birkbeck (University of London), *World Prison Brief data – El Salvador*, 2021.

multiplied more than six times, increasing from 433 to 2,782.<sup>249</sup> In Honduras between 2002 and 2018, they multiplied nearly two times, increasing from 614 to 1,160.<sup>250</sup> The IACHR notes that the main reason for this trend is the establishment of public security policies – also known as “hard-line” policies – to combat organized crime, which lack a gender perspective. In particular, their predominantly repressive focus has prioritized a punitive and retributive response through the penal system and the deprivation of liberty. This is despite the fact that these policies have been shown to be ineffective and, on the contrary, have been linked to the persistence and increase of cycles of violence and criminality.<sup>251</sup> In this context, the principal crimes that lead to women’s incarceration are extortion and crimes linked to drugs.

## 2. Factors producing involvement in the commission of crimes

102. The IACHR notes that most incarcerated women in this subregion have become involved in the commission of crimes due to factors linked to: i) situations of poverty; ii) their presumed willingness; iii) the context of family relations; or iv) previous violence.<sup>252</sup> In this regard, the Commission reiterates that barriers to access to education, poverty, and a lack of opportunities put women in at-risk situations and make them easy targets for organized crime, as women at low socioeconomic and educational levels are at the greatest risk of being used to participate in criminal operations as perpetrators or traffickers.<sup>253</sup> On this subject, Honduras stated that incarcerated women characteristically face “problems of low socioeconomic status” and unemployment.<sup>254</sup> Along the same lines, civil society indicated that many incarcerated women belong to “marginal neighborhoods” and have been forced to abandon their studies due to a lack of resources.<sup>255</sup> The IACHR has also noted that some women in this subregion supposedly join gangs voluntarily motivated by a search for protection, access to weapons, drugs, and money and their desire to rejoin a group after abandoning households with abusive relatives. Similarly, many women become linked with organized crime in the context of family relationships because they live with gang members in their communities as partners or relatives<sup>256</sup>.

103. In addition, the Commission has learned that many women are required to participate in illegal activities based on violence or threats. In this regard, it notes that the structural

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<sup>249</sup> Institute for Criminal Policy Research at Birkbeck (University of London), *World Prison Brief data – Guatemala*, 2021.

<sup>250</sup> Institute for Criminal Policy Research at Birkbeck (University of London), *World Prison Brief data – Honduras*, 2022.

<sup>251</sup> In this regard, IACHR, *Violence and Discrimination against Women and Girls*, para. 197.

<sup>252</sup> In this regard, IACHR, *Violence and Discrimination against Women and Girls*, paras. 194-195.

<sup>253</sup> IACHR, *Poverty and Human Rights in the Americas*, para. 320.

<sup>254</sup> Government of Honduras, Diplomatic Note No. DNDDHH-LI-316-2021, May 19, 2021, p. 6.

<sup>255</sup> ASOPAZH y CEMH, Consultation Questionnaire on Women Deprived of Liberty, April 10, 2021, p. 4.

<sup>256</sup> IACHR, *Violence and Discrimination against Women and Girls*, paras. 194-195.



factors of discrimination present in Latin America societies are reproduced and reinforced in the dynamics within the gangs.<sup>257</sup> In this scenario, women face “punishments for disobedience” that include acts of gender-based violence, such as sexual violence and murders with particular abuse and misogynous cruelty. In addition, in many cases, women have been subject to pressure, bullying, and threats against themselves and their families when being recruited by criminal organizations and forced to participate in crimes. Some of them have been involved in criminal activities after being the victims of trafficking or abduction. This situation complicates the understanding of and approach to their situation, as they act as criminal operators while being victims at the same time.<sup>258</sup> In this regard, Guatemala informed the IACHR that incarcerated women have a “history of violence in childhood and partner relations.”<sup>259</sup> Similarly, in Honduras, the most prevalent factors among women in prison include a history of sexual and physical abuse, intra-family violence, situations of extortion within their nuclear family, “problems of association with criminal groups,” and “problems of inclusion in groups and gangs.”<sup>260</sup> In addition, many of the women detained belong to households displaced by violence and neighborhoods dominated by organized crime groups<sup>261</sup>.

### 3. Policies against organized crime and their impact on women’s incarceration

104. As the IACHR has indicated, in the context of their efforts to combat organized crime, El Salvador, Guatemala, and Honduras adopted security policies to combat organized crime that typically proposed higher levels of incarceration as a solution to the problems of citizen insecurity.<sup>262</sup> The application of these policies has resulted in: i) excessive use of pretrial detention; ii) restrictions on benefits reducing time in prison; and iii) a lack of proportionality in dealing with behaviors linked to organized crime. This has helped to increase female incarceration, primarily for extortion and drug-related crimes.

#### A) Excessive use of pretrial detention

105. The Commission has received information indicating that in this subregion there is excessive use of pretrial detention due to its automatic application or the inability to replace it with alternative measures, which has a differentiated impact on women. On this subject,

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<sup>257</sup> In particular, various researchers have found that since gangs are traditionally made up of and designed by men they show the stereotypes and inequities between men and women that are present in society, exacerbated by the violence and marginality that prevails in gangs. In this regard, see the University Institute of Public Opinion, Central American University “José Simeón Cañas” *“Seconds in the Air” Women Gang Members and their Prisons*, 2010, p. 74; and Global Voices, *The Dangerous and Complex Reality of Women Who Join Central American Gangs*, February 1, 2016.

<sup>258</sup> In this regard, IACHR, *Violence and Discrimination against Women and Girls*, paras. 194-197.

<sup>259</sup> Government of Guatemala, Diplomatic Note No. DAJCC-Seprem 003-2021, April 14, 2021, p. 12.

<sup>260</sup> Government of Honduras, Diplomatic Note No. DNDDHH-LI-316-2021, May 19, 2021, p. 6.

<sup>261</sup> ASOPAZH and CEMH, Consultation Questionnaire on Women Deprived of Liberty, April 10, 2021, p. 4.

<sup>262</sup> In this regard, see IACHR, *Violence and Discrimination against Women and Girls*, para. 197.

the State of Honduras reported that “criminal conduct resulting in the automatic application of pretrial detention is related to drug crimes.”<sup>263</sup> In addition, the regulations in El Salvador, Guatemala, and Honduras prohibit replacing pretrial detention with alternative measures with respect to specific crimes linked to organized crime, particularly those related to drugs and extortion.

106. In particular, the Salvadoran system establishes that when pretrial detention is imposed for crimes linked to organized crime such as those involving drugs, extortion, and human trafficking, it may not be replaced by alternative measures. In the specific case of drug crimes, this prohibition on substitution is regulated only when there are aggravating circumstances regarding the method of the criminal conduct with respect to how dangerous it is, the nature of the person who is allegedly the perpetrator of the crime, possible recidivism, or whether the criminal act has been committed by an organized crime group to which the accused belongs.<sup>264</sup> In Guatemala, the Anti-Narcotics Law excludes replacing pretrial detention with alternative measures with respect to certain crimes, including drug-linked crimes that are included in Chapter VII of the Anti-Narcotics Law.<sup>265</sup> For its part, Honduran legislation prohibits using measures to replace pretrial detention in cases of crimes related to the illicit trafficking of drugs and narcotics, extortion, human trafficking and unlawful association, among others<sup>266</sup>.
107. In this context, the Commission notes that there is excessive use of pretrial detention for women. According to official data, in Honduras, as of May 2021, 1,177 women deprived of liberty were documented and 741 of them were subject to pretrial detention,<sup>267</sup> indicating that the rate of pretrial detention for women is 63%. In Guatemala, as of September 2021, the rate of pretrial detention for women was 49%.<sup>268</sup> In El Salvador, in 2020, the rate of pretrial detention for women was 29%.<sup>269</sup> In the specific case of Guatemala, the IACHR notes that this trend toward excessive use of pretrial detention for women applies even in the case of drug crimes involving small quantities. Specifically, of the total number of

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<sup>263</sup> Government of Honduras, Diplomatic Note No. DNDDHH-LI-316-2021, May 19, 2021, p. 3.

<sup>264</sup> See: El Salvador, Ley Reguladora de las Actividades Relativas a las Drogas, published November 7, 2003, Arts. 71 and 54.

<sup>265</sup> These crimes include: international trafficking, seeding and growing, manufacturing or processing, trade, trafficking or unlawful storage, possession for use, promotion and pushing, facilitation of means, alteration, unlawful shipping, prescribing, or supply, unlawful transactions or investments, presumption, criminal associations, seeking impunity or evasion, promotion or encouraging drug addiction, actual concealment, personal concealment. In this regard, Guatemala, Code of Criminal Procedure, updated as of April 30, 2014, Articles 259 and 264; and Government of Guatemala, Diplomatic Note No. DAJCC-Seprem 003-2021, April 14, 2021, p. 6.

<sup>266</sup> Honduras, Code of Criminal Procedure, adopted December 30, 1999, Articles 172 and 184.

<sup>267</sup> Government of Honduras, Diplomatic Note No. DNDDHH-LI-316-2021, May 19, 2021, p. 2.

<sup>268</sup> In this regard, Cantidad de personas privadas de libertad a cargo de la @Dgspg al día de hoy. Twitter account of the General Directorate of the Penitentiary System (@DGSP). Publication of September 13, 2021.

<sup>269</sup> Government of El Salvador, Diplomatic Note No. MPOEA-OEA-106/2021, September 21, 2021, p. 1.

women incarcerated for drug crimes, 33% represented “promotion or encouragement of drug addiction,” 28% represented possession for consumption, and 21% represented “promotion and encouragement,” while only 18% of women are detained for “trade, trafficking, or unlawful storage.”<sup>270</sup> These figures indicate that Guatemala’s criminal policy contributes to the increased number of women detained by making them subject to criminal proceedings for crimes involving small quantities.

## **B). Restrictions on benefits that reduce time in prison**

- 108.** The Commission notes with concern that the legal systems of El Salvador and Honduras contain restrictions preventing those who are convicted of crimes linked to organized crime from accessing benefits that suspend the enforcement of penalties or reduce time in prison, forcing them to serve the entire prison term. Specifically in El Salvador, Article 71 of the Law Governing Drug-Related Activities excludes persons charged with “any of the crimes referred to in this law” from being able to benefit from conditional suspension of the sentence and release.<sup>271</sup> With regard to the application of this article, the Chamber for Constitutional Matters of the Supreme Court of Justice resolved in its judgment of October 3, 2011 that said provision did not violate the principles of equality and reintegration “to the extent that granting the referenced criminal substitute in crimes related to drug trafficking is feasible whenever the conditions established in Article 77 of the Penal Code are met, with the prohibition thereof taking effect when serving a prison term is shown to be essential to prevent the convicted person from committing a repeat offense”<sup>272</sup>.
- 109.** In Honduras, the Penal Code establishes that the system of conditional release is not applicable to persons convicted for “their participation in an organized crime group, unless they collaborate directly and effectively to prevent other crimes committed by organized crime by preventing their occurrence or providing or obtaining evidence of others crimes already committed.”<sup>273</sup> In this regard, the IACHR notes that Honduran legislation has a disproportional impact on all persons who have limited participation in criminal activity, particularly women, who occupy the lowest rungs in the criminal network and generally lack knowledge of the unlawful enterprise and are unable to collaborate with justice and obtain procedural benefits. In view of the foregoing, the IACHR notes that procedural legislation of this kind, to the extent that it excludes persons convicted for drug crimes or organized crime from the system of benefits, contributes to the detention of women and to their being deprived of liberty for long periods of time.

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<sup>270</sup> Government of Guatemala, Diplomatic Note No. DAJCC-Seprem 003-2021, April 14, 2021, p. 2.

<sup>271</sup> El Salvador, Law Governing Drug-Related Activities, published November 7, 2003.

<sup>272</sup> Government of El Salvador, Diplomatic Note No. MPOEA-OEA-106/2021, September 21, 2021, p. 2.

<sup>273</sup> Honduras, Penal Code, adoption January 31, 2019, Article 81.

### C) Lack of proportionality in the treatment of criminal conduct and impact on female incarceration

110. The Commission notes that policies adopted in the context of combating organized crime give disproportionate treatment to conduct linked to this criminal method, given that no distinction is made regarding different levels of participation in the criminal network. The result is that persons with a low level of participation in the criminal activity become subject to a criminal proceeding due to the failure to consider the circumstances surrounding the commission of the crime as well as the personal factors that led these persons to become involved in such activities. This situation has a disproportionate effect on women, who generally do not occupy a leadership role in the unlawful activity and are involved in the commission of crimes by organized crime as a result of factors linked to their situation of poverty, barriers to access to education, and violence, or in the context of their family relationships.<sup>274</sup> Along the same lines, the European Union's EL PAcCTO Program has found that the legal frameworks in these three countries lack provisions with a gender perspective to provide differentiated criminal treatment for women linked to gangs, that consider women's vulnerability within such criminal structures and society in the extremely violent context in which they live<sup>275</sup>.
111. In particular, the IACHR has documented that in the context of women's participation in the commission of organized crime offenses, the main activities they carry out – often after being forced to do so – include: i) collecting the groups' "rents" from people with businesses and shops who are victims of extortion; ii) transporting, hiding, and selling drugs and weapons; iii) visiting prisons; iv) maintaining communication between imprisoned leaders and gang members in their neighborhood; and v) acting as partners.<sup>276</sup> Although these activities do not involve a leadership role in the criminal network, they increase women's exposure to being identified as gang members and consequently detained. As the Commission was informed, many women in this subregion have even been involved as collectors in cases of extortion where they were unaware of the crime, for example, by providing their bank account data to collect maintenance or payments for cooking for men. As a result, they have been convicted and given long prison terms as perpetrators of the crime of extortion, because judicial systems did not conduct exhaustive investigations but

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<sup>274</sup> On these points, see the sections on "Factors leading to female incarceration" and "Impact of drug policies on women's incarceration" in this chapter.

<sup>275</sup> In this regard, El Paccto. Gangs and Women in Central America: Problems and Solutions in Law. August 2020, p. 50.

<sup>276</sup> IACHR, Violence and Discrimination against Women and Girls, para. 196. See also: IACHR, Situation of Human Rights in El Salvador, OEA/Ser.L/V/II. Doc. 278, October 14, 2021, para. 149.

on the contrary presumed that a deposit to a bank account is sufficient to prove commission of the crime.<sup>277</sup> This judicial practice is broadly supported by the courts<sup>278</sup>.

112. In this scenario, most women incarcerated in this subregion are deprived of liberty for crimes involving extortion and drugs. Specifically in El Salvador, the crime of extortion is one of the main reasons why women are incarcerated.<sup>279</sup> In Guatemala, the large majority of women in pretrial detention are subject to this measure based on the crime of extortion, while drug crimes occupy third and fifth place.<sup>280</sup> Similarly, in Honduras, extortion represents the principal crime for which women are incarcerated.<sup>281</sup> In view of this, the IACHR concludes that the application of heavy-handed policies to combat organized crime seriously impacts the lives of women given that although they are involved in these activities primarily in contexts characterized by exclusion and violence – as a result of uneven power relationships – and lack a leadership role within the criminal structure, they end up being those most subject to criminal proceedings and incarceration for several years for these crimes. On this basis, it calls on the States to incorporate the human rights approach and gender perspective in all dimensions of their strategies to combat organized crime. This means designing comprehensive and coordinated strategies directed to prosecuting these women with a gender perspective<sup>282</sup>.

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<sup>277</sup> Specifically, women face high prison terms because a conviction is imposed for each deposit received, which can be up to 12 years in prison on each count. In this regard, IACHR, Information provided to the IACHR by the representative of the Colectivo Artesana of Guatemala during a technical meeting on women deprived of liberty, September 20, 2021.


<sup>278</sup> For example, see: Supreme Court of Justice – Criminal Chamber. Judgment No. 639-2016. Judgment of August 22, 2017.

<sup>279</sup> IACHR, Press release No. 33520, IACHR presents its preliminary observations following its *in loco* visit to El Salvador, December 27, 2019.

<sup>280</sup> Government of Guatemala, Diplomatic Note No. DAJCC-Seprem 003-2021, April 14, 2021, p. 4.

<sup>281</sup> Government of Honduras, Diplomatic Note No. DNDDHH-LI-316-2021, May 19, 2021, p. 1.

<sup>282</sup> On prosecution with a gender perspective, see the considerations and specific recommendations in the subsection on the “Impact of drug policies on women’s incarceration” in this chapter.



# **THE SITUATION OF WOMEN DEPRIVED OF LIBERTY IN THE REGION**



### III. THE SITUATION OF WOMEN DEPRIVED OF LIBERTY IN THE REGION

113. In this chapter, the Commission analyzes the special at-risk situation and the serious impacts women face in the context of the deprivation of their liberty, given the failure to adopt measures that respond to their specific needs, based both on gender and other factors of discrimination. In this regard, the IACHR addresses the lack of a gender perspective in data compilation, inadequate prison infrastructure, women's greater exposure to being victims of violence, and the obstacles they face in accessing health services. In addition, specifically, and in view of the exacerbation of the differentiated impacts of incarceration due to their special at-risk situation, the Commission examines the specific challenges faced by women who are pregnant, in the post-partum period, and nursing. Finally, it examines the impact of women's deprivation of liberty on children living together with their incarcerated mothers.

#### A. *Special at-risk situation in the context of the deprivation of liberty*

114. The Commission notes that women have historically faced discrimination and exclusion, which leads to their being victims of differentiated impacts while incarcerated due to the lack of a gender perspective in prison policies. In particular, in its Request for an Advisory Opinion from the Inter-American Court on Human Rights, *Differentiated Approaches to Persons Deprived of Liberty*<sup>283</sup> and its Observations,<sup>284</sup> the IACHR analyzed the States' duty to incorporate differentiated approaches on the deprivation of liberty in the light of the principle of equality and non-discrimination. In this regard, according to the Court's case law, the principle of equality and non-discrimination must be understood in the sense of incorporating two concepts. The negative concept relates to the prohibition on arbitrary differences in treatment, while the positive concept relates to the duty to "create real equal conditions towards groups that have been historically excluded or who are exposed to a greater risk of being discriminated against."<sup>285</sup> On the first, the Court has stated that not all differences in treatment are discriminatory and it is necessary to establish whether there is

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<sup>283</sup> IACHR, *Request for Advisory Opinion from the Inter-American Court of Human Rights*.

<sup>284</sup> IACHR, *Observations on the Advisory Opinion to the Inter-American Court of Human Rights*.

<sup>285</sup> I/A Court H.R. Case of Furlan and family v. Argentina. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2012. Series C No. 246. para. 267.

an objective and reasonable justification.<sup>286</sup> As for the second, the IACHR has emphasized that there are groups who are subject to discrimination and historic exclusion for various reasons – gender among them – that prevent them from exercising their rights under the same conditions as others<sup>287</sup>.

115. In this regard, the IACHR's Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas (hereinafter "Principles and Best Practices") and various United Nations instruments prohibit discrimination against persons deprived of liberty for various reasons, among them sex, gender, ethnic origin, and sexual orientation. Said instruments also establish that measures intended to protect the rights of incarcerated persons who belong to groups in a particular situation of risk cannot be considered discriminatory.<sup>288</sup> On this basis, the IACHR has asserted that persons belonging to groups in at-risk situations and who face discrimination as regards their liberty are more susceptible to being subject to indirect discrimination in view of the disproportionate risks and differentiated impacts they face during their incarceration, which means that the effects of their confinement are much more intense<sup>289</sup>.
116. Specifically, women have historically faced discrimination and exclusion, which results in the possibility of their being victims of differential or prejudicial impacts from standards or practices – including the deprivation of their liberty – that while they may seem to be neutral and without discriminatory intent, are in fact discriminatory based on their effects. This puts women in a situation of greater susceptibility to indirect discrimination, because the treatment they receive in detention is generally the same that is given to the rest of prison population, without considering their gender and their special needs.<sup>290</sup> In particular, the Commission notes that the result of the fact that incarcerated women represent a small percentage of the total number of persons deprived of liberty is that prison policies lack a gender perspective. Thus, special gender-based needs added to the lack of differentiated protection means that the effects of detention have a disproportionate impact on women's

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<sup>286</sup> I/A Court H.R. Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, paras. 55 and 56.

<sup>287</sup> IACHR, Request for Advisory Opinion from the Inter-American Court of Human Rights, para. 14. See also: I/A Court H.R. Case of *Artavia Murillo et al. (In Vitro Fertilization) v. Costa Rica*. Preliminary Objections, Merits, Exceptions, and Costs. Judgment of November 28, 2012. Series C No. 257, para. 286.

<sup>288</sup> IACHR, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas (Principles and Best Practices), OEA/Ser/L/V/II.131, Document approved by the Commission during its 131<sup>st</sup> session held March 3-14, 2008, Principle II "Equality and non-discrimination;" UN, United Nations Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), E/CN.15/2015/L.6/Rev.1, May 21, 2015, Rule 2.2; UN, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Resolution 43/173, December 9, 1988, Principle 5.2; and UN, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), Resolution A/RES/65/229, March 16, 2011, Rule 1.

<sup>289</sup> In this regard, IACHR, Report on Measures to Reduce Pretrial Detention in the Americas, para. 215; and IACHR, Request for Advisory Opinion to the Inter-American Court of Human Rights, paras. 16 and 17.

<sup>290</sup> In this regard, IACHR, Request for Advisory Opinion to the Inter-American Court of Human Rights, para. 3.

lives and, consequently, women face conditions of detention that do not respond to their needs and are at greater risk of being the victims of acts of violence<sup>291</sup>.

117. In this regard, the then Special Rapporteur on the Violence against Women pointed out that the prevalence of extreme conditions in the prisons and the absence of a gender approach means that women face “conditions that are worse than those experienced by their male counterparts,” because prisons were constructed taking men into account and because of “serious negative consequences” of gender-neutral policies. Thus, for example, less attention is paid to the health care of incarcerated women than men, which increases the prevalence of illness, with limited or no attention paid to women’s specific problems such as basic sexual and reproductive health needs<sup>292</sup>.
118. In this regard, the UNODC has stated that there is “general disregard for the gender-specific needs of women [and] denial of many services and opportunities accessible to male prisoners.” In particular, it refers to disregard for women’s psychological and medical care, safety, family contact, and the particular needs of pregnant women or women with children who live outside or in prison with their mothers.<sup>293</sup> For its part, in the case of the Miguel Castro Castro Prison v. Peru, the Court determined that disregard for women’s physiological and pre- and post-partum needs represented serious conditions of detention. In view of this, it referred to what the International Committee of the Red Cross established with respect to the obligation to ensure that prisons have adequate sanitary conditions to maintain women’s hygiene and health and to make arrangement for women who are menstruating, pregnant, or accompanied by their children.<sup>294</sup>
119. The Commission has also noted that incarcerated women face a greater risk of being subjected to various forms of violence and discrimination.<sup>295</sup> On this point, both the Inter-American Court and the IACHR have determined that women under the control of State authorities encounter increased exposure to enduring different forms of violence, assaults, and hostility, including sexual assault.<sup>296</sup> Similarly, the IACHR notes that some incarcerated women encounter particular at-risk situations reflecting multiple special needs and greater challenges to the exercise of their rights. Consequently, the lack of protection due to the failure to adopt gender-specific measures is exacerbated in the case

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<sup>291</sup> On this point, see section on “Special impacts considering gender.”

<sup>292</sup> Special Rapporteur on Violence against Women, Report “Pathways to, Conditions, and consequences of incarceration for women, paras. 33, 44, 46, and 54.

<sup>293</sup> In this regard, UNODC, Handbook on Women and Imprisonment. Criminal Justice Handbook Series, 2<sup>nd</sup> edition, 2014 [hereinafter “Handbook on Women and Imprisonment”], pp. 4, 8-20.

<sup>294</sup> *IA Court H.R. Case of the Miguel Castro Castro Prison v. Peru*, paras. 319 and 331.

<sup>295</sup> On this point, see the subsection “Submission to acts of violence” in this chapter.

<sup>296</sup> In this regard, *IA Court H.R. Case of the Miguel Castro Castro Prison v. Peru*, para. 303; and IACHR, Report on Measures to Reduce Pretrial Detention in the Americas, para. 195.

of pregnant, postpartum, and nursing women, women who live in prison with their children, and trans women.

120. In this context, the Commission recalls that standards and practices that overlook the differentiated impact of incarceration on women lead to prison systems that reproduce and increase the patterns of discrimination and violence that exist outside prison.<sup>297</sup> In view of this, the adoption of measures that respond to a differentiated approach that considers women's condition of vulnerability when detained and specific violations of their rights that lead to incarceration represents an unavoidable obligation. In addition, these measures must consider the frequent intersectionality of risk factors that may exacerbate their situation of risk.
121. The IACHR reiterates that in order to fulfill their special duty to protect persons in their custody and to guarantee the principle of equality and non-discrimination, the States must adopt measures so that incarcerated women's rights are respected and guaranteed and to ensure that they do not suffer discrimination and are protected against all forms of violence. This duty includes implementing actions to respect and guarantee women's rights that ensure their autonomy and empowerment and not including stereotyped concepts of women's roles that perpetuate discrimination and present obstacles to the exercise of their rights in the development, implementation, or supervision of those actions<sup>298</sup>.

## ***B. Special impacts considering gender***

122. The Commission emphasizes that imprisoned women face serious impacts on their human rights based on the failure to provide differentiated treatment and to adopt diligent prison policies and measures that consider women's special needs. In particular, the causes of certain differentiated impacts notably include: i) the absence of a gender perspective in the compilation of prison data; ii) inadequate prison infrastructure; iii) subjection to acts of violence; and, iv) the lack of a gender approach in health care.<sup>299</sup> In addition and specifically, the Commission emphasizes that some women deprived of liberty belong to groups in special at-risk situations, as reflected in multiple special needs and greater obstacles in accessing their rights under equal conditions when compared to other women. These include pregnant, postpartum, and nursing women, those who live in prison with their children, and trans women.

### **1. Lack of a gender perspective in data collection**

123. The Commission notes that a challenge present in most countries in the region is the lack of a gender perspective in the collection of prison data. Generally, the only indicator used

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<sup>297</sup> IACHR, [Request for Advisory Opinion from the Inter-American Court of Human Rights](#), para. 17.

<sup>298</sup> In this regard, IACHR, [Report on Measures to Reduce Pretrial Detention in the Americas](#), paras. 215 and 198.

<sup>299</sup> In this regard, IACHR, [Report on Measures to Reduce Pretrial Detention in the Americas](#), para. 196.

relates to the number of incarcerated women, which is not sufficient to adequately evaluate whether the conditions under which the women serve their sentences are respectful of their gender-based needs. In particular, based on the information received, the IACHR notes that data are not generally compiled for: i) socioeconomic information; ii) the family composition of women at the time of their detention, particularly on the existence of persons in their care; iii) children who live in detention with their mothers; iv) presence of pregnant women; v) health status; vi) disability; vii) ethnic-racial origin; viii) nationality or migrant status; and ix) gender identity.<sup>300</sup> Regarding this last point, the Commission notes that this deficiency in data collection also includes the lack of statistical information on trans women in prison, due to the fact that gender identity is not usually considered as one of the demographic data included in the region's census-taking instruments. However, the available information indicates that Argentina, Bolivia, Brazil, Colombia, Costa Rica, Guatemala, and Uruguay do record the number of trans women in their prison statistics<sup>301</sup>.

124. In this regard, the Commission notes that the widespread failure to produce statistics broken down using a gender perspective is an obstacle to addressing the special at-risk situation faced by incarcerated women, which is reflected in the inability to do evaluations and make decisions based on objective and differentiated parameters. This is of concern to the Commission, considering the importance of adequate data collection and production mechanisms to develop adequate information with which to design prison policies that include a gender perspective and are respectful of intercultural and intersectional approaches based on the identification of structural problems that affect this population.<sup>302</sup> This situation may result both in greater obstacles to the exercise of their rights and an increase in situations of violence and discrimination. In view of this, the IACHR calls on the States to dedicate efforts and assign sufficient resources to gathering statistical data with a gender approach and intercultural and intersectional perspectives, and to analyze the data systematically and comprehensively in order to adopt measures that cover women's specific needs. Such data must be easily accessed by the public, should be updated periodically, and should be an effective tool providing the information needed to change government policies<sup>303</sup>.

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<sup>300</sup> In addition to the information received through its different mechanisms both from the States and civil society as well as academia, the IACHR compiled information in the context of expert consultations and technical meetings with women who were released from prison. Also see: WOLA, IDPC, Dejusticia and CIM, Women, Drug Policies, and Incarceration, 2016, p. 38.

<sup>301</sup> On this subject, WOLA, et al., Regional Response to the Consultation Questionnaire on Women Deprived of Liberty, 2021, April 23, 2021, p. 14. With respect to Brazil, Colombia, Costa Rica, Guatemala, and Uruguay, see: Government of Brazil, Diplomatic Note No. 120, April 9, 2021, p. 3; Government of Colombia, Diplomatic Note No. MPC/OEA No. 530-2021, April 12, 2021, p. 1; Government of Costa Rica, Diplomatic Note No. CROEA-AA-576-21, April 9, 2021, p. 1; Government of Guatemala, Diplomatic Note No. DAJCC-Seprem 003-2021, April 14, 2021, p.1; and Government of Uruguay, Diplomatic Note No. 041/2021 - Annex 2, April 20, 2021, p. 2.

<sup>302</sup> In this regard, see WOLA, IDPC, Dejusticia and CIM, Women, Drug Policies, and Incarceration, 2016, p. 39.

<sup>303</sup> In this regard, see: IACHR, Report on Measures to Reduce Pretrial Detention in the Americas, para. 217.

## 2. Inadequate prison infrastructure

125. The Commission notes that prison infrastructure in the Americas does not respond to the gender perspective due, among other reasons, to: i) the limited number of female detention centers or sections exclusively for women, with the result that they are located far away from their families; ii) the failure to adapt prisons to women's needs; iii) challenges in effective separation; and iv) obstacles to housing trans women due to the lack of spaces that are respectful of their gender identity. In particular, based on the information received through its various mechanisms, the IACHR notes that there is a marked insufficiency of female detention centers or specific sections for women in mixed prisons. In this regard, it notes that the fact that women deprived of liberty represent a small percentage of incarcerated persons means that the States do not allocate sufficient resources and spaces exclusively to house women. Consequently, women's prisons are usually located in remote or inaccessible areas and are far removed from their customary residences and family households, which affects the ability to maintain family ties<sup>304</sup>.
126. In addition, the IACHR reiterates that one of the serious differentiated situations that incarcerated women face is the failure to adapt prisons according to their specific gender-based needs.<sup>305</sup> In particular, based on United Nations statements, the Commission notes that despite the increase in the female prison population, most facilities retain their original structures as constructed for the male population and have not been adapted to the needs of women.<sup>306</sup> Along these same lines, according to testimony from women who have been released, women's prisons lack sufficient sanitary facilities for personal hygiene and prison infrastructure is ill-suited to the development of mother-child relationships.<sup>307</sup> In view of this, the IACHR recalls that its Principles and Best Practices refers to the States' duty to meet women's special needs, particularly with respect to hygiene conditions, especially the right to access hygienic and sufficient sanitary facilities under conditions of privacy and dignity. In addition, facilities at detention sites must consider the needs of pregnant and nursing mothers.<sup>308</sup>
127. In addition to the above, the available data indicate that due to inadequate infrastructure, some women's prisons lack areas for conducting intimate visits. This means that such visits

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<sup>304</sup> In this regard, IACHR, Request for Advisory Opinion, para. 49. See also: I/A Court H.R. Differentiated Approaches to Persons Deprived of Liberty, para. 136. Similarly, on the challenges to maintaining family ties, see the subsection "Challenges for maintaining contact with persons in their care," in Chap. II.

<sup>305</sup> IACHR, Report on Measures to Reduce Pretrial Detention in the Americas, para. 196.

<sup>306</sup> On this point, see the section "Special situation of risk in the context of the deprivation of liberty." See also, Special Rapporteur on Violence against Women, Report on "Pathways to, Conditions, and Consequences of Incarceration for Women," para. 33; and UNODC, Handbook on Women and Imprisonment, p. 16.

<sup>307</sup> IACHR, Information provided to the IACHR by women who were released from prison in Brazil, Chile, Colombia, El Salvador, and Mexico during a meeting held on October 14, 2021. See also the section on "Groups in special risk situations" in this chapter.

<sup>308</sup> In this regard, see: IACHR, Principles and Best Practices, Principles. X, XII.1 and XII.2.



are not authorized or are conducted in areas not equipped for this purpose, such as in the cells themselves or in areas set aside for contact between incarcerated women and their lawyers.<sup>309</sup> In this regard, the IACHR recalls that it is the States' duty to ensure that intimate visits are conducted with dignity under minimum conditions of hygiene, safety, and respect on the part of officials. This means that the authorities must create areas intended for this purpose and avoid the practice of having incarcerated persons receive their partners in their own cells<sup>310</sup>.

**128.** In addition, the Commission notes that sometimes inadequate prison infrastructure produces obstacles to ensuring effective separation between women and men, given that the marked absence of centers exclusively for women means that many women are housed in women's sections located in detention centers for men. The information available indicates that some of the countries where this situation occurs are Colombia,<sup>311</sup> Guatemala,<sup>312</sup> Honduras,<sup>313</sup> Mexico,<sup>314</sup> Nicaragua,<sup>315</sup> Paraguay,<sup>316</sup> Uruguay,<sup>317</sup> and Venezuela.<sup>318</sup>

**129.** In this regard, the IACHR is extremely concerned that women are housed in mixed centers where the infrastructure is not adequate to ensuring effective separation, particularly because this increases their exposure to being victims of violence both at the hands of

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<sup>309</sup> In this regard, PPN, Argentina, Informe Anual 2021: la situación de los Derechos Humanos en las cárceles federales de la Argentina, 2022, p. 56; El Mostrador, Radiografía de la visita conyugal en Chile: un derecho que opera como beneficio y en el cual las más castigadas son las mujeres, July 23, 2021; and La Razón, Defensoría del Pueblo identifica que se vulneran los derechos sexuales de las privadas de libertad, March 22, 2013.

<sup>310</sup> IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, OEA/Ser.L/V/II. Doc. 64, December 31, 2011, [hereinafter "Report on the Human Rights of Persons Deprived of Liberty in the Americas"] para. 586; and IACHR, Informe No. 122/18, Case No.11.656. Merits (Publication). Marta Lucía Álvarez Giraldo. Colombia, October 5, 2018, para. 196.

<sup>311</sup> In Colombia, women are housed in six "Women's Detention Centers" and female pavilions located in 29 Detention Facilities for Men. See, Government of Colombia, Diplomatic Note No. MPC/OEA No. 530-2021, April 12, 2021, p. 9.

<sup>312</sup> IACHR, Information provided by the Colectivo Artesana during the first IACHR meeting of experts on women deprived of liberty April 17, 2021.

<sup>313</sup> In this regard, Government of Honduras, Diplomatic Note No. DNDDHH-LI-316-2021, May 19, 2021, p. 1.

<sup>314</sup> Secretariat of Security and Citizen Protection, Government of Mexico, Cuaderno Mensual de Información Estadística Penitenciaria Nacional, February 2021.

<sup>315</sup> In Nicaragua, there is a detention center exclusively for women located in Managua. The other prison facilities and pretrial cells of the National Police are mixed, with separate spaces for women. In this regard, Government of Nicaragua, MPN-OEA/LAR/21-00097, April 7, 2021, pp. 13-14.

<sup>316</sup> In Paraguay, there are three Women's Prison Centers and six women's pavilions set up in Regional Centers. In this regard, Government of Paraguay, Diplomatic Note No. 495-21/MMP/OEA, April 27, 2021, p. 7.

<sup>317</sup> Government of Uruguay, Diplomatic Note No. 041/2021 - Annex 2, April 20, 2021, pp. 5 and 9.

<sup>318</sup> In Venezuela, there is a center exclusively for women and 16 female annexes in male prisons. In this regard, OVP, Informe Mujeres privadas de la libertad en Venezuela: Las voces de las mujeres detrás de las rejas, 2021, p. 9.

men deprived of liberty and male officers exercising supervisory functions.<sup>319</sup> For example, during its visit to the Guayas prison complex located in Guayaquil (Ecuador), the IACHR visited the Women's Center and was able to note that this prison is located inside the Guayas No. 1 Prison Center just meters away from the men's pavilions. Thus, the proximity of the women's prison and centers controlled by male inmates makes the women fear being victims of the high levels of violence characteristic of the adjoining centers.<sup>320</sup> In addition, according to available information, in both the Guayas and Cotopaxi Complexes men had access to the women's sectors, putting the women's safety at risk.<sup>321</sup>

130. On this subject, the IACHR reiterates that separation based on gender in the centers is one of the fundamental guarantees that must be implemented by the States to protect the life and physical safety of women deprived of liberty.<sup>322</sup> It also emphasizes that the lack of effective separation between men and women may itself represent a violation of the right to personal safety.<sup>323</sup> In view of this, the Commission recalls that its Principles and Best Practices and other United Nations instruments establish that persons deprived of liberty who belong to various categories by reason of their gender must be housed in different confinement locations, considering the particular importance of separation between women and men.<sup>324</sup> On the same subject, in its Advisory Opinion No. OC-29/22, the I/A Court H.R. indicated that all women deprived of liberty must be housed physically separated from men and, additionally, in less restrictive pavilions or sections with a lower level of security in view of the low level of risk they pose, and with sufficient space to allow them to attend to their specific needs. In addition, surveillance staff must be female<sup>325</sup>.
131. With regard to the housing of trans women, the IACHR notes that although some regulations govern the existence of special locations for them,<sup>326</sup> generally there are no exclusive spaces for housing them according to their gender identity. Consequently, they are usually housed in male sectors based on their physical gender and sex assigned at birth, subjected to extended isolation, or placed along with other LGBTI persons with no

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<sup>319</sup> On this point, see the subsection on "Women detained in mixed centers."

<sup>320</sup> IACHR, Report on the Situation of Persons Deprived of Liberty in Ecuador, para. 44.

<sup>321</sup> IACHR, Information provided to the IACHR by the Office of the Ombudsman of Ecuador during the meeting held on November 4, 2021.

<sup>322</sup> IACHR, Report of the Inter-American Commission on Human Rights on the Situation of Persons Deprived of Liberty in Honduras, OEA/Ser.L/V/II.147, adopted March 18, 2013, para. 94.

<sup>323</sup> IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, para. 435.

<sup>324</sup> IACHR, Principle and Best Practices, Principle XIX; and UN, Mandela Rules, Rule 8 (a).

<sup>325</sup> I/A Court H.R. Differentiated Approaches to Persons Deprived of Liberty, para. 135.

<sup>326</sup> For example, see: Colombia, Resolution No. 6349, adopted December 19, 2016, Article 36, paragraph 4; and Ministry of Justice and Public Security, Brazil, Technical Note No. 9/2020/DIAMGE/CGCAP/DIRPP/DEPENMJ, adopted April 3, 2020.

distinction as to their status.<sup>327</sup> On the last point, it has been documented that male prisons with annexes for LGBTI persons<sup>328</sup> sometimes lack sectors exclusively for trans women with access to facilities that provide basic services.<sup>329</sup> In this regard, the IACHR has determined that these situations violate trans women's right to the free development of their personality and human dignity.<sup>330</sup> This population should not be harmed or punished due to existing prejudices and discrimination regarding their gender identity. In addition, measures for their protection should not include greater restrictions on their rights than those experienced by the general population. This means that gender identity is not to be used as a criterion for subjecting them to solitary confinement for unduly prolonged periods<sup>331</sup>.

### 3. Subjection to acts of violence

132. The Commission reiterates that another of the differentiated and disproportionate impacts that imprisoned women face based on their nature is subjection to various forms of violence, at the hands of both prison staff<sup>332</sup> and other persons deprived of liberty. In this regard, it recalls that the Convention of Belém do Pará establishes that violence against women is “any act or conduct, based on gender, which causes death or physical, sexual, or psychological harm or suffering to women, whether in the public or the private sphere,” including violence perpetrated or tolerated by the State or its agents.<sup>333</sup> In this scenario, the IACHR emphasizes that certain groups of women find themselves even more exposed to being subjected to violence due to their being in a special situation of vulnerability. This produces the duty of enhanced protection for specific groups of women who are particularly at risk of suffering violations of their human rights based on combined factors,

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<sup>327</sup> In this regard, see: IACHR, Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas, paras. 155-157; and IACHR, Request for Advisory Opinion from the Inter-American Court on Human Rights, para. 32. In addition, IACHR, Information provided to the IACHR for Fundación Construir of Bolivia and APT during the first meeting of experts on women deprived of liberty, April 27, 2021; and IACHR, Information provided to the IACHR by trans women who were released from prison in Brazil, El Salvador, Guatemala, and Mexico during a meeting, October 13, 2021.

<sup>328</sup> For example, in Argentina, Brazil, Colombia, El Salvador, Guatemala, Honduras, Jamaica, Paraguay, the United States, and Uruguay. See, IACHR, Violence against Lesbian, Gay, Bisexual, Trans, and Intersex Persons in the Americas, para. 156; MPD, Argentina, Consultation Questionnaire on Women Deprived of Liberty, April 9, 2021, pp. 15 and 17-18; Government of Colombia, Diplomatic Note No. MPC/OEA No. 530-2021, April 12, 2021, p. 11; and Government of Uruguay, Diplomatic Note No. 041/2021 - Annex 2, April 20, 2021, p. 9.

<sup>329</sup> In this regard, IACHR, Violence against Lesbian, Gay, Bisexual, Trans, and Intersex Persons in the Americas, para. 156.

<sup>330</sup> In this regard, see IACHR, Request for Advisory Opinion from the Inter-American Court on Human Rights, para. 33.

<sup>331</sup> In this regard, IACHR, Violence against Lesbian, Gay, Bisexual, Trans, and Intersex Persons in the Americas, paras. 156 and 160.

<sup>332</sup> IACHR, Report on Measures to Reduce Pretrial Detention in the Americas, para. 196.

<sup>333</sup> On this subject: OAS, Inter-American Convention to Prevent, Punish, and Eradicate Violence against Women ("Convention of Belém do Pará"), adopted on June 9, 1994 [hereinafter the “Convention of Belém do Pará”], Articles 1 and 2.c.

which includes women deprived of liberty.<sup>334</sup> Additionally, some incarcerated women face greater risks of violence based on the reasons that led to their detention, where they are housed, and their gender identity.

## A) Forms of violence

133. The IACHR has received information indicating that despite progress made in preventing torture against women deprived of liberty – in Honduras, for example<sup>335</sup> – this population encounters various acts of violence, torture, and other forms of mistreatment in the region's prisons, including sexual, physical, and psychological violence, as well as violent practices in the context of security operations<sup>336</sup> to a greater extent than men in detention given that, according to civil society, sexual torture occurs three to four times more frequently against women than men<sup>337</sup>.

134. Specifically, incarcerated women are subject to various forms of sexual violence, including: i) rape as a means of coercion to obtain a confession, humiliate them, or exercise power over them;<sup>338</sup> ii) forced nudity;<sup>339</sup> iii) sexual exploitation through “sexual services” that women are required to provide in exchange for being able to exercise their rights;<sup>340</sup> and iii) sexual exploitation through forced participation in prostitution networks run by prison staff, particularly harmful to trans women.<sup>341</sup> In this regard, the Court and the IACHR have

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<sup>334</sup> In this regard, see: OAS, Convention of Belem do Para, Article 9.

<sup>335</sup> In particular, Local Boards against Torture for the Protection of Imprisoned Women and LGBTI Persons were formed, under the coordination of the National Mechanism to Prevent, Torture, Cruel, Inhuman or Degrading Treatment (MNP-CONAPREV). In this regard, CONAPREV Facebook page – National Prevention Mechanism, Honduras, Local Board for Prevention of Torture in the Area of Women Deprived of Liberty, March 5, 2021; and Honduran Secretariat for Human Rights (SEDH), SEDH saluda la conformación de la Junta Local de Prevención contra la Tortura para Protección de las Personas LGTBI Privadas de Libertad, May 5, 2021.

<sup>336</sup> In this regard, IACHR, Press Release No. 159/21 – International Day in Support of Victims of Torture: States Must Take Measures with a Gender Perspective to Prevent Torture. Washington DC, June 26, 2021.

<sup>337</sup> IACHR, Public hearing “Use of virtual hearings in criminal proceedings in the region in the context of the COVID-19 pandemic,” 180<sup>th</sup> regular session, June 30, 2021.

<sup>338</sup> In this regard, see: IACHR, Report on Persons Deprived of Liberty in Nicaragua, paras. 187-188; and WOLA, et al., Regional response to the Consultation Questionnaire on Women Deprived of Liberty,, 2021, April 23, 2021, p. 24.

<sup>339</sup> In particular, inter-American case law has determined that forced nudity of women in detention, in addition to violating their personal dignity, may constitute sexual violence. In this regard,, IA Court H.R. *Case of the Miguel Castro Castro Prison v. Peru*, para. 306.

<sup>340</sup> In this regard, IACHR, Public hearing on the “Situation of Human Rights of Persons Deprived of Liberty in Venezuela,” 183<sup>rd</sup> regular session, March 17, 2022; IACHR, Information provided to the IACHR by APT during the first meeting of experts, April 27, 2021; UNODC, Handbook on Women and Imprisonment, 2014, p. 14; and OVD, Informe Mujeres privadas de la libertad en Venezuela: Las voces de las mujeres detrás de las rejas, 2021, p. 52.

<sup>341</sup> In this regard, IACHR, Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas, para. 148; UNODC, Handbook on Prisoners with Special Needs, 2009, p. 106; and IACHR, Information provided to the IACHR by the organization Fundación Construir of Bolivia during the first meeting of experts on women deprived of liberty, April 27, 2021.

maintained that sexual violence has devastating physical, emotional and psychological consequences and have recognized that rape of an imprisoned women by an agent of the State is a particularly serious and reprehensible act, considering the vulnerability of the victim and the abuse of power deployed by the agent<sup>342</sup>.

135. In addition, incarcerated women face practices of physical violence that include beatings, kicking their entire bodies, putting plastic bags over their heads to produce asphyxia, and bites from prison staff, as well as psychological violence including threats of harm to members of their families as a means of intimidation, excessive use of isolation, and insults or verbal abuse. Added to this, according to information received and as indicated by the then Special Rapporteur on Violence against Women and the UNODC, there is a significant amount of violence and mistreatment that occurs in the context of security operations inside prisons. This mistreatment may take various forms, such as: i) exhaustive and unnecessary surveillance; ii) invasive or degrading inspections, and inappropriate touching during inspections; iii) disproportionate use of force; and iv) forced nudity<sup>343</sup>.
136. Specifically on the subject of exhaustive surveillance, international organizations have documented practices that include the routine surveillance of women by male prison staff who observe or try to observe them when they are nude.<sup>344</sup> In this regard, the Committee for the Elimination of Discrimination against Women (CEDAW Committee) considered that unjustified intrusion in a women's privacy by observing her performing intimate activities constitutes sexual assault and discrimination.<sup>345</sup> With regard to invasive or degrading inspections, as indicated by the then Special Rapporteur on Violence against Women and the UNODC, these actions may include: checks while nude or checks of body cavities, internal vaginal or anal checks, requiring women to undress and lift their breasts or to bend over and spread their legs to be checked.<sup>346</sup> On this subject, the Court deemed that the

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<sup>342</sup> In this regard, *IA Court H.R. Case of the Miguel Castro Castro Prison v. Peru*, para. 313; and IACHR, Report on Measures to Reduce Pretrial Detention in the Americas, para. 195.

<sup>343</sup> In this regard, IACHR, Press Release No. 159/21 – International Day in Support of Victims of Torture: States Must Take Measures with a Gender Perspective to Prevent Torture. Washington DC, June 26, 2021. See also: IACHR, Annual Report, Chapter IV. A “Human Rights Development in the Region.” 2019, para. 126; IACHR, Situation of Human Rights in Guatemala. OEA/Ser.LV/II. Doc. 43/15, December 31, 2015, para. 356; Special Rapporteur on Violence against Women, Report “Pathways to, Conditions, and Consequences of Incarceration for Women,” paras. 42-43; and UNODC, Handbook on Women and Imprisonment, p. 14.

<sup>344</sup> In this regard, Special Rapporteur on Violence against Women, Report, “Pathways to, conditions, and consequences of Incarceration for Women,” para. 42; and UNODC, Handbook for Prison Managers and Policymakers on Women and Imprisonment, p. 12.

<sup>345</sup> CEDAW Committee, Views – Communication No. 23/2009, CEDAW/C/49/D/23/2009, September 27, 2011, para. 7.7.

<sup>346</sup> In this regard, Special Rapporteur on Violence against Women, Report on “Pathways to, Conditions, and Consequences of Incarceration for Women.” para. 43; and UNODC, Handbook on Women and Imprisonment, p. 44.

sexual violence to which an incarcerated women was subjected when her vagina was inspected with a finger constituted torture, based on its effects<sup>347</sup>.

## B) Special situations of risk

### I. Women deprived of liberty for political reasons or for their work as human rights defenders

137. The IACHR has documented various acts of violence, torture, and mistreatment committed by government agents against women detained for political reasons, for their work as defenders, or for participating in protests in Nicaragua in the context of the human rights crisis the country is experiencing. In particular, such acts are used as a means of obtaining information, punishing, or humiliating women, both at the time of arrest and during the deprivation of liberty. They consist of physical, sexual, and psychological violence, such as beatings, rapes, improper touching, forced nudity, forcing women to do nude squats, threats of death and rape, and transfers to “unknown locations.”<sup>348</sup> In this regard, the IACHR emphasizes that special circumstances cannot be invoked to avoid compliance with the obligations of respect and guarantee of humane treatment for all incarcerated women.

### II. Women detained in mixed centers

138. Through its various mechanisms, the Commission was informed that when detained in mixed centers women face increased risk of being the victims of violence both at the hands of male prisoners and agents, despite their being housed in female sectors. This is due to the lack of effective separation between women and men, which is sometimes reflected in the presence of male security staff in women's sectors.<sup>349</sup> In particular, the IACHR has received specific information reporting that women deprived of liberty are frequently the victims of sexual violence by other male prisoners who have access to female sectors<sup>350</sup> and who sometimes collude with prison staff.<sup>351</sup> In addition, there is a frequent presence of male agents

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<sup>347</sup> VA Court H.R. *Case of the Miguel Castro Castro Prison v. Peru*, para. 312.

<sup>348</sup> In this regard, see IACHR, Report on Persons Deprived of Liberty in Nicaragua, OEA/Ser.L/V/II, Doc. 287, approved October 5, 2020, paras. 181-188 and 194; IACHR, Public hearing, “Persecution, Repression, Criminalization, and Judicialization of the Peasant and Forcibly Displaced Population of Nicaragua,” 173<sup>rd</sup> regular session, September 25, 2019; IACHR, Annual Report, Chapter IV. B “Nicaragua,” 2019, para. 188; and IACHR, Annual Report. Chapter IV.B “Special Report: Nicaragua,” 2018, para. 216.

<sup>349</sup> The IACHR gathered information on this subject in the context of consultations with experts and technical meetings with released women. See also UNODC, Handbook on Women and Imprisonment, 2014, p. 14.

<sup>350</sup> IACHR, Information provided to the IACHR by representatives of the Colectivo Artesana of Guatemala during the first meeting of experts on women deprived of liberty, April 27, 2021; and IACHR, Report on the Situation of Persons Deprived of Liberty in Ecuador, para. 42.

<sup>351</sup> OVD, Informe Mujeres privadas de la libertad en Venezuela: Las voces de las mujeres detrás de las rejas, 2021, p. 52.



responsible for control and surveillance in female sectors of mixed centers, which increases the likelihood that women will be the victims of mistreatment at their hands<sup>352</sup>.

139. In this regard, the IACHR has been informed of acts of sexual violence committed by guards who demand “sexual services” in exchange for access to basic services such as food or drinking water, holding family visits, or receiving medical care.<sup>353</sup> On this subject, the Commission reiterates that according to its Principles and Best Practices, persons deprived of liberty who belong to various categories based on their gender must be housed in different detention areas. In addition, in areas where women are confined or in female sections in mixed facilities, the surveillance and custody of women should be performed exclusively by female staff.<sup>354</sup>

### III. Special situation of risk faced by trans women

140. Trans women who are deprived of liberty face a greater risk of being subject to acts of violence, including sexual violence, as a form of reprisal for their sexual orientation or gender identity or expression.<sup>355</sup> In particular, the data show a higher prevalence of acts of violence against trans women due to the absence of spaces exclusively assigned for this population and their inability to choose where they will stay. In this regard, despite standards providing special areas for their housing or recognizing their right to choose,<sup>356</sup> obstacles persist in relation to their participation in decision-making.<sup>357</sup> In this context, the most prevalent forms of violence against incarcerated trans women consist of: i) physical and sexual violence; ii) psychological abuse, which includes practices such as cutting their hair to cancel their gender expression; iii) excessive use of force by agents; iv) vexatious searches; and v) sexual exploitation after being forced into sex work by prison staff who run

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<sup>352</sup> IACHR, Information provided to the IACHR by representatives of the Colectivo Artesana of Guatemala during the first meeting of experts on women deprived of liberty, April 27, 2021.

<sup>353</sup> IACHR, Public hearing “Situation of Human Rights of Persons Deprived of Liberty in Venezuela,” 183<sup>rd</sup> regular session, March 17, 2022.

<sup>354</sup> IACHR, Principles and Best Practices, Principles XIX and XX.

<sup>355</sup> IACHR, Violence against Lesbian, Gay, Bisexual, Trans, and Intersex Persons in the Americas, paras. 148 and 200-212.

<sup>356</sup> For example, Brazil and Costa Rica. In this regard, see: IACHR [@IACHR]. (March 24, 2021). IACHR saúda a decisão do @STF\_oficial, em #18Mar, que garantiu o direito às mulheres trans e travestis privadas de liberdade de decidir se cumpriram suas penas alocadas em estabelecimento feminino ou em área reservada de centro masculino de detenção [Tweet]. Twitter. <https://twitter.com/IACHR/status/1374856170003968007>; and Government of Costa Rica, Diplomatic Note No. CROEA-AA-576-21, April 9, 2021, p. 13.

<sup>357</sup> On this point, see the section on “Inadequate prison infrastructure.” See also: IACHR, Report on Measures to Reduce Pretrial Detention in the Americas, para. 216; IACHR, Violence against Lesbian, Gay, Bisexual, Trans, and Intersex Persons in the Americas, paras. 155-157; and IACHR, Request for Advisory Opinion from the Inter-American Court of Human Rights, paras. 31-32; Information provided to the IACHR by Fundación Construir of Bolivia and APT during the first meeting of experts on women deprived of liberty, April 27, 2021; IACHR, Information provided to the IACHR by trans women who were released in Brazil, El Salvador, Guatemala, and Mexico during a meeting on October 13, 2021.

prostitution rings in prisons.<sup>358</sup> According to information provided to the IACHR, although violence committed by men is prevalent, some of these acts occur in female sections and are committed by other women motivated by feelings of discrimination<sup>359</sup>.

### C) State duty of enhanced due diligence

141. Based on the foregoing, the Commission notes that the patterns of violence of which women deprived of liberty are victims are a manifestation or reflection of a broader context of gender violence, discrimination, and power relationships existing in society. In this respect, the States are required to act with enhanced due diligence and to adopt and apply a gender and intersectional perspective to prevent, punish, and provide reparations for all acts of discrimination and violence against incarcerated women.<sup>360</sup> In particular, this duty should be enhanced and include a gender approach. In this regard, the Inter-American Court has indicated that the States “also have the general obligation established in the American Convention” and an “obligation reinforced since the Convention of Belém do Pará” referring to the standard of “due diligence” established in Art. 7 (b) of that instrument. This means that in contexts of violence, subordination, and historical discrimination against women, international commitments impose an enhanced responsibility on the State<sup>361</sup>.
142. In this regard, considering that women’s incarceration takes on its own dimensions resulting in specific violations of rights based on gender status, the States must adopt all comprehensive measures necessary to ensure that women are protected against all forms of violence and exploitation. In its approach to their situation, the IACHR reiterates that a gender perspective means taking into account the special situation of risk of violence in all its manifestations, as well as the fact that the large majority of these incidents end in

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<sup>358</sup> In this regard, see: IACHR, Violence against Lesbian, Gay, Bisexual, Trans, and Intersex Persons in the Americas, para. 148; IACHR, Request for Advisory Opinion from the Inter-American Court of Human Rights, para. 30; IACHR, Information provided to the IACHR by trans women who were released in Brazil, El Salvador, Guatemala, and Mexico during a technical meeting on October 13, 2021; DISF, Subject. DISF Response to Consultation Questionnaire on Women Deprived of Liberty, in collaboration with the Rapporteurship on the Rights of Persons Deprived of Liberty, April 21, 2021, p. 102; MPD, Argentina, Ref.: Consultation Questionnaire on Women Deprived of Liberty, April 9, 2021, p. 16; WOLA, et al., Regional Response to the Consultation Questionnaire on Women Deprived of Liberty, 2021, April 23, 2021, p. 15; CSS, Response to the Consultation Questionnaire on Women Deprived of Liberty, Colombia, April 10, 2021, pp. 7-8; IDPC, Punitive Drug Laws: 10 Years Undermining the Bangkok Rules, p. 2; and APT, Towards the Effective Protection of LGBTI Persons Deprived of Liberty: A Monitoring Guide, 2019, p. 85.

<sup>359</sup> IACHR, Information provided to the IACHR by trans women who were released in Brazil, El Salvador, Guatemala, and Mexico during a technical meeting, October 13, 2021.

<sup>360</sup> In this regard, see OAS, “Convention of Belem do Para,” adopted on June 9, 1994.

<sup>361</sup> In this regard, I/A Court H.R. *Case of González et al. (“Cotton Field”) v. Mexico*, Preliminary Objection, Merits Reparations, and Costs. Judgment of November 16, 2009. Series C No. 205, paras. 158 and 282. This criterion was reiterated by the Court in its rulings on “Velásquez Paiz et al. v. Guatemala,” “Véliz Franco et al. v. Guatemala,” and “J. v. Peru.”

impunity.<sup>362</sup> Similarly, the States must incorporate an intersectional and intercultural perspective that takes into consideration the potential aggravation and frequency of human rights violations against women deprived of liberty due to factors such as ethnicity, age, or economic status. In addition, a gender perspective assumes giving consideration to the specific risks of persons with diverse or non-normative sexual orientations, identities, and gender expressions or whose bodies vary from the male and female standard.<sup>363</sup>

143. In view of this, States must adopt effective measures to prevent and eradicate all forms of violence and discrimination against incarcerated women in order to protect them against threats, acts of torture, mistreatment, sexual violence, and any methods the purpose of which is to negate their personality or diminish their physical or mental capacity. Similarly, an important component of violence prevention is the investigation, prosecution, and punishment of these actions. In particular, States have the duty to investigate *ex officio* and seriously, exhaustively, impartially, and swiftly all cases in which the commission of these acts is alleged. This investigation must be governed by the principles of independence, impartiality, competence, diligence, and meticulousity, must be conducted within a reasonable period, and be directed to determining the truth. In addition, States must guarantee that health personnel responsible for examining and providing care to women are female and ensure their independence so they can freely conduct the evaluations needed<sup>364</sup>.

144. In addition, the IACHR emphasizes the State's duty to make reparation for all acts of violence, torture, or mistreatment committed against women deprived of liberty. In particular, it must guarantee access to adequate compensation and the measures necessary for the comprehensive restoration of their rights.<sup>365</sup> In this scenario, in the case of pregnancy resulting from sexual violence, States must eliminate all obstacles hindering this population's access to the sexual and reproductive health services they need,<sup>366</sup> which includes the ability to access services to interrupt the pregnancy free of charge and under safe conditions. Finally, States have the duty to create suitable and effective judicial entities and remedies to guarantee that incarcerated women who are the victims of violence have

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<sup>362</sup> On impunity in cases of gender violence against incarcerated women, in the *Espinoza González v. Peru* case, the expert Rebeca Cook referred to the "culture of impunity" that perpetuates the idea that women who are considered suspects are worth less than men, which causes the response of States and judges in such cases to be inadequate. Consequently, gender violence in contexts of detention are "under-penalized," producing impunity. See: I/A Court H.R. *Espinoza González v. Peru*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 20, 2014. Series C No. 289, [hereinafter "*Espinoza González v. Peru*"], para. 281.

<sup>363</sup> IACHR, Report on Measures to Reduce Pretrial Detention in the Americas, paras. 198-199.

<sup>364</sup> In this regard, see: IACHR, Principles and Best Practices, Principles I and XXIII.3; IACHR, Report on Measures to Reduce Pretrial Detention in the Americas, para. 193; I/A Court H.R. *Espinoza González v. Peru*, para. 266; I/A Court H.R. *Case of Gutiérrez Soler v. Colombia*. Judgment of September 12, 2005. Series C No. 132, para. 54; and I/A Court H.R. *Case of J. v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 27, 2013. Series C No. 275, para. 347.

<sup>365</sup> In this regard, IACHR, Violence and Discrimination against Women and Girls - Annex 1 Standards and Recommendations regarding Violence and Discrimination against Women and Girls, para. 67.

<sup>366</sup> In this regard, IACHR, Violence and Discrimination against Women and Girls, para. 210.

full access to effective judicial protection. In particular, women's right to submit by themselves or through third parties complaints to competent, independent, and impartial authorities must be assured.<sup>367</sup> To that end, the IACHR recalls that the State's duty to provide judicial remedies is not limited to the formal availability of such remedies but extends to ensuring their suitability for redressing the violations reported<sup>368</sup>.

#### 4. Lack of health care with a gender approach

145. The IACHR has been informed that women deprived of liberty face great obstacles when seeking access to health services and specific types of care that are respectful of their gender and responsive to their needs.<sup>369</sup> These challenges relate primarily to: i) the limited number of health professionals specializing in female pathologies; ii) the lack of personal hygiene care; iii) deficiencies in mental health care; and iv) the lack of adequate treatments addressing problematic drug use. Added to this is inadequate health care for trans women.

##### A) Few healthcare professionals specializing in specific pathologies

146. The IACHR has information on obstacles that incarcerated women face when seeking care from healthcare professionals specializing in female disorders on a timely basis and whenever needed. In general, prisons lack professionals specializing in gynecology or mastology and do not have sexual and reproductive health services.<sup>370</sup> In such cases, specialized services are outsourced,<sup>371</sup> which does not happen frequently, is delayed, and impedes prompt care for urgent cases.<sup>372</sup> As an exception, some women's centers have a

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<sup>367</sup> In this regard, IACHR, Principles and Best Practices, Principle V.

<sup>368</sup> IACHR, Report on Access to Justice for Women Victims of Violence in the Americas, para. 5.

<sup>369</sup> Also see: IACHR, Report on Measures to Reduce Pretrial Detention in the Americas, para. 196.

<sup>370</sup> IACHR, Information provided by representatives from Mujeres Libres of Colombia and the Colectivo Artesana of Guatemala during the first meeting of experts on women deprived of liberty de la IACHR, April 27, 2021; IACHR, Press release 117/22-IACHR: Concerned about Health Condition of Women Who are Deprived of Liberty in Nicaragua. Washington DC, May 27, 2022; Citizens' Group for the Decriminalization of Abortion in El Salvador and CRR Program for Latin America and the Caribbean, Consultation Questionnaire – Women Deprived of Liberty, April 9, 2021, pp. 5-6; ASOPAZH and CEMH, Consultation Questionnaire on Women Deprived of Liberty, April 10, 2021, p. 11; and OVIC, Rapporteurship on the Rights of Persons Deprived of Liberty – Consultation Questionnaire on Women Deprived of Liberty, April 9, 2021, p. 11.

<sup>371</sup> In this regard, Cladem Bolivia, et al., Contributions from Civil Society to the Rapporteurship on the Rights of Persons Deprived of Liberty, April 2021, pp. 18-19.

<sup>372</sup> In this regard, IACHR, Information provided by representatives from Mujeres Libres de Colombia and the Colectivo Artesana of Guatemala during the first meeting of experts on women deprived of liberty de la IACHR, April 27, 2021; and MPD, Argentina, Ref.: Consultation Questionnaire on Women Deprived of Liberty, April 9, 2021, p. 19.

gynecology specialist, as in Guatemala, Honduras, and Bolivia.<sup>373</sup> In this scenario, civil society organizations and local human rights organizations have reported that incarcerated women lack access to medical check-ups with the required frequency, which even makes it difficult to follow up cases where there are indications of serious diseases.<sup>374</sup> Consequently, the data indicate that the challenges faced in seeking health care on a specialized and timely basis are the reason why women suffer from serious health conditions, including cancer<sup>375</sup>.

147. In this regard, the Commission recalls that according to its Principles and Best Practices, women deprived of liberty have the right to access specialized medical care according to their physical and biological characteristics and to receive an appropriate response to their needs in the area of reproductive health.<sup>376</sup> This right includes receiving health care with a gender perspective on a regular and timely basis, at least in the specialties of gynecology, mastology, and sexual and reproductive health. This also entails the States' duty to adopt measures to guarantee that health professionals specializing in female and gender-based disorders are available in the prisons for medical consultations on a sufficiently regular basis. In cases where health services cannot be provided in the facilities, the States must implement actions to ensure prompt and regular transfer of incarcerated women to health centers where they can receive appropriate care.
148. Specifically with respect to sexual and reproductive health, the I/A Court H.R. has indicated that the States have an enhanced duty to ensure that women deprived of liberty have access to care, without discrimination, and to adopt measures intended to eradicate practical obstacles to making this right fully effective. This includes: i) a medical exam upon their entering the prison center conducted by female staff in order to identify any type of violence including sexual violence a women may have suffered previously; ii) information and care needed in this area including access to preventive health services suited to their gender, access to and free provision of birth control methods, reproductive planning, and prevention and treatment of sexually transmitted diseases; iii) comprehensive and timely care in cases where women have been the victims of sexual violence, including access to

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<sup>373</sup> In this regard, IACHR, Information provided by the representative from the Colectivo Artesana of Guatemala during the first meeting of experts on women deprived of liberty of the IACHR, April 27, 2021; Government of Guatemala, Diplomatic Note No. DAJCC-Seprem 003-2021, April 14, 2021, p. 12; Government of Honduras, Diplomatic Note No. DNDDHH-LI-316-2021, May 19, 2021, pp. 1 and 4; and Cladem Bolivia, et al., Contributions from Civil Society to the Rapporteurship on the Rights of Persons Deprived of Liberty, April 2021, pp. 18-19.

<sup>374</sup> See: IACHR, Information provided to the IACHR by the National Mechanism to Prevent Torture of Honduras during the first meeting of experts on women deprived of liberty, April 27, 2021; CSS, Response to the Consultation Questionnaire on Women Deprived of Liberty, April 10, 2021, p. 8; OVD, Informe Mujeres privadas de la libertad en Venezuela: Las voces de las mujeres detrás de las rejas, 2021, p. 48; PPN, Report of the PPN to the Rapporteurship on the Rights of Persons Deprived of Liberty, April 2021, p. 20; and, MPD, Argentina, Consultation Questionnaire on Women Deprived of Liberty, April 9, 2021, p. 19.

<sup>375</sup> In this regard, IACHR, Information provided to the IACHR by the representative of the Colectivo Artesana of Guatemala during the first meeting of experts on women deprived of liberty, April 27, 2021; and CSS, Response to Consultation Questionnaire on Women Deprived of Liberty, April 10, 2021, p. 8.

<sup>376</sup> IACHR, Principles and Best Practices, Principle X.

prophylactic treatments, emergency birth control, and psychosocial care; and iv) as appropriate, information regarding pregnancy and the health status of the fetus, as well as recommended medical check-ups and their results. In addition, all exams and procedures should meet the requirements of privacy, confidentiality, and dignity.<sup>377</sup>.

## **B) Lack of personal hygiene care**

**149.** The IACHR has received information reporting the challenges that incarcerated women face in accessing hygiene items for their sexual and reproductive health care, particularly sanitary napkins in the required quantities.<sup>378</sup> In this regard, as established in its Principles and Best Practices, the Commission reiterates that the State must regularly provide imprisoned women essential items free-of-charge for sanitary needs proper to their gender. This right includes the provision of basic personal hygiene products such as sanitary napkins, tampons, menstrual cups, post-partum dressings, and other products; water for their personal hygiene with sufficient frequency, quality and quantity; and containers for hygienic disposal of used items<sup>379</sup>.

## **C) Deficiencies in mental health care**

**150.** The Commission notes that although many women deprived of liberty have mental health disorders, they generally lack adequate medical care with a gender perspective. In particular, studies indicate that women commonly suffer greater psychological distress over the course of their lives than men do, which could be linked to the causes and consequences of their incarceration.<sup>380</sup> As indicated by international organizations, this situation is exacerbated in detention contexts as mental health effects are more common among women than men due to the lack of attention paid to women's needs.<sup>381</sup> However, there is an absence of specific programs with a gender perspective that address the mental health care of incarcerated women. In this context, women with mental health disorders are

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<sup>377</sup> In this regard, I/A Court H.R. Differentiated approach to Persons Deprived of Liberty, para. 152.

<sup>378</sup> In this regard, IACHR, Information provided by the Corporación Humanas during the IACHR's first meeting of experts on women deprived of liberty, April 27, 2021; Citizen's Group for the Decriminalization of Abortion in El Salvador and CRR Program for Latin America and the Caribbean, Consultation Questionnaire – Women deprived of liberty, April 29, 2021, p. 1; and, OVD, Ref.: Responses to the Consultation Questionnaire on Women Deprived of Liberty, April 2021, p. 7.

<sup>379</sup> In this regard, IACHR, Principles and Best Practices, Principle. XII.2; y I/A Court H.R. Differentiated Approaches to Persons Deprived of Liberty, para. 163. In addition, the IACHR emphasizes the adoption of Law No. 2261 in Colombia, which ensure the provision of menstrual hygiene items for imprisoned women. See: Colombia, Law No. 2261, adopted July 19, 2022.

<sup>380</sup> In this regard, Special Rapporteur on Violence against Women, Report on "Pathways to, conditions, and consequences of incarceration for women", para. 48; and OVIC, Rapporteurship on the Rights of Persons Deprived of Liberty -Consultation questionnaire on women deprived of liberty, April 9, 2021, p. 12-3.

<sup>381</sup> UNODC, Handbook on Women and Imprisonment, p. 10; and Special Rapporteur on Violence against Women, Report "Pathways to, conditions and causes of incarceration for women," para. 48.



subject to isolation, forcibly medicated, or over-medicated.<sup>382</sup> In this regard, the IACHR recalls that the Bangkok Rules stipulate that incarcerated women who require this type of care must have access to broad individualized health care and rehabilitation programs, which must be sensitive to gender issues and be qualified to treat traumas<sup>383</sup>.

#### D) Lack of adequate treatments in response to problematic drug use

**151.** The IACHR notes that although drug use among incarcerated women is frequent,<sup>384</sup> prisons in the region generally lack access to treatment and harm reduction services that are respectful of the gender approach. In particular, despite some progress made in access to harm reduction services in Chile,<sup>385</sup> Colombia,<sup>386</sup> and Costa Rica,<sup>387</sup> the data indicate a widespread absence of treatment with a gender approach to address addictive drug use in incarcerated women in the region.<sup>388</sup> Similarly, the UNODC has determined that women in prison have less access than men to services to address their drug use, and if they do

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<sup>382</sup> In this regard, IACHR, Information provided to the IACHR representatives of the Colectivo Artesana of Guatemala, the National Mechanism to Prevent Torture of Honduras and Equis: Justicia para las Mujeres de Mexico, during the first meeting of experts on women deprived of liberty, April 27, 2021; and UNODC, *Handbook on Women and Imprisonment*, p. 10.

<sup>383</sup> UN, *Bangkok Rules*, Rule 12.

<sup>384</sup> For example, in Argentina, 33% of incarcerated women in federal centers present problematic use of illicit drugs; in Bolivia, close to 25%; in Canada, 80% has a history of drug uses; and in Paraguay, close to 50% present substance use disorders. In this regard, PPN, Argentina, Report of the PPN to the Rapporteurship on the Rights of Persons Deprived of Liberty, IACHR, April 2021, p. 28; Cladem Bolivia, et al., Contributions of Civil Society on the Rights of Persons Deprived of Liberty, April 2021, pp. 2 and 19; Canadian HIV/AIDS Legal Network, Women deprived of liberty due to drug-related offences in Canada, October 1, 2018, p. 1; and Government of Paraguay, Diplomatic Note No. 495-21/MMPOEA, April 27, 2021, p. 1.

<sup>385</sup> In Chile, incarcerated women who meet certain requirements have access to specialized treatment in the Female Prison Center of Santiago. In this regard, OVIC, Rapporteurship on the Rights of Persons Deprived of Liberty – Consultation questionnaire on women deprived of liberty, April 9, 2021, p. 13.

<sup>386</sup> In Colombia, the High and Medium Security Prison and Penitentiary for Women in Bogota has a “Therapeutic Community,” the objective of which is promote change in lifestyles, development of employment capabilities, and social values. In this regard, Government of Colombia, Diplomatic Note No. MPC/OEA No. 530-2021, April 12, 2021, p. 25.

<sup>387</sup> In Costa Rica, through the Institute on Alcoholism and Drug Dependence and the National Institute for Women, there is an approach to problematic drug use among women in criminal proceedings, who are included in group care processes. In addition, progress has been made in staff training using a harm reduction approach. See, Government of Costa Rica, Diplomatic Note No. CROEA-AA-576-21, April 9, 2021, pp. 16, 28-29.

<sup>388</sup> IACHR, Information provided to the IACHR by the representative of the Colectivo Artesana of Guatemala and a research professor at the Autonomous University of Chiapas during the first meeting of experts on women deprived of liberty, April 27, 2021. In addition, although the Commission received information on Argentina, Colombia, and Guatemala reporting the existence of drug use treatments, the IACHR notes that these are directed to the general prison population and do not consider the specific needs of women. On this subject: Government of Argentina, Diplomatic Note No. IF-2021-34330903-APN-DCIMD#MRE, IACHR, April 20, 2021, p. 8; Prison System Prosecutor for the Nation of, Argentina, PPN Report to the Rapporteurship on the Rights of Persons Deprived of Liberty, IACHR, April 2021, pp. 29-31; Government of Colombia, Diplomatic Note No. MPC/OEA No. 530-2021, April 12, 2021, p. 12; and Government of Guatemala, Diplomatic Note No. DAJCC-Seprem 003-2021, April 14, 2021, pp. 12-13.

have access to treatment, few prisons offer specialized services for women.<sup>389</sup> In addition, according to the IDPC, the available treatments are frequently designed, implemented, and evaluated without the participation of women, and are primarily based on abstinence,<sup>390</sup> despite the existence of treatments focused on harm reduction that consider other alternatives for care.

152. On this subject, based on the provisions of the Bangkok Rules, the IACHR emphasizes that the States must guarantee specialized treatment programs for incarcerated women who are drug users.<sup>391</sup> These programs should be voluntary and respectful of the gender approach and be directed to harm reduction and rehabilitation. In this respect, based on the recommendations adopted by the States in the context of the UN General Assembly Special Session on the World Drug Problem (UNGASS) held in 2016,<sup>392</sup> the Commission calls on the States to include measures for users in national treatment, care, recovery, and rehabilitation actions and programs that are designed to reduce to a minimum the adverse consequences of the improper use of drugs and include, *inter alia*, medication-assisted therapy programs, programs related to injection equipment, and antiretroviral therapy, which should consider a gender perspective throughout treatment.

#### E) Inadequate health care for trans women

153. The Commission notes that due to the lack of a gender and diversity perspective in the region's prisons, the medical care provided to trans women generally still fails to respond to their specific needs. In particular, it identifies the following challenges: i) lack of health professionals with specific training, such as in endocrinology; ii) authorization required to access hormone treatment and changes; iii) limited resources for providing specialized services such as hormone medications; iv) failure to implement protocols facilitating access to prison for medications for such treatments, so that they are denied entry; and v) lack of periodic medical check-ups. The result is that trans women are prevented from accessing

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<sup>389</sup> In this regard, UNODC, Handbook on Women and Imprisonment, p. 13; and, UNODC, "Women and Drugs. Drug use, drug supply and their consequences," p. 36.

<sup>390</sup> IDPC, Punitive Drug Laws: 10 Years Undermining the Bangkok Rules, p. 14.

<sup>391</sup> UN, Bangkok Rules, Rule 15.

<sup>392</sup> In this regard, see: UNDOC, Final document of the UN General Assembly Special Session on the World Drug Problem (UNGASS) held in 2016, Thirtieth Special Session of the General Assembly held in New York, April 19-21, 2016, July 2016, p. 12.

hormone treatment for transition under safe conditions, continuing treatments already started, and receiving adequate follow-up care after gender affirmation surgeries<sup>393</sup>.

154. In view of this, the IACHR reiterates that enjoyment of the highest level of health imposes the obligation to offer this group access to care services so that they can carry out or continue transition processes that are accessible, depathologized, non-discriminatory, and free of violence. In addition, the States must remove unnecessary administrative obstacles or pathologizing requirements that make it difficult for trans women to undertake gender transition or reaffirmation procedures.<sup>394</sup> Along the same lines, in its Advisory Opinion No. OC-29/22, the Inter-American Court stated that in compliance with the international duty to recognize the gender identity of all persons, the States have the duty to guarantee those medical treatments that are necessary to allow trans persons to adapt their bodies, including their genitalia, to their self-perceived gender identity, to the extent that such services are available to the community<sup>395</sup>.

## C. Groups in special at-risk situations

### 1. Pregnant, postpartum, and nursing women

155. The Commission has noted that in addition to the effects faced by women deprived of liberty, there are also challenges faced by some groups of women in particularly vulnerable situations, who are more susceptible to being subject to indirect discrimination in view of the greater risks and differentiated risks they face during incarceration. These groups include pregnant, post-partum, and nursing women who are incarcerated. In general terms, the treatment that these groups received is practically the same as that given to other incarcerated women. Consequently, added to the deficiencies and difficulties that women face in prison are those specific to their condition. In this regard, the lack of a differentiated approach that addresses their specific conditions can put them in a situation that threatens their lives and integrity and prevents them from enjoying their rights. In particular, the IACHR notes that the principal effects that pregnant, post-partum, and nursing women in prison face are related to: i) the scarcity of appropriate programs and spaces; ii) deficient pre- and post-natal health care; iii) inadequate nutrition; and iv) the use of coercive

<sup>393</sup> In this regard, see: IACHR, Request for Advisory Opinion from the Inter-American Court of Human Rights, para. 34; IACHR, Information provided to the IACHR by trans women who were released from prison in Brazil, El Salvador, Guatemala, and Mexico, during the meeting held on October 13, 2021; WOLA, et al., Regional response to the Consultation questionnaire on women deprived of liberty, 2021, April 23, 2021, p. 15; Association for the Prevention of Torture, Towards the Effective Protection of LGBTI Persons Deprived of Liberty: Monitoring Guide, 2019, p. 102; and CSS, Response to the consultation questionnaire on women deprived of liberty, Colombia, April 10, 2021, p. 9. In addition, see: LGBT Litigants Network of the Americas and the LGBTTTI and sex workers coalition before the OAS, Questionnaire – Women Deprived of Liberty – Contribution from the LGBT Litigants Network of the Americas and the LGBTTTI and sex workers coalition before the OAS., Colombia, April 9, 2021, pp. 38-40.

<sup>394</sup> In this regard, IACHR, Observations on Advisory Opinion of the Inter-American Court of Human Rights, paras. 67 and 73. Also, see: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (Yogyakarta Principles), March 2007, Principle 17.G.

<sup>395</sup> I/A Court H.R. Differentiated Approaches to Persons Deprived of Liberty, para. 268.

methods. In addition, pregnant women face the lack of access to appropriate clothing and challenges relating to labor in childbirth<sup>396</sup>.

### A) Limited number of appropriate programs and spaces

156. The Commission notes that despite measures adopted to treat these groups of women, they continue to face various effects that may endanger their lives, the well-being of the fetus, and their babies due to the scarcity of appropriate programs and spaces that consider their special needs. In particular, the IACHR takes note of the measures adopted by some States in the region related to their treatment, comprehensive care, and health care. These notably include: i) laws on the subject of treatment for pregnant women in prison and during the postpartum period in the state of Massachusetts in the United States<sup>397</sup> and in Brazil;<sup>398</sup> ii) provisions guaranteeing health care for pregnant women and postpartum women and for babies in Brazil;<sup>399</sup> iii) regulations establishing that childbirth must occur in maternity services in Argentina;<sup>400</sup> iv) prison protocols on care for pregnant women in Argentina;<sup>401</sup> v) administrative agreements between various organization for comprehensive care of pregnant and nursing women in Colombia;<sup>402</sup> vi) resolutions governing the transfer and custody of pregnant women in Chile;<sup>403</sup> vii) programs providing bonuses to pregnant women that include a nursing subsidy in Bolivia;<sup>404</sup> and viii)

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<sup>396</sup> In this regard, IACHR, Request for Advisory Opinion, paras. 17, 22, 26. A;sp, MPD, Argentina, Ref.: Consultation Questionnaire on Women Deprived of Liberty, April 9, 2021, p. 22; and PPN, Argentina, PPN Report to the Rapporteurship on the Rights of Persons Deprived of Liberty, IACHR, April 2021, pp. 23-24.

<sup>397</sup> United States - Massachusetts, Massachusetts General Laws chapter 127 § 118: Pregnant and postpartum inmates; standards of care; use of restraints, adopted May 15, 2014.

<sup>398</sup> Brazil, Law No. 14.326, adopted April 12, 2022.

<sup>399</sup> Brazil, Law No. 14.326, adopted April 12, 2022.

<sup>400</sup> Argentina, Law No. 24.660 on Enforcement of Prison Terms, adopted June 19, 1996, Article 192.

<sup>401</sup> In Argentina, in 2015, in the context of the Federal Prison System the “Protocol on Diagnostic Obstetric Care of Pregnancy” and the “Protocol on Obstetric Care – Care for Pregnant Women” were adopted. In this regard, Government of Argentina, Diplomatic Note No. IF-2021-34330903-APN-DCIMD#MRE, IACHR, April 20, 2021, p. 6.

<sup>402</sup> In particular, inter-agency agreement No. 001/21 signed between the Colombian Family Welfare Institute (ICBF) and the National Penitentiary and Prison Institute (INPEC) establishes the following duties: i) provide specific nutrition; ii) provide additional nutrition in facilities where the child development program operates; iii) provide training to strengthen the ties between mothers and children, special care, and promotion of breastfeeding; and iv) provide education on sexual and reproductive health. In this regard, Government of Colombia, Diplomatic Note No. MPC/OEA No. 530-2021, April 12, 2021, p. 13.

<sup>403</sup> In particular, Exempt Resolution No. 11.354 on the subject of transfers and custody provides that: i) pregnant women must be transported in vehicles different from those used when women are released from prison; ii) no coercive methods will be applied upon certification of the pregnancy until medical discharge; and iii) direct custody will be exclusively carried out by female staff. In this regard, see: Chile, Exempt Resolution No. 11.354, approved December 30, 2016.

<sup>404</sup> Government of Bolivia, Diplomatic Note No. MPB-OEA-NV116-21, June 1, 2021, p. 9.

designation of specific sections for pregnant women and postpartum women in certain detention centers in Costa Rica,<sup>405</sup> Honduras,<sup>406</sup> and Nicaragua<sup>407</sup>.

157. However, based on the information available, the IACHR notes in general that the region's prison systems lack programs focused on comprehensive care for the needs of these groups of women, as only certain States take into consideration some of their specific needs, particularly those related to health care. Similarly, there is a widespread absence of adequate spaces intended exclusively for the placement of incarcerated women who are going through pregnancy or the postpartum, and the lack of suitable spaces for breastfeeding<sup>408</sup>.
158. In view of this, the Commission recalls that in order to guarantee that pregnant women, postpartum women, and breastfeeding women do not face discrimination and violence in the enjoyment of their rights, personal integrity, information, and family, the States must adopt prison policies and implement actions that are responsive to their special conditions and respond with flexibility to their needs.<sup>409</sup> This obligation includes: i) establishing appropriate programs that consider their specific physical, nutritional, health, sanitary, psychological, social, parental, and legal needs;<sup>410</sup> and ii) allocating appropriate resources and special facilities for the treatment of this population before and after childbirth,<sup>411</sup> including adequate, clean, comfortable, and private areas set aside for breastfeeding with adjoining provision of safe drinking water<sup>412</sup>.
159. Regarding facilities, in its Advisory Opinion No. OC-29/22, the Inter-American Court stated that the States need to regulate and implement differentiated housing areas adapted to the needs of pregnant women, post-partum women, and nursing mothers, as well as the needs

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<sup>405</sup> In Costa Rica, pregnant women starting in the sixth month (or early when medically recommended) and women who live together with their children in prison are housed in the mother-child module located on the "CAI Vilma Curling" center. In this regard, Government of Costa Rica, Diplomatic Note No. CROEA-AA-576-21, April 9, 2021, p. 14.

<sup>406</sup> In Honduras, the National Women's Penitentiary for Social Adaptation (PNFAS) has specific areas that women can access once their pregnancy is confirmed. These include nurseries, early stimulation rooms, and recreation rooms. In this regard, Government of Honduras, Diplomatic Note No. DNDDHH-LI-316-2021, May 19, 2021, pp. 4-5.

<sup>407</sup> In Nicaragua, the Bluefields Penitentiary Facility has an special maternity areas set aside for pregnant, post-partum, and nursing women. In this regard, Government of Nicaragua, Diplomatic Note No. MPN-OEALAR21-00097, April 7, 2021, p. 14.

<sup>408</sup> In this regard, see IACHR, Information provided to the IACHR by women who were released from prison in Brazil, Chile, Colombia, El Salvador, and Mexico during a technical meeting held on October 14, 2021; and OVD, Ref.: Responses to the Consultation Questionnaire on Women Deprived of Liberty – State: Venezuela, April 2021, p. 8.

<sup>409</sup> In this regard, IACHR, Observations on Advisory Opinion to the Inter-American Court of Human Rights, para. 18.

<sup>410</sup> In this regard, see: IACHR, Observations on the Advisory Opinion to the Inter-American Court on Human Rights, para. 26; UN, Bangkok Rules, Rule 42.3; and UNODC, Handbook on Women and Imprisonment, p. 85.

<sup>411</sup> In this regard, IACHR, Principles and Best Practices, Principles X and XII; and UN, Mandela Rules, Rules 23 (1) and 28.

<sup>412</sup> In this regard, see UNODC, Handbook on Women and Imprisonment, p. 84; and Unicef Mexico, Publicaciones de lactancia materna - ¿Por qué es importante proteger la lactancia materna en los albergues?, 2021.

of women who are the primary care-givers for their children living in prison, which also allow them to access the activities offered by the prison facility in terms of compensated work with differentiated tasks and schedules, educational training, and cultural, sports, and recreational activities<sup>413</sup>.

## B) Deficient health care

160. There is general consensus among various sources indicating that health care is not specialized both during pregnancy and after childbirth or that it is inadequate and limited. In effect, care for pregnant women is characterized by: i) few prenatal medical check-ups; ii) lack of specialized treatment to address complications associated with pregnancy; iii) failure to standardize care in the various prisons; and iv) challenges in guaranteeing women's right to be informed regarding their status. Added to this, in the case of postpartum women, mental health care is negligent and does not take into consideration needs related to separating mothers from their newborns, which sometimes happens between 24 and 72 hours after childbirth<sup>414</sup>.
161. In this regard, the IACHR has expressed its concern that upon being detained pregnant women often have not had prior contact with prenatal care and thus need specialized care to continue their pregnancies safely. In addition, pregnancies are very likely to be high-risk not only in view of the conditions specific to incarceration but also taking into account the situation of exclusion that women usually encounter when subject to proceedings before the criminal justice system. In this regard, the IACHR has found that the lack of timely and appropriate specialized care to prevent and deal with complications in pregnancy may have serious consequences that endanger the life of the mother and fetal well-being, such as the risk of spontaneous abortion, fetal death, and ectopic pregnancies<sup>415</sup>.
162. In view of the above, the Commission emphasizes that women deprived of liberty who are pregnant, in the postpartum period, and breastfeeding have the right to receive adequate pre- and post-natal care. Specifically, the State's obligation should focus on providing specialized medical care that responds to needs based on a woman's condition, care that should be provided by qualified medical personnel at the detention site and be comparable

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<sup>413</sup> VA Court H.R. Differentiated Approaches to Persons Deprived of Liberty, para. 139.

<sup>414</sup> IACHR, Request for Advisory Opinion, paras. 22-23. Also, CSS, Response to Consultation Questionnaire on Women Deprived of Liberty, Colombia, April 10, 2021, pp. 9-10; MPD, Argentina, Ref.: Consultation Questionnaire on Women Deprived of Liberty, April 9, 2021, p. 22; PPN, Argentina, PPN Report to the Rapporteurship on the Rights of Persons Deprived of Liberty IACHR, April 2021, pp. 23-24; OVIC, Rapporteurship on the Rights of Persons Deprived of Liberty – Consultation Questionnaire on Women Deprived of Liberty, April 9, 2021, p. 12; Citizens' group for the decriminalization of abortion in El Salvador and CRR Program for Latin America and the Caribbean, Consultation Questionnaire – Women Deprived of Liberty, April 9, 2021, p. 5. On the separation of mothers from their newborn babies, see the subsection "Separation from their children and loss of family ties" in Chap. II.

<sup>415</sup> IACHR, Request for Advisory Opinion, para. 24. Also see: Vera Institute of Justice, Overlooked: Women and Jails in an Era of Reform, 2016.

According to Planned Parenthood, ectopic pregnancy is what happens when the pregnancy progresses outside the uterus, generally in the Fallopian tubes. On this subject, see Planned Parenthood, Ectopic Pregnancy, 2019.



to the care she would receive in the community. If this is not possible, frequent access to community health centers should be guaranteed. Such care should also be provided throughout the pregnancy, from the moment it becomes known.

163. With respect to women in the postpartum period, States should also guarantee that evaluations are conducted to identify depression and, if found, provide the required care.<sup>416</sup> In addition, pregnant women in the postpartum period and when breastfeeding have the right to receive information in writing and on an accessible basis regarding their special condition and their own health status, that of the fetus, and their children. This should include counseling on health, diet, pre- and postpartum care, medical evaluations, labor, and access to medical care after their release,<sup>417</sup> which, according to the Bangkok Rules, should be provided within the context of a program developed and supervised by medical staff<sup>418</sup>.

### C) Inadequate nutrition

164. According to the information available to the IACHR, the provision of food is often inadequate and does not meet the nutritional requirements of pregnant, nursing, and postpartum women, in addition to the limited amount of food provided. This situation is of concern to the IACHR given that inadequate nutrition can damage women's health, fetal well-being, and the health of nursing babies and may also affect women's ability to breastfeed.<sup>419</sup> On this subject, the IACHR has emphasized that the State's obligations focus on the development and supervision of diet, nutritional counseling, and food storage, as well as the form, quantity, and type of food<sup>420</sup>.
165. In this regard, the Bangkok Rules state that the diet of pregnant and lactating women should be developed and supervised in the context of a program led by health personnel and that women should receive advice on their diet provided by a duly qualified prison doctor. They also indicate that food should be provided free of charge, in sufficient quantity,

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<sup>416</sup> In this regard, IACHR, Observations on the Advisory Opinion to the Inter-American Court of Human Rights, para. 25. Also on this subject, the IACHR emphasizes Massachusetts state legislation that contains a provision to this effect. See: Massachusetts General Laws chapter 127 § 118: Pregnant and postpartum inmates; standards of care; use of restraints. Effective: May 15, 2014.

<sup>417</sup> In this regard, IACHR, Observation on the Advisory Opinion to the Inter-American Court of Human Rights, para. 32. On this subject, it emphasizes Massachusetts regulations stipulating that prior to the release of pregnant women, the center's medical staff should provide counseling to ensure the continuity of prenatal care. See: Massachusetts, Massachusetts General Laws chapter 127 § 118: Pregnant and postpartum inmates; standards of care; use of restraints, adopted May 15, 2014. Also see: I/A Court H.R. Differentiated Approaches to Persons Deprived of Liberty, para. 152.

<sup>418</sup> UN, Bangkok Rules, Rule 48.

<sup>419</sup> In this regard, IACHR, Request for Advisory Opinion, paras. 22 y 27. Also see: IACHR, Information provided to the IACHR by the Fundación Construir of Bolivia during the first meeting of experts on women deprived of liberty, April 27, 2021; and Special Rapporteur on Violence, Report "Pathways to, conditions, and consequences of incarceration for women," para. 52.

<sup>420</sup> IACHR, Request for Advisory Opinion from the Inter-American Court of Human Rights, para. 21.

on a timely basis, and in a healthy area where women are able to do physical exercise.<sup>421</sup> Regarding the type of food and its storage, the UNODC indicates that foods must include milk, high-protein products, and sufficient amounts of fruits and vegetables and arrangements should be made in the prisons for storing such products appropriately<sup>422</sup>.

#### D) Use of coercive methods

166. The Commission notes with concern that coercive measures are usually used against pregnant and postpartum women during transfers for outside visits as well as at the time of birth and immediately thereafter, by strapping them to the hospital bed, despite the existence of best practices in this area that consist of: i) a prohibition on coercive measures, ii) ban on their use in practice, and iii) use of such measures on a temporary and exceptional basis if a woman jeopardizes her own physical safety or that of others.<sup>423</sup> In this regard, the IACHR has determined that the practice of handcuffing a pregnant woman entails the risk of injuries both for her and for the fetus, in the form of falls, dangerous blood pressure levels, and obstructed circulation and movement of the fetus, in addition to the fact that shackles may interfere with medical evaluations and care<sup>424</sup>.
167. Along these lines, the United Nations Minimum Rules for the Treatment of Prisoners (hereinafter the “Mandela Rules”) and the Bangkok Rules establish that States should refrain from using physically coercive measures when women are about to give birth, during childbirth, and in the period immediately thereafter.<sup>425</sup> Similarly, the I/A Court H.R. has determined that it is essential that States, by adopting relevant legislative or other measures, eradicate the use of measures to restrain or immobilize women deprived of liberty who are about to give birth, in labor, or who have recently given birth<sup>426</sup>.

#### E) Additional effects faced by pregnant women

168. The Commission notes that in addition to the effects indicated, pregnant women deprived of liberty face: i) a lack of access to appropriate clothing, and ii) challenges related to labor. In particular, the information gathered indicates that the States do not provide appropriate

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<sup>421</sup> UN, Bangkok Rules, Rule 48.

<sup>422</sup> In this regard, UNODC, Handbook on Women and Imprisonment, p. 85.

<sup>423</sup> In this regard, see: IACHR, Request for Advisory Opinion, paras. 25 and 27. Also, Special Rapporteur on Violence, Report on “Pathways to, conditions, and consequences of incarceration for women,” para. 52; UNODC, Handbook on Women and Imprisonment, p. 19; and Dejusticia, Women, Drug Policies, and Incarceration: a Guide for Reforming Policies in Colombia, 2016. Cited in CICR, Pontificia Universidad Javeriana and CIDE, Mujeres y prisión en Colombia. Desafíos para la política criminal desde un enfoque de género, 2018, p. 91.

<sup>424</sup> IACHR, Request for Advisory Opinion, para. 25. See also: The Prison Birth Project and Prisoners’ Legal Services of Massachusetts, Breaking Promises: Violations Of the Massachusetts Pregnancy Standards & Anti-Shackling Law, 2016, p. 4.

<sup>425</sup> UN, Mandela Rules, Rule 48.2, and UN, Bangkok Rules, Rule 24.

<sup>426</sup> I/A Court H.R. Differentiated Approaches to Persons Deprived of Liberty, para. 147.

clothing to pregnant women, but rather that this depends on help from their families or those close to them. On this subject, the IACHR has determined that the lack of appropriate clothing for imprisoned pregnant women may constitute a possible violation of their rights as contained in Articles 4 and 5 of the ACHR, considering that the lack of clothing would put women at greater risk of falls and stumbles that could injure them or the fetus. In view of this, the States must provide pregnant women with clothing suited to their pregnant condition in order to minimize accidents and the risks of tripping and falling<sup>427</sup>.

169. In addition, the Commission has determined that incarcerated women who are beginning labor face various difficulties that represent a risk to their life and safety as well as those of their children. These notably include: i) prison staff's failure to recognize when labor begins due to their lack of training; ii) giving birth in prison – even in the cells themselves – under non-hygienic conditions and without specialized assistance; iii) the use of shackles, when women are chained to the hospital bed while being transferred to the hospital to give birth and while giving birth, despite the serious complications that this may cause by limiting the women's movement, such as hemorrhages or a reduction in the fetal heart rate; iv) problems with their ability to be accompanied by their confidants before, during, and after childbirth; and v) lack of protocols establishing authorities' actions when women begin labor.<sup>428</sup> In this regard, the IACHR recalls that its Principles and Best Practices, as well as other international instruments, indicate that childbirth should not occur where there is deprivation of liberty, but rather in hospitals or civilian facilities designed for the purpose. In addition, the States should not record on the birth certificate that the birth occurred in a detention center<sup>429</sup>.

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<sup>427</sup> In this regard, IACHR, Request for Advisory Opinion, paras. 22 and 26; and IACHR, Observations on Advisory Opinion to the Inter-American Court of Human Rights, para. 27. Similarly, see: I/A Court H.R. Differentiated Approaches to Persons Deprived of Liberty, para. 164. See also: The Prison Birth Project and Prisoners' Legal Services of Massachusetts, Breaking Promises: Violations Of The Massachusetts Pregnancy Standards & Anti-Shackling Law, 2016, p. 2.

<sup>428</sup> IACHR, Request for Advisory Opinion, para. 26. In this regard, see: Special Rapporteur on Violence against Women, Report on "Pathways to, conditions, and consequences of incarceration for women," para. 57; UNODC, Handbook on Women and Imprisonment, 2014, pp. 19-20; IACHR, Information provided to the IACHR by the representative from the National Mechanism for the Prevention of Torture of Honduras, April 27, 2021; MPD, Argentina, Ref.: Consultation Questionnaire on Women Deprived of Liberty, April 9, 2021, p. 22; PPN Prosecutor, Argentina, PPN Report to the Rapporteurship on the Rights of Persons Deprived of Liberty, IACHR, April 2021, pp. 23-24; and OVIC, Rapporteurship on the Rights of Persons Deprived of Liberty – Consultation Questionnaire on Women Deprived of Liberty, April 9, 2021, p. 12. In this regard, the IACHR emphasizes the case of Tammy Jackson – a disabled woman in isolation – held in the North Broward Bureau prison in Florida, United States. According to the country Public Defender's Office, on April 10, 2019, Mrs. Jackson was in the isolation cell when she asked for medical assistance due to the contractions she was experiencing. Approximately seven hours after her call for help and without the required medical assistance, she gave birth to a daughter. See: IACHR, Annual Report, Chapter IV. A "Development of human rights in the region," 2019, para. 285.

<sup>429</sup> IACHR, Principles and Best Practices, Principle X; y UN, Mandela Rules, Rule 28. See also: I/A Court H.R. Differentiated Approaches to Persons Deprived of Liberty, para. 156.

## 2. Children who live in detention centers with their mothers

170. The Commission notes that protecting children's right to family in the context of the deprivation of liberty of their caregivers continues to be an important challenge for the States in the region. Despite policies that allow children to stay with their mothers and best practices implemented by the States to guarantee their rights, the deplorable conditions of detention that characterize the prisons in the region subject this group to an environment that is ill-suited to their development.<sup>430</sup> In particular, the IACHR appreciates the practices adopted by some States, notably: i) establishment of specific areas or nurseries as in Guatemala and Honduras, among other countries;<sup>431</sup> ii) implementation of programs to promote children's care, nurture, and development;<sup>432</sup> iii) community releases;<sup>433</sup> iv) assignment of individual rooms exclusively to house mothers and children;<sup>434</sup> v) transfers of children to educational centers in the community;<sup>435</sup> vi) educational programs in prison, as in Guatemala;<sup>436</sup> vii) social security assistance benefits for women who live in prison with their children;<sup>437</sup> and viii) actions to prepare these children for leaving the facility<sup>438</sup>.
171. However, the Commission notes that authorities fail to consider the children's at-risk situation, related to the fact that they represent a very small group in the prisons in the

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<sup>430</sup> In this regard, IACHR, Request for Advisory Opinion, paras. 47- 48.

<sup>431</sup> See, Government of Guatemala, Diplomatic Note No. NV-OEA-MI-No. 161-2022, August 4, 2022, p. 5; Government of Honduras, Diplomatic Note No. DNDDHH-LI-316-2021, May 19, 2021, pp. 5 and 9; Government of Argentina, Diplomatic Note No. IF-2021-34330903-APN-DCIMD#MRE, IACHR, April 20, 2021, p. 11; OVIC, Rapporteurship on the Rights of Persons Deprived of Liberty – Consultation Questionnaire on Women Deprived of Liberty, April 9, 2021, p. 16; Government of Costa Rica, Diplomatic Note No. CROEA-AA-576-21, April 9, 2021, p. 14; and, Government of Mexico, Diplomatic Note No. OEA1121, April 12, 2021, p. 15.

<sup>432</sup> On this subject, Government of Argentina, Diplomatic Note No. IF-2021-34330903-APN-DCIMD#MRE, IACHR, April 20, 2021, pp. 7-9; OVIC, Rapporteurship on the Rights of Persons Deprived of Liberty – Consultation Questionnaire on Women Deprived of Liberty -Consultation Questionnaire on Women Deprived of Liberty, April 9, 2021, p. 17; Government of Colombia, Diplomatic Note No. MPC/OEA No. 530-2021, April 12, 2021; Government of Uruguay, Diplomatic Note No. 041/2021 - Annex 2, April 20, 2021, p. 13.

<sup>433</sup> See, PPN, Argentina, PPN Report to the Rapporteurship on the Rights of Persons Deprived of Liberty, IACHR, April 2021, p. 39; and Government of Costa Rica, Diplomatic Note No. CROEA-AA-576-21, April 9, 2021, p. 20.

<sup>434</sup>In this regard, Government of Costa Rica, Diplomatic Note No. CROEA-AA-576-21, April 9, 2021, p. 14.

<sup>435</sup> In this regard, Government of Uruguay, Diplomatic Note No. 041/2021 - Annex 2, p. 13.

<sup>436</sup> In this regard, Government of Guatemala, Diplomatic Note No. NV-OEA-MI-No. 161-2022, August 4, 2022, p. 4.

<sup>437</sup> In this regard, see Supreme Court of Justice of the Nation,, Argentina. Inmates of Unit No. 31 SPF et al. on habeas corpus. FLP 58330/2014/1/RH1. Judgment of February 11, 2020.

<sup>438</sup> In this regard, PPN, Argentina, PPP Report to the Rapporteurship on the Rights of Persons Deprived of Liberty,, April 2021, p. 37.

region – close to 4% of persons living in women’s prisons or sections.<sup>439</sup> This is reflected in the lack of prison policies respectful of a differentiated approach based on their age and has multiple effects on their rights. In particular, those effects related to: i) submission to procedures on entering and staying that are not in their interest; ii) obstacles to living with their parent outside of prison; iii) barriers for community integration and establishing links with the outside; iv) risks to their health; v) inadequate nutrition; vi) challenges in accessing education; and vii) obstacles to their overall development<sup>440</sup>.

172. In this regard, the Commission recalls that the States are required to adopt all measures necessary to allow mothers deprived of liberty to care for and raise their children in detention contexts. This includes implementing actions that: i) promote attachment and parental care-giving skills; ii) designate areas within prisons so they can spend time together, including areas for cooking, education, recreation, and play; and iii) facilitate children’s integration in the community in the company of their mothers, for example by allowing mothers to accompany them to school or kindergarten, plazas, and medical centers in the community<sup>441</sup>.

#### A) Submission to procedures on entering and staying

173. The IACHR has observed that the procedures whereby children enter and stay in detention centers to live together with their mothers are not homogenous in terms of the standards that should be applied, and do not take into consideration the best interests of the child.

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<sup>439</sup> The IACHR arrives at this percentage based on official data indicating that in Argentina, with a female prison population of 684 women in federal facilities, five children are housed. In Brazil, there are 36,999 women and 1,850 children. In Bolivia, 1,100 women and 85 children. In Colombia, 6,920 women and 51 children. In Costa Rica, 536 women and 12 children. In El Salvador, 2,852 women and 88 children. In Guatemala, 2,814 women and 125 children. In Honduras, 1,177 women and 84 children. In Mexico, 12,253 women and 362 children. In Nicaragua, 503 women in the Prison System and three girls. In Paraguay, 737 women and 19 children. In Uruguay, 873 women and 48 children. In this regard, Government of Argentina, Diplomatic Note No. IF-2021-34330903-APN-DCIMD#MRE, IACHR, April 20, 2021, pp. 1-10; Government of Brazil, Diplomatic Note No. 120, April 9, 2021, pp. 3-9; Government of Bolivia, Diplomatic Note No. MPB-OEA-NV116-21, June 1, 2021, pp. 1 and 9; Government of Colombia, Diplomatic Note No. MPC/OEA No. 530-2021, April 12, 2021, pp. 1 and 14; Government of Costa Rica, Diplomatic Note No. CROEA-AA-576-21, April 9, 2021, pp. 1-18; Government of El Salvador, Diplomatic Note No. MPOEA-OEA-106/2021, September 21, 2021, pp. 1 and 7; Government of Guatemala, Diplomatic Note No. DAJCC-Seprem 003-2021, April 14, 2021, pp. 1 and 14; Government of Honduras, Diplomatic Note No. DNDDHH-LI-316-2021, May 19, 2021, pp. 1 and 8; Government of Mexico, Diplomatic Note No. OEA1121, April 12, 2021, pp. 1 and 14; Government of Nicaragua, Diplomatic Note No. MPN-OEALAR21-00097, April 7, 2021, pp. 4 and 22; Government of Paraguay, Diplomatic Note No. 495-21/MMP/OEA, pp. 2 and 10; Government of Uruguay, Diplomatic Note No. 041/2021 - Annex 2, April 20, 2021, pp. 2 and 11.

<sup>440</sup> In this regard, IACHR, [Request for Advisory Opinion](#), para. 48.

<sup>441</sup> In this regard, see: IACHR, [Observations on Advisory Opinion to the Inter-American Court of Human Rights](#), para. 158.

Specifically, these policies are characterized by: i) focusing on age<sup>442</sup> and not taking into account other subjective and specific aspects relating to each child; ii) not making the best interest of the child at the center in the decision-making process; and iii) not considering children's participation in the decision-making process, violating their right to be heard and have their opinions properly taken into account<sup>443</sup>.

174. In this regard, the decision on whether children stay together with their mothers in prison should take into account the living conditions and the quality of the care they can receive inside the prison facility and possible alternatives to prison, and should be made individually with unlimited respect for their best interests and expressed opinion according to their age and maturity and the principle of progressive autonomy.<sup>444</sup> In particular, the decision should consider: i) the specific circumstances of each child – age, gender, and need for special care; ii) inhabitability of the center; iii) qualities of those who will take care of the child if they do not remain with their mother, such as pre-existing ties with mother, distance between the prison and the respective home and availability, willingness, and ability to assume care, including the economic costs; and iv) effective possibilities for maintaining the link between the mother and her children – distance, ability to travel, and accessibility.

## B) Obstacles to engaging in family life

175. Obstacles to engaging in family life are often manifested in the loss of contact with the other parent as a result of one's own deprivation of liberty, primarily due to: i) inability or difficulty leaving; ii) prison locations, generally found in remote or inaccessible areas or at great distances from family homes; and iii) difficulty visiting.<sup>445</sup> In this context, according to the then Special Rapporteur on Violence against Women, the loss of contact with the other

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<sup>442</sup> For example, national regulations provide that boys and girls may live with their mothers up to six months in Brazil; 12 or 18 months in some of the United States and, sometimes, 18 months in Brazil under Resolution No. 04/2009 of CNPCP; two years in Chile; three years in Colombia, Costa Rica, Ecuador, Mexico (with possible extension in the case of disability) and Venezuela; four years in Argentina, Guatemala, Honduras, and Uruguay; five years in El Salvador; six years in Bolivia; and seven years in Brazil in case of "greater need" of the boy or girl. In this regard, Argentina, Law No. 24.660 on Enforcement of the Prison Term, June 8, 1996, Article 195; Bolivia, Law No. 2298 on Criminal Enforcement and Supervision, December 20, 2001, Article 26; Government of Brazil, Diplomatic Note No. 120, April 9, 2021, pp. 9-10; OVIC, Rapporteurship on the Rights of Persons Deprived of Liberty – Consultation Questionnaire on Women Deprived of Liberty, April 9, 2021, p. 16; Government of Colombia, Note MPC/OEA No. 530-2021, April 12, 2021, p. 14; Government of Costa Rica, Diplomatic Note No. CROEA-AA-576-21, April 9, 2021, p. 19; Government of Ecuador, Diplomatic Note No. 4-2-102/2021, April 12, 2021, p. 11; Citizens' Group for the Decriminalization of Abortion in El Salvador and CRR Program for Latin America and the Caribbean, Consultation Questionnaire – Women Deprived of Liberty, April 9, 2021, p. 7; Government of Guatemala, Diplomatic Note No. DAJCC-Seprem 003-2021, April 14, 2021, p. 15; Government of Honduras, Diplomatic Note No. DNDDHH-LI-316-2021, May 19, 2021, p. 8; Government of Mexico, Diplomatic Note No. OEA1121, April 12, 2021, p. 14; Government of Uruguay, Diplomatic Note No. 041/2021 - Annex 2, April 20, 2021, p. 2; Venezuela, Organic Penitentiary Code, December 28, 2015, Article 15, paragraph 10; and The Journal of the American Academy of Psychiatry and the Law, The Realities of Pregnancy and Mothering While Incarcerated, September 2020, p. 368.

<sup>443</sup> In this regard, see IACHR, Request for Advisory Opinion, para. 52.

<sup>444</sup> IACHR, Observations on the Advisory Opinion to the Inter-American Court of Human Rights, para. 154. See also: I/A Court H.R. Differentiated Approaches to Persons Deprived of Liberty, paras. 189, 192, 194-5.

<sup>445</sup> IACHR, Request for Advisory Opinion, para. 49.



parent and distancing from them mean that the only male role models for these children are prison guards<sup>446</sup>.

176. In this regard, the Commission recalls that the Convention on the Rights of the Child (CRC) stipulates that the State must respect the right to maintain personal relations and direct contact with both parents on a regular basis, except when this is contrary to the best interests of the child.<sup>447</sup> In this regard, in order to ensure that children have contact with the parent who is not deprived of liberty, the adoption of special measures is essential to foster affective ties and facilitate that contact, the purpose being to allow their relationship to develop as normally as possible.<sup>448</sup> Similarly, in light of what has been established by the Committee on the Rights of the Child, these obligations also extend to these children's relations with other family members such as siblings and grandparents<sup>449</sup>.

### C) Barriers to community integration and establishment of links with the outside

177. The IACHR has observed that children who live with their mothers in prison generally face barriers to community integration and to establishing ties with the outside, in that they frequently: i) grow up without any contact with the outside world; ii) rarely leave prison; iii) do not live with other children; and iv) are unfamiliar with items, toys, and settings intrinsic to this population.<sup>450</sup> In this regard, in order to ensure that the living conditions of these children are to the greatest extent possible removed from the prison environment and to ensure the exercise of their rights under conditions comparable to those who live in the community, the Commission emphasizes that the States should implement actions to ensure that this population is able to participate in outside activities by establishing a flexible system of outings allowing them to access, at least, education, health services, and recreational and cultural activities in the community. In particular, based on indications from various international precedents, the conditions necessary for this purpose are: i) authorization from their parents; ii) consistency with security considerations; and iii) adequate monitoring<sup>451</sup>.

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<sup>446</sup> In this regard, Special Rapporteur on Violence against Women, Report on "Pathways to, conditions, and consequences of incarceration for women," para. 76.

<sup>447</sup> UN, Convention on the Rights of the Child, November 20, 1989, Article 9.3.

<sup>448</sup> IACHR, Observations on Advisory Opinion to the Inter-American Court of Human Rights, para. 159. See also: IA Court H.R. Differentiated Approaches to Persons Deprived of Liberty, paras. 206-207.

<sup>449</sup> Committee on the Rights of the Child, Report and Recommendations of the day of General Discussion on "Children of Incarcerated Parents", September 30, 2011, para. 33. See also: IACHR, Request for Advisory Opinion, para. 159.

<sup>450</sup> IACHR, Request for Advisory Opinion, para. 49.

<sup>451</sup> In this regard, see IACHR, Observations on Advisory Opinion to the Inter-American Court of Human Rights, para. 167. See also: UNODC, Handbook on Women and Imprisonment, p. 86; UN, Mandela Rules, Rule 29.1.

## D) Risks to their health

165. The Commission has noted that the health of children who live with their mothers may be put at risk due to various factors. These notably include: i) unhealthy environments; ii) inadequate hygiene; iii) lack of medical care areas exclusively intended for this group; iv) lack of medical staff with specialization in pediatrics or limited availability of such specialists for 24 hours a day, which leads to delays in care; and v) a lack of protocols on transferring children to health centers located in the community. This situation is of concern to the IACHR given that these factors may also increase the likelihood that these children will contract diseases<sup>452</sup>.
166. In this regard, the IACHR recalls that Article 24 of the CRC establishes that children have the right to enjoy the highest attainable standard of health, which includes facilities for the treatment of illness and restoration of health. In addition, such care should at least be provided under the same conditions as care received by children living outside prison. Accordingly, the IACHR calls on the States to provide children living in prison with adequate medical and health care in view of their special needs based on their age and greater exposure to contracting diseases in contexts of detention. In particular, such care should include: i) access free of charge and under equal conditions to specialized pediatric health care; ii) initial medical examination services upon entry; iii) periodic check-ups; iv) provision free of charge of vaccinations included in the national schedule as well as medications; v) measures to prevent and reduce infant mortality; and v) a confidential record of health data<sup>453</sup>.

## E) Inadequate nutrition

167. The Commission has noted that inadequately nutrition is often prevalent in prisons, with profound effects on children who live with their mothers. In particular, that nutrition is characterized by: i) being standardized and not taking into account different ages and physical and biological conditions; and ii) being inconsistent with specific nutritional requirements based on their needs as children in a development stage<sup>454</sup>.

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<sup>452</sup> In this regard, see IACHR, Request for Advisory Opinion, para. 50; Special Rapporteur on Violence against Women, Report on “Pathways to, conditions, and consequences of incarceration for women,” para. 56; PPN, Argentina, PPN Report to the Rapporteurship on the Rights of Persons Deprived of Liberty, IACHR, April 2021, p. 38; Government of Bolivia, Diplomatic Note No. MPB-OEA-NV116-21, June 1, 2021, pp. 10-11; IACHR, Information provided to the IACHR by the Fundación Construir of Bolivia during the first meeting of experts on women deprived of liberty, April 27, 2021; OVIC, Rapporteurship on the Rights of Persons Deprived of Liberty - Consultation Questionnaire on Women Deprived of Liberty, April 9, 2021, p. 17; and AsiLegal, Rapporteurship on the Rights of Persons Deprived of Liberty - Consultation Questionnaire on Women Deprived of Liberty, April 2021, p. 15.

<sup>453</sup> See: I/A Court H.R. Differentiated Approaches to Persons Deprived of Liberty, paras. 210-211.

<sup>454</sup> On this subject, IACHR, Request for Advisory Opinion, para. 50. Also AsiLegal, Rapporteurship on the Rights of Persons Deprived of Liberty - Consultation Questionnaire on Women Deprived of Liberty, April 2021, p. 15; Republic of Panama and UNODC, Diagnóstico de la situación de las mujeres privadas de libertad en Panama desde un enfoque de género y derechos, p. 129.

168. On this subject, the Commission recalls that the CRC establishes the obligation of the States, among other measures, to supply nutritious foods sufficient to combat diseases and malnutrition.<sup>455</sup> In addition, the Bangkok Rules stipulate that infants and children – as well as mothers and pregnant women – shall be provided free of charge sufficient and timely food in a healthy environment where they are able to engage in customary physical exercise.<sup>456</sup> Along these lines, and consistent with the provisions of its Principles and Best Practices and other international precedents, the IACHR urges the States to implement the actions necessary to ensure that this population has suitable special nutrition services, which should guarantee the provision of healthy, nutrient- and vitamin-rich foods sufficient to guarantee their full physical, mental, and cognitive growth and development<sup>457</sup>.

## F) Challenges in accessing education

169. The Commission has noted that children who live with their mothers in prison face challenges to enjoying the right to education, primarily related to: i) the failure to implement actions ensuring their attendance at schools in the community; ii) the lack of nurseries or adequate educational structures in the prisons; and, iii) obstacles to accessing good quality pre-school and primary education within the prisons. This situation is of concern to the IACHR given that it may result in the children's: i) not receiving the necessary stimuli for their overall development; ii) showing educational levels lower than other children who attend outside school facilities; and iii) failing to interact with other children of the same age<sup>458</sup>.

170. In this regard, the Commission emphasizes that a child's right to education entails the obligation to guarantee access to education through the provision of good quality educational services to all children without discrimination, including children who live in prison together with their mothers, services that meet the requirements of availability, accessibility, acceptability, and adaptability. This duty includes adopting measures to allow children's access to education in the community, ensuring transfers under dignified conditions.<sup>459</sup> If this is not possible, the States must have suitable educational facilities in the prisons that: i) address children's educational needs according to their age, maturity, and cognitive development; ii) have qualified staff; and iii) provide cultural and recreational

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<sup>455</sup> In this regard, see: Committee on the Rights of the Child, Concluding observations on the combined fourth and fifth periodic reports of Mexico, CRC/MEX/CO/4-5, July 3, 2015, para. 44; and, UNICEF, State of the World's Children 2019, Children, Food, and Nutrition, Growing Well in a Changing World – Executive Summary, 2019.

<sup>456</sup> UN, Bangkok Rules, Rule 48.

<sup>457</sup> In this regard, see: IACHR, Principles and Best Practices, Principle. X; Committee on the Rights of the Child, Concluding observations on the combined fourth and fifth periodic reports of Mexico, CRC/MEX/CO/4-5, July 3, 2015, para. 44; and, UNICEF, State of the World's Children 2019, Children, Food, and Nutrition, Growing Well in a Changing World – Executive Summary, 2019.

<sup>458</sup> In this regard, IACHR, Request for Advisory Opinion, para. 51. See also: CELS, MPD and PPN, Las mujeres en prisión. Los alcances del castigo, 2011, p. 185; Government of Uruguay, Diplomatic Note No. 041/2021, Annex 1, April 20, 2021, p. 13; and Mattos Filho, Memorandum - inputs, April 10, 2021, p. 22.

<sup>459</sup> I/A Court H.R. Differentiated Approaches to Persons Deprived of Liberty, para. 222.

activities suited to their needs.<sup>460</sup> In addition, the IACHR recalls that access to childcare services or provisions in prison is important for ensuring that mothers are able to participate in prison activities and programs under the same conditions as other incarcerated women<sup>461</sup>.

### G) Obstacles to comprehensive development

171. In view of the obstacles analyzed, the IACHR concludes that the region's detention centers do not constitute appropriate spaces for ensuring to a maximum extent the adequate physical, mental, spiritual, moral, and social development of children who live in prison with their mothers. In this regard, the IACHR recalls that as stipulated by Article 6 of the CRC, the States shall ensure to the maximum extent possible the survival and development of the child. This includes adopting all measures necessary to ensure that children are protected against stigmatization and do not suffer discrimination in the exercise and enjoyment of their rights<sup>462</sup>.
172. On this subject, and considering that children who live in prison with their mothers have not engaged in any unlawful conduct and cannot be subject to punitive action,<sup>463</sup> the States must take actions to ensure a favorable social environment for their adequate development within the prisons so they can exercise the same rights as children who live in the community.<sup>464</sup> Specifically, it reiterates that in those cases where the law allows one of their parents to live with them in prison, the States – as guarantors of the rights of persons in their custody – assume a still greater duty to adopt concrete measures to guarantee the life, integrity, and health of this population, ensuring in particular their access to the special protection, nutrition, health, and education services needed for their development<sup>465</sup>.
173. Moreover, as the Inter-American Court has pointed out, mothers as the primary caregivers and adult role models must have access to sufficient support to provide a positive upbringing in which responsibility is shared by both parents. In addition, children must be provided with special protection measures that foster the comprehensive development of their personality, talents, and mental and physical abilities in all their potential, which should at a minimum include medical care, access to early childhood and primary

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<sup>460</sup> In this regard, see: Committee on the Rights of the Child, Report and Recommendations of the day of General Discussion on "Children of Incarcerated Parents," September 30, 2011, para. 34.

<sup>461</sup> IACHR, Observations on Advisory Opinion to the Inter-American Court of Human Rights, para. 169.

<sup>462</sup> In this regard, see IACHR, Request for Advisory Opinion, para. 165; IACHR, Observations on Advisory Opinion to the Inter-American Court of Human Rights, para. 155; and Committee on the Rights of the Child, Report and Recommendations of the day of General Discussion on "Children of Incarcerated Parents," September 30, 2011, para. 33.

<sup>463</sup> In this regard, see UN, Mandela Rules, Rule 29. 2; and UNODC, Handbook on Women and Imprisonment, p. 86.

<sup>464</sup> IACHR, Request for Advisory Opinion, para. 164.

<sup>465</sup> IACHR, Observations on Advisory Opinion to the Inter-American Court of Human Rights, para. 153.

education, and play and recreational areas with direct access to natural light in the open air. In addition, the States must guarantee that the facilities in which this population resides must be separated from the rest of the prison population and must be adapted to children's needs, ensure their development, and have appropriate staff, materials, and services. In addition, cells should not look like prisons and should remain open all day<sup>466</sup>.

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<sup>466</sup> I/A Court H.R. Differentiated Approaches to Persons Deprived of Liberty, para. 215, 217-218.



# **ALTERNATIVE MEASURES TO DEPRIVATION OF LIBERTY**



## IV. ALTERNATIVE MEASURES TO DEPRIVATION OF LIBERTY

174. In this chapter, the Commission analyzes practices identified in the area of implementing measures alternative to deprivation of liberty with respect to women. Specifically, it addresses the context in which the implementation of these measures occurs, where incarceration is characteristically the priority response to certain crimes, and there is a failure to consider all specific gender-based needs. In addition, it examines the principal alternative post-sentencing measures used by the States for the benefit of women. In addition, while understanding the importance of giving preference to the use of such measures, the IACHR addresses the major obstacles to the implementation of alternative measures with a gender approach based on the challenges that women face in seeking access to alternative measures, particularly in view of judicial decisions influenced by gender stereotypes and material obstacles as well as obstacles based on a lack of mechanisms with a gender approach for supervising such measures and monitoring women during their application. In addition, the Commission presents a specific analysis related to the application of alternative measures in northern Central America.

### A. *Practices in the region*

#### 1. Context of the application of alternative measures in the Americas

175. The IACHR notes that the States have generally made efforts to incorporate the gender perspective in the regulation and application of alternative measures to prison on a priority basis for the benefit of women, particularly those who are pregnant, mothers, or have people in their care.<sup>467</sup> However, it notes with concern information received indicating that despite the existence of certain alternatives, incarceration continues to be the priority response to certain crimes, particularly those linked to drugs and organized crime. Additionally, the available data indicate that regulations providing alternatives with a gender perspective do not incorporate this approach comprehensively, leaving aside specific gender-based needs, which prevents some women from benefitting from them.

##### A) Incarceration as the priority response to certain crimes

176. The Commission notes that one of the major obstacles preventing women from benefitting from alternative measures is the existence of legal systems and judicial practices that prioritize incarceration through the excessive use of pretrial detention and the limited application of both alternative measures and procedural benefits that reduce time spent in prison by convicted persons, based on the type of crime or the amount of the penalty. Specifically with respect to the excessive use of pretrial detention, as indicated, some systems establish the use of pretrial detention automatically in the case of those accused

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<sup>467</sup> On this point, see below the sections on “Alternative measures with a gender approach,” and “Post-sentencing measures” in this chapter.”

of committed drug-linked crimes. These systems include Honduras, Mexico, Nicaragua, and Uruguay.<sup>468</sup> In addition, other regulations prevent replacing this precautionary measure with alternatives in cases of crimes linked to organized crime. This group includes El Salvador, Guatemala, and Honduras.<sup>469</sup> In addition, judicial officers often automatically impose pretrial detention for persons accused of committing drug crimes, at least in Argentina, Chile, Costa Rica, Ecuador, and Honduras.<sup>470</sup> Added to this, certain legal systems restrict the application of alternatives based on the amount of the penalty. This is the case in Costa Rica<sup>471</sup> and Paraguay<sup>472</sup>.

177. Some regulations also prevent convicted persons from benefiting from measures suspending the enforcement of penalties or reducing prison time, so that they have to serve their entire sentence, based on the type of crime, particularly in the case of crimes related to drugs or organized crime, or the amount of the penalty. For example, there are restrictions on access to these benefits with regard to drug crimes in Argentina, Colombia, Costa Rica, Ecuador, Mexico, and Uruguay<sup>473</sup> and organized crime in El Salvador and Honduras.<sup>474</sup> In addition, some legislation establishes as a requirement for accessing prison benefits that the prison term not exceed a specific number of years. This includes the legislation of Argentina<sup>475</sup> and Costa Rica.<sup>476</sup> The foregoing means that if women are sentenced to long prison terms – which usually happens in drug crime cases – they are

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<sup>468</sup> On this point, see the subsections on “Automatic use of pretrial detention and failure to apply alternative measures” and “Policies against organized crime and their impact on the incarceration of women” in Chap. II.

<sup>469</sup> On this subject, see the section “Policies against organized crime and their impact on the incarceration of women,” in Chap. II.

<sup>470</sup> In this regard, see the subsection on “Excessive use of pretrial detention and the failure to apply alternative measures,” in Chap. II.

<sup>471</sup> In particular, in order to apply house arrest with electronic monitors, the punishment must not exceed six years. This leaves out persons convicted for drug crimes given that the penalties applicable for these crimes range between eight and fifteen years. In this regard, Government of Costa Rica, Diplomatic Note No. CROEA-AA-576-21 – Inputs from Costa Rica regarding the Questionnaire on Women Deprived of Liberty in the Americas, April 9, 2021, pp. 8-10. See also: Costa Rica, Penal Code, Articles 57 bis, 58, and 59.

<sup>472</sup> In particular, the application of house arrest for women with children or who are disabled is only permitted when the punishment does not exceed one year. In this regard, Paraguay, Penal Code of Paraguay: Law No. 1.160/97, 1997, Art. 42.

<sup>473</sup> In this regard, see the subsection on “Excessive use of pretrial detention and failure to apply alternative measures,” in Chap. II.

<sup>474</sup> In this regard, see the subsection on “Policies against organized crime and their impact on women’s incarceration,” in Chap. II.

<sup>475</sup> In particular, in order to benefit from a suspended sentence, the case must involve conviction and sentencing to a term not to exceed three years. In this regard, see: Argentina, Penal Code, Article 26.

<sup>476</sup> In particular, conditional enforcement of the punishment is applicable only with respect to crimes punished with a prison terms not exceeding three years. In addition, for the application of house arrest with electronic monitoring, the punishment imposed must not exceed six years. This would leave aside persons convicted for drug crimes given that the penalties applicable for these crimes range between eight and fifteen years. In this regard, Government of Costa Rica, Diplomatic Note No. CROEA-AA-576-21, April 9, 2021, pp. 8-10. See also: Costa Rica, Penal Code, Articles 57 bis, 58 and 59.

prevented from accessing prison release benefits regardless of their surrounding personal or family circumstances<sup>477</sup>.

178. Considering that the principal causes for female incarceration are drug-related crimes in the region and offenses related to organized crime in northern Central America, the IACHR notes that the lack of a gender perspective in these regulations means that women are barred from accessing alternatives to incarceration and other release benefits. In particular, the procedural requirements linked to the type of crime and the amount of the penalty lack a gender perspective given that they do not take into consideration the specific role that women play in the criminal network, the factors that lead to their involvement in these activities, the differentiated impact that their incarceration has on those in their care, or the special situation of risk they face in detention.<sup>478</sup> Consequently, the application of these regulations has a discriminatory effect based on gender to the extent that - by limiting the use of alternative measures and other release benefits for persons convicted of crimes related to drugs or organized crime, or for long prison terms – they promote greater female incarceration as such crimes – punished with high prison sentences – constitute the primary reason why women are detained.
179. In this regard, considering the differentiated impact of women's incarceration, the advantages of applying alternative measures and the effects that their detention has on persons in their care, the IACHR has emphasized the need for the States to incorporate a gender perspective in the creation and implementation of policies seeking to reduce the mandatory use of pretrial detention. In particular, pretrial detention of women who are mothers or are pregnant, and those who have persons in their care who are in particularly at-risk situations must be considered a measure of last resort and non-custodial measures must be prioritized that would allow these women to be responsible for persons who depend on them.<sup>479</sup> In view of this, the IACHR calls on the States to adopt legislative provisions that allow women to access alternative measures and other release benefits regardless of the type of crime for which they have been convicted or the amount of the penalty.

## **B) Failure to consider all specific gender-based needs**

180. Based on the information collected, the Commission notes with concern that the regulations on alternative measures that include a gender perspective do not consider this approach comprehensively by addressing all specific gender-based needs relating to all women. Specifically, there are in the region some alternatives respectful of the gender

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<sup>477</sup> On this point, see the section on “Drug policies,” in Chap. II.

<sup>478</sup> On these points, see Chaps. II and III. Also on this point with regard to drug policies, see IACHR, [Report on Measures to Reduce Pretrial Detention in the Americas](#), para. 200.

<sup>479</sup> IACHR, [Report on Measures to Reduce Pretrial Detention in the Americas](#), para. 203.

perspective,<sup>480</sup> with house arrest being the principal alternative and sometimes the only one. However, these measures, by including only some specific aspects of gender – such as pregnancy, motherhood, child-rearing, and care for other persons – lack an approach that considers all gender-based aspects that cause women to face differentiated risks during their detention.<sup>481</sup> At the same time, such measures tend to affirm the stereotyped role of women as mothers and caregivers. This situation is reflected in exclusion with respect to access to alternatives for women who: i) are not mothers of children; ii) have no persons in their care; iii) have adolescent children; or iv) are trans.<sup>482</sup> On this last point, the IACHR has received information indicating that the granting of benefits to trans women based on their gender identity is closely linked to that identity, which continues to be an obstacle in some countries<sup>483</sup>.

181. In view of this and considering that most women are subjected to a criminal proceeding for the commission of minor non-violent crimes that involve minimal or no risk to society, the Commission emphasizes the need to give priority to the use of alternative measures to prison, with regard to both pretrial detention and prison sentences, for the benefit of all women. In this regard, the IACHR has emphasized that the application of such measures, in addition to avoiding incarceration, reduces recidivism rates and prevents disintegration and community stigmatization, while reducing the economic costs of prison use.<sup>484</sup> Considering the above, the IACHR calls on the States to incorporate a gender perspective that includes all gender-based aspects in the creation and implementation of alternatives to incarceration. These measures should take into account, in addition to women's reproductive function, motherhood, and caregiver role, discrimination in the exercise and enjoyment of their rights and the special risk of violence they face in prison due to the lack of prison policies with a gender perspective<sup>485</sup>.
182. Specifically, justice officials should consider various aspects such as: i) women's particular and historically disadvantaged position in society; ii) their socioeconomic vulnerability; iii) a history of previous victimization; iv) other situations of risk linked to their age, ethnicity, and place of origin, among other factors; v) absence of aggravating circumstances in the

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<sup>480</sup> The IACHR has received information on house arrest, electronic monitoring devices, community care programs, drug courts, and post-sentencing measures. See the sections on "Alternative measures with a gender approach" and "Post-sentencing measures" in this chapter.

<sup>481</sup> On this point, see the section on the "Special situation of risk in the context of the deprivation of liberty" in Chap. III.

<sup>482</sup> In this regard, IACHR, Information provided to the IACHR by the representative from the APT and a research professor at the Autonomous University of Chiapas during the second IACHR meeting of experts on women deprived of liberty, June 4, 2021; WOLA, Imprisoned at Home: Women under House Arrest in Latin America, July 2020, p. 9; and IDPC, Punitive Drug Laws: 10 Years Undermining the Bangkok Rules, March 2021, p. 9.

<sup>483</sup> IACHR, Information provided to the IACHR by the representative of the organization Corpora en Libertad during the second IACHR meeting of experts on women deprived of liberty, June 4, 2021.

<sup>484</sup> In this regard, IACHR, Report on Measures to Reduce Pretrial Detention in the Americas, para. 228.

<sup>485</sup> Similarly, see, see IACHR, Report on Measures to Reduce Pretrial Detention in the Americas, para. 204.

commission of the crime; and iv) differential impact of prison with respect to persons in their care.<sup>486</sup> In addition, alternative measures should be accompanied by the establishment of programs with a human rights approach and gender perspective directed to addressing the causes that have led to women's involvement in the commission of crimes, in order to promote their social reintegration. In this regard, the IACHR has indicated that the States should provide different options to resolve the most customary problems that cause these women to come into contact with the criminal justice system, such as psychological treatment and education and training programs to increase their chances of obtaining employment<sup>487</sup>.

183. On this subject, as alternatives to pretrial detention, the IACHR has recommended that the States consider applying: i) a promise to appear for the proceeding and not to obstruct the investigation; ii) the obligation to submit to the care or surveillance of a specific person or institution; iii) the duty to appear periodically before the judge or the authority designated by the judge; iv) prohibition on leaving the designated territorial area without prior authorization; v) retention of travel documents; vi) provision of a personal or third party bond in a sufficient amount; vii) surveillance by means of an electronic device to track or identify physical location; viii) arrest in one's own home or someone else's home, with or without surveillance as ordered by the judge; and ix) restorative justice programs<sup>488</sup>.

184. In addition, as an alternative to a prison term, the Commission recommends the application of: i) verbal sanctions; ii) economic sanctions or fines; iii) imposition of community services; iv) mediation with the victim's participation; v) disqualifications; vi) restitution to the victim or compensation; vii) judicial probation and surveillance system; xviii) participation in community programs and services; ix) obligation to regularly visit a specific center, particularly a transition center; x) submission to voluntary drug treatment; xi) restorative justice programs; xii) programs of care in the community; and xiii) house arrest. In addition, the IACHR recommends the use of the following post-sentencing measures: i) absolute or partial acquittal; ii) parole; iii) suspended sentence; and iv) pardons<sup>489</sup>.

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<sup>486</sup> In this regard, see: IACHR, Report on Measures to Reduce Pretrial Detention in the Americas, para. 203. See also: UN, Bangkok Rules, Rule 57; and WOLA, IDPC and Dejusticia, Alternatives to incarceration for women involved in the drug market, May 2018, p. 3.

<sup>487</sup> IACHR, Report on Measures to Reduce Pretrial Detention in the Americas, para. 204.

<sup>488</sup> IACHR, Report on Measures to Reduce Pretrial Detention in the Americas, paras. 108 and 145.

<sup>489</sup> In this regard, see The United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules), Resolution approved by General Assembly No. 45/110, December 14, 1990, Rules 8.2 and 9.1; and UNODC, Handbook on Women and Imprisonment, pp. 84, 108 y 115.

## 2. Alternative measures with a gender perspective

185. The Commission notes that the principal alternative measures with a gender approach<sup>490</sup> used by countries in the Americas with respect to women who are accused and those who are convicted include: i) house arrest; ii) electronic monitoring devices; iii) community care programs; and iv) drug tribunals or courts.

### A) House arrest

186. The Commission notes that house arrest is the principal alternative measure both for pretrial detention and prison sentences that considers a gender perspective and this measure was given priority in the context of the COVID-19 pandemic. Specifically, this measure takes into consideration the special situation of risk in which pregnant women would be placed if deprived of liberty, as well as the consequences that their incarceration would have for their children and others in their care.<sup>491</sup> In this regard, legislation generally allows both the precautionary measure of pretrial detention in prison and the prison sentence to be replaced by arrest in the women's home, under the following assumptions: i) pregnancy;<sup>492</sup> ii) after childbirth, up to 90 days, six months, or a year;<sup>493</sup> iii) while nursing,

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<sup>490</sup> In this regard, the IACHR emphasizes that only measures containing specific provisions on their application with respect to women will be subject to analysis.

<sup>491</sup> In this regard, IACHR, Report on Measures to Reduce Pretrial Detention in the Americas, paras. 209 and 212.-

<sup>492</sup> As an alternative to pretrial detention, this provision is considered by Argentina, Brazil, Colombia (as of the last two months), Costa Rica, Mexico (except in cases of ex officio pretrial detention when there is a risk of flight or that involves a "social risk"), Nicaragua (as of the last three months), Paraguay (in "recent months"), and Uruguay (starting in the fifth month). In addition, as an alternative to prison upon conviction, it is considered by Argentina, Costa Rica, Panama, and Peru (in the last three months). In this regard, Government of Argentina, Diplomatic Note No. IF-2021-34330903-APN-DCIMD#MRE, IACHR, April 20, 2021, pp. 12, 14; Brazil, Code of Criminal Procedure: Law No. 3689, October 3, 1941, Art. 318; Colombia, Colombian Code of Criminal Procedure: Law No. 906, August 2004, Art. 314; Costa Rica, Code of Criminal Procedure - Law No. 7594, April 10, 1996, Art. 486 bis; Panama, Penal Code of the Republic of Panama: Law 14 of 2007, May 22, 2007, Arts. 108 and 109; Peru, Penal Code: Legislative Decree No. 635, April 3, 1991, Art. 29-A; Paraguay, Code of Criminal Procedure: Law No.1286, July 14, 1998, Art. 238; Peru, Penal Code: Legislative Decree No. 635, April 3, 1991, Art. 29-A; and Uruguay, Law No. 19.293 – Code of Criminal Procedure 2017, amended on July 14, 2017, Art. 228.

<sup>493</sup> As an alternative to preventive detention, this provision is considered by Ecuador (up to 90 days), Colombia (up to six months). As an alternative to a prison term, it is considered by Bolivia and Ecuador up to 90 days and Panama and Peru up to one year. See: Bolivia, Law. 2298 on Enforcement of Penalties and Supervision, December 20, 2001, Art. 197; Colombia, Colombian Code of Criminal Procedure: Law No. 906, August 2004, Art. 314; Ecuador, Comprehensive Organic Penal Code, February 10, 2014, Arts. 537 and 624; Panama, Penal Code of the Republic of Panama: Law 14 of 2007, May 22, 2007, Arts. 108 and 109; Peru, Penal Code: Legislative Decree No. 635, April 3, 1991, Art. 29-A; Peru, Penal Code: Legislative Decree No. 635, April 3, 1991, Art. 29-A.



which is sometimes considered up to six months or one year of the baby's life;<sup>494</sup> iv) the mother has a child;<sup>495</sup> v) the woman is head of the family and has a minor child in her care;<sup>496</sup> or vi) the woman is responsible for the care of disabled persons<sup>497</sup> or persons facing a serious illness<sup>498</sup>.

187. Additionally, the IACHR notes the priority use of house arrest in the context of COVID-19 for the benefit of persons belonging to groups in particularly at-risk situations, as part of the measures for preventing the spread of the virus by reducing the prison population.<sup>499</sup> With regard to specific actions focused on women, the IACHR highlights the measures adopted by Argentina, Brazil, Chile, and Colombia. In particular, in Argentina, during 2020 and in the context of the pandemic, the courts prioritized the use of house arrest for women, which according to official information “produced a considerable reduction in the number of women currently housed in facilities within the orbit of the SPF.”<sup>500</sup> In Brazil, the National Council of Justice issued Recommendation No. 062/2020, which called on judicial

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<sup>494</sup> As an alternative to pretrial detention, this provision is considered by Paraguay, Mexico (except in cases of ex officio preventive detention, risk of flight or “social risk” involved), Nicaragua (up to six months), Paraguay, and Uruguay (up to a year). In this regard, Mexico, Federal Penal Code, August 14, 1931, Art. 55; Government of Nicaragua, Diplomatic Note No. MPN-OEALAR21-00097, April 7, 2021, p. 2; Nicaragua, Code of Criminal Procedure, November 13, 2001, Art. 176; Paraguay, Code of Criminal Procedure: Law No. 1286, July 14, 1998, Art. 238; and Uruguay, Law No. 19.293 – Code of Criminal Procedure 2017, amended July 14, 2017, Art. 228.

<sup>495</sup> As an alternative to both pretrial detention and a prison term, this is considered by Argentina (up to five years by law and up to ten years by judicial practice) and Brazil and Costa Rica (up to 12 years). In addition, in as an alternative to a prison term, it is considered by Costa Rica. In this regard, Government of Argentina, Diplomatic Note No. IF-2021-34330903-APN-DCIMD#MRE, IACHR, April 20, 2021, pp. 12, 14; Public Defenders Office, Argentina, Ref.: Consultation Questionnaire on Women Deprived of Liberty, April 9, 2021, pp. 23-24; Brazil, Code of Criminal Procedure: Law No. 3689, October 3, 1941, Art. 318; and Costa Rica, Code of Criminal Procedure - Law No. 7594, April 10, 1996, Art. 486 bis.

<sup>496</sup> As an alternative to pretrial detention, this provision is considered by Colombia. In addition, as an alternative to prison upon conviction, it is considered by Peru. Both legislative systems require that: i) the woman is head of the family; and ii) the child “has been in her care.” In this regard, Colombia, Colombian Code of Criminal Procedure: Law No. 906, August 2004, Art. 314; and Peru, Penal Code: Legislative Decree No. 635, April 3, 1991, Art. 29-A.

<sup>497</sup> As an alternative to pretrial detention, this provision is considered by Argentina, Brazil, Colombia, and Costa Rica. In addition, as an alternative to a prison term, it is considered by Argentina, Costa Rica, and Peru. In this regard, Government of Argentina, Diplomatic Note No. IF-2021-34330903-APN-DCIMD#MRE, IACHR, April 20, 2021, pp. 12, 14; Brazil, Code of Criminal Procedure: Law No. 3689, October 3, 1941, Art. 318; Colombia, Colombian Code of Criminal Procedure: Law No. 906, August 2004, Art. 314; Costa Rica, Code of Criminal Procedure – Law No. 7594, April 10, 1996, Art. 486 bis; and Peru, Penal Code: Legislative Decree No. 635, April 3, 1991, Art. 29-A.

<sup>498</sup> As an alternative to a prison term, this provision is considered by Costa Rica. In this regard, Costa Rica, Code of Criminal Procedure - Law No. 7594, April 10, 1996, Art. 486 bis.

<sup>499</sup> IACHR, Press release 212/20 – IACHR concerned about specific risks faced by persons deprived of liberty in the Americas during the COVID-19 pandemic. Washington DC, September 9, 2020.

<sup>500</sup> Government of Argentina, Diplomatic Note No. IF-2021-34330903-APN-DCIMD#MRE, IACHR, April 20, 2021, p. 8.

authorities to adopt measures to reduce the population of persons deprived of liberty, including the use of house arrest for pregnant women<sup>501</sup>.

188. In Chile, Law No. 21.228 granted general commutative pardon amended to house arrest for the benefit of convicted women who: i) having completed one third of their sentence and with a remaining term equal to or less than 36 months, are pregnant or live in prison with their child who is less than two years of age; or ii) having completed half of the sentence and with a remaining term equal to or less than 36 months, are aged 55 or older.<sup>502</sup> In Colombia, through Legislative Decree No. 546-2020, the Ministry of Justice and Law ordered the replacement of prison terms and pretrial detention by temporary house arrests for the benefit, *inter alia*, of pregnant women or women who live with a child who is less than three years old<sup>503</sup>.

## I. Challenges in the use of house arrest

189. Although the use of house arrest avoids keeping certain groups of women in prison, the Commission has been informed of various criticisms regarding its use. Specifically, the information gathered for the preparation of this report indicates the following criticisms:: i) principal focus of application based on women's reproductive or caregiver role – despite the special protection of women who are pregnant, mothers, or responsible for caregiving tasks – without taking into account the disproportionate effects of female incarceration for all women, i.e., without including other differential criteria;<sup>504</sup> ii) frequent use to the detriment of other alternatives less restrictive of liberty; iii) the need to have a fixed and suitable home to carry out the measure; and iv) social stigmatization that this measure entails when accompanied by electronic monitoring devices.<sup>505</sup> For example, in the case of Argentina, in its 2017 Report, the IACHR emphasized the lack of monitoring in the application of these

<sup>501</sup> START In this regard, IACHR, Press release 066/20 - The IACHR urges States to guarantee the health and integrity of persons deprived of liberty and their families in the face of the COVID-19 pandemic. Washington DC, March 31, 2020; and Brazil, Recommendation No. 062/2020, adopted March 17, 2020.

<sup>502</sup> In this regard, IACHR, Press release 066/20 - The IACHR urges States to guarantee the health and integrity of persons deprived of liberty and their families in the face of the COVID-19 pandemic. Washington DC, March 31, 2020; and Chile, Law No. 21.228, adopted April 17, 2020, Articles 2 and 3.

<sup>503</sup> In this regard, IACHR, Press release 212/20 - IACHR concerned about specific risks faced by Persons Deprived of Liberty in the Americas during the COVID-19 pandemic. Washington DC, September 9, 2020; and Colombia, Legislative Decree No. 546-2020, adopted May 31, 2020.

<sup>504</sup> On this point, see Chap. III of this report.

<sup>505</sup> On this subject: WOLA, Pretrial Detention in Latin America: the Disproportionate Impact on Women Deprived of Liberty for Drug Offenses, June 2019, p. 12; and WOLA, Imprisoned at Home: Women under House Arrest in Latin America, July 2020, pp. 1, 5, 11; IACHR, Information provided to the IACHR for the WOLA organization during a technical meeting on women deprived of liberty, February 10, 2022; and IACHR, Information provided to the IACHR by the CELS experts and a researcher from the Autonomous University of Chiapas during the second IACHR meeting of experts on women deprived of liberty, June 4, 2021.

measures, consideration of the socioeconomic conditions as a major component, and the need to have electronic devices to apply it<sup>506</sup>.

190. Generally added to the above are obstacles to the exercise of the rights of women subject to house arrest, which besides violating their rights may affect persons who live with them or are in their care. In particular, the data indicate that women subject to this measure in the region face: i) difficulties leaving the home given the failure to grant or late granting of judicial authorizations, leading to challenges in obtaining food, health services, and working, as well in meeting their family responsibilities;<sup>507</sup> ii) obstacles to performing daily household tasks, especially when there is no one to support them;<sup>508</sup> and iii) inability to benefit from social assistance programs due to the failure to implement actions in this regard<sup>509</sup>.
191. This situation has a profound effect on pregnant women and women with small children. In this regard, pregnant women are sometimes prevented from getting medical check-ups as often as they should due to delays in granting permission for them to leave the house. For their part, mothers of small children face obstacles obtaining authorization to take them to school or the doctor, meaning that the children are unable to attend regularly.<sup>510</sup> Based on this, the IACHR notes that women are faced with home arrest without a monitoring policy that would ensure that they could at least obtain adequate health care and income and be able to resolve basic issues of daily life. This puts them in a situation of being totally dependent on others, which is impossible for those who have no family or social network. This has a negative impact both on the women and on those who are in their care, exacerbating their historical position of social disadvantage<sup>511</sup>.
192. Added to the above, the IACHR notes with concern that certain laws govern the house arrest of pregnant women or mothers for a specific period of time only. In particular, it notes that laws like this do not take into consideration the disproportionate impact that women's incarceration has on the life of their children, regardless of their age.<sup>512</sup> This is the case in Bolivia, Colombia, Ecuador, and Panama. Such laws establish that women may only

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<sup>506</sup> IACHR, Report on Measures to Reduce Pretrial Detention in the Americas, para. 214.

<sup>507</sup> See, WOLA, *et al.*, Regional Response to the Consultation Questionnaire on Women Deprived of Liberty, 2021, April 23, 2021, pp. 26, 42. Also: CELS and Yo No Fui, Castigo a domicilio: La vida de las mujeres presas en sus casas, 2020; and WOLA, Pretrial Detention in Latin America: the Disproportionate Impact on Women Deprived of Liberty for Drug Offenses, June 2019, p. 14.

<sup>508</sup> On this subject, WOLA, Pretrial Detention in Latin America: the Disproportionate Impact on Women Deprived of Liberty for Drug Offenses, June 2019, p. 12; and WOLA, Imprisoned at Home: Women under House Arrest in Latin America, July 2020, pp. 1, 5.

<sup>509</sup> In this regard, MPD, Argentina, Ref.: Consultation Questionnaire on Women Deprived of Liberty, April 9, 2021, p. 25.

<sup>510</sup> WOLA, *et al.*, Regional Response to the Consultation Questionnaire on Women Deprived of Liberty, April 23, 2021, pp. 26, 42-43.

<sup>511</sup> In this regard, see: WOLA, *et al.*, Regional Response to the Consultation Questionnaire on Women Deprived of Liberty, 2021, April 23, 2021, pp. 42-43.

<sup>512</sup> In this regard, see the section on "Differentiated effect of incarceration on women and those in their care," in Chap. II.

continue under this measure for 90 days after giving birth in Bolivia and Ecuador, six months in Colombia, and one year in Panama. In the case of Ecuador, this period can be extended for an additional 90 days but only if the child is born with illnesses “that require maternal care<sup>513</sup>”

## B) Electronic monitoring devices

193. House arrest is sometimes accompanied by electronic monitoring devices, specifically under legislative provision in Costa Rica, Ecuador, and Peru or pursuant to judicial practice in Argentina.<sup>514</sup> For example, in Argentina, although the regulations establish that arrest may be unmonitored, the practice of most courts is to grant house arrest accompanied by the use of electronic ankle bands.<sup>515</sup> For this purpose, in order to increase the number of women benefitting from this practice, the Ministry of Justice established priorities for accessing the available ankle bands, in the following order: i) pregnant women; ii) mothers with children under five years or caring for a disabled person; and iii) mothers with children between the ages of five and ten<sup>516</sup>.
194. On this subject, the IACHR received information indicating that the principal advantage of using electronic monitoring devices is that they facilitate access to house arrest in cases where the courts would not otherwise be willing to grant this benefit.<sup>517</sup> In addition, they allow women to leave the home. For example, Costa Rican law expressly establishes that the courts may grant permits to leave the home.<sup>518</sup> However, the Commission also notes aspects of concern. In this regard, in its 2017 Report, the IACHR emphasized its concern regarding the two-fold control entailed in the use of electronic monitoring devices when accompanied by an alternative measure<sup>519</sup> In addition, civil society and human rights organizations also emphasize the additional punishment that electronic monitoring

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<sup>513</sup> In this regard, Bolivia, Law No. 2298 on the Enforcement and Penalties and Supervision, December 20, 2001, Art. 197; Colombia, Law No. 906, September 1, 2004, Art. 314; Ecuador, Comprehensive Organic Penal Code, February 10, 2014, Arts. 537 and 624; and Panama, Penal Code of the Republic of Panama: Law 14 of 2007, May 22, 2007, Art. 109.

<sup>514</sup> In this regard, Costa Rica, Code of Criminal Procedure- Law No. 7594, April 10, 1996, Art. 486 bis; Ecuador, Comprehensive Organic Penal Code, February 10, 2014, Arts. 537 and 624; and Peru, Penal Code: Legislative Decree No. 635, April 3, 1991, Art. 29-A.

<sup>515</sup> Public Defenders Office, Argentina, Ref.: Consultation Questionnaire on Women Deprived of Liberty, April 9, 2021, p. 23.

<sup>516</sup> In this regard, Government of Argentina, Diplomatic Note No. IF-2021-34330903-APN-DCIMD#MRE, IACHR, April 20, 2021, p. 12; and MPD, Argentina, Ref.: Consultation Questionnaire on Women Deprived of Liberty,, April 9, 2021, p. 23.

<sup>517</sup> MPD, Argentina, Ref.: Consultation Questionnaire on Women Deprived of Liberty,, April 9, 2021, p. 24.

<sup>518</sup> Costa Rica, Code of Criminal Procedure - Law No.7594, April 10, 1996, Article 486 bis.

<sup>519</sup> In this regard, see IACHR, Report on Measures to Reduce Pretrial Detention in the Americas, para. 214.

supposes, the intensified control over women and their family groups,<sup>520</sup> and the stigmatization of having a visible device<sup>521</sup>.

### C) Community care programs

195. The Commission emphasizes the adoption of community care programs as alternatives to a prison term for women in at-risk situations. These have been implemented in Costa Rica and in the states of New York and Oklahoma in the United States. Specifically in Costa Rica, the Preliminary Evaluation Unit or the Interdisciplinary Boards of the prison centers may recommend placement at the community care or semi-institutional care level for anyone who has been sentenced for the first time and whose sentence is for no more than eight years. Although this measure may be applied for anyone's benefit, there are greater requirements for women in at-risk situations. Specifically, the sentence may be for up to twelve years in prison in the case of women convicted for the first time who have committed a crime motivated by their at-risk situation. Determining such a situation takes into account the following aspects: i) being in a situation of poverty; ii) being responsible for the care and financing of "dependent families;" iii) having a disability; or iv) being the victim of gender violence. In these cases, the "Women's Care Level" is responsible for assisting the women, along with the National Institute of Women<sup>522</sup>.

196. For its part, New York has the Justice Home program headed by that state's Women's Prison Association, which works with the New York District Prosecutor's Office to identify women who meet the requirements for participating. Specifically, the program allows women sentenced in the New York penal system to terms of six months or more for a serious offense to continue living at home to the extent that they participate in different health and education programs and services that seek to address the causes that led to their involvement in the commission of the crimes that led to their arrest.<sup>523</sup> Similarly, in Oklahoma, with the support of civil society, the "ReMerge" program has been implemented and accepts women referred by the District Prosecutor's Office of Oklahoma. It is directed in particular to mothers of minor children facing charges for non-violent offenses. Thus, this program provides services, safe housing, and access to health care, including recovery from addictions. In this way, once participating women leave the program they become eligible to have their charges dismissed<sup>524</sup>.

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<sup>520</sup> MPD, Argentina, Ref.: Consultation Questionnaire on Women Deprived of Liberty, April 9, 2021, p. 24.

<sup>521</sup> IACHR, Information provided to the IACHR by representatives of WOLA and the IDPC during a technical meeting on women deprived of liberty, February 10, 2022.

<sup>522</sup> In this regard, Government of Costa Rica, Diplomatic Note No. CROEA-AA-576-21, April 9, 2021, p. 8. See also: Costa Rica, Decree No. 40849-JP – National Penitentiary System Regulations, adopted January 9, 2018, Articles 177 and 179.

<sup>523</sup> In this regard, WOLA, JusticeHome: Breaking Barriers and Helping Families Via Alternatives to Incarceration, in Gender and Drug Policy: Innovative Approaches to Drug Policy and Incarceration, p. 1.

<sup>524</sup> See: ReMerge, 2022. See also: Vera, Alternatives to incarceration for moms aim to strengthen families, August 10, 2015.

## D) Drug Tribunals or Courts

197. In recent years, as an alternative measures to incarceration both for pretrial detention and prison sentences, various countries in the region have adopted or are considering the adoption of drug treatment programs under court supervision, known as “drug tribunals or courts.” Through their implementation, persons who have been subject to a criminal proceeding for committing minor crimes related to their problematic drug use or drug dependency – including those who commit minor crimes to support their habit – or for using or carrying for personal use, are diverted to other institutions to receive treatment.<sup>525</sup> Regarding this treatment, in a meeting held with the Inter-American Drug Abuse Control Commission (CICAD), the IACHR was informed that such treatment is provided independently of the judicial conditions that people must meet by order of the judicial authorities, which in most cases means that treatment is provided as a complement to the judicial process. In addition, the CICAD reported on its work in primary referral programs meant to detach people from the criminal process in advance, without their becoming parties to judicial proceedings<sup>526</sup>.
198. Some States in the region that have adopted the drug courts model or where it is being considered are - in addition to the United States – the Bahamas, Chile, Costa Rica, and Mexico, while others are in the pilot phase or considering them, as in Argentina, Barbados, Belize, Colombia, Panama, Peru, the Dominican Republic, and Trinidad and Tobago.<sup>527</sup> For example, the Women in Recovery program implemented by civil society in the state of Oklahoma is free of charge and intended for women accused of non-violent, drug-related crimes. To benefit from the program, women must admit their responsibility for committing the crime of which they are accused. In this context, beneficiaries remain at liberty while they receive drug abuse and mental health treatment as well as occupational training and support for family reunification.<sup>528</sup> According to data from the Catholic Health Association of

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<sup>525</sup> In this regard, IACHR, Report on Measures to Reduce Pretrial Detention in the Americas, para. 146. In this regard, see also: IACHR, Information provided to the IACHR for CICAD during a technical meeting, September 1, 2022.

<sup>526</sup> Specifically, CICAD referred to actions being carried within the framework of the Hemispheric Plan of Action on Drugs 2021-2025, which include, inter alia, providing support to the States in the formulation and implementation of alternatives to incarceration for those convicted of minor, non-violent offenses, independently of the legal context. In this scenarios, they encourage the treatments implemented in the context of the drug courts to be based on scientific evidence, to contain medical and psycho-social programs, and to respect inform consent, among other issues. On this subject, , IACHR, Information provided to the IACHR by the CICAD during a technical meeting, September 1, 2022. See also: CICAD, Hemispheric Plan of Action on Drugs 2021-2025, approved in the 68<sup>th</sup> regular assembly of the BICAD in Bogota, Colombia, September 9-11, 2020.

<sup>527</sup> Social Science Research Council, Drug Courts in the Americas, October 2018. See also: WOLA, IDPC and Dejusticia, Alternatives to incarceration for women involved in the drug trade, May 2018, [hereinafter Alternatives to incarceration for women involved in the drug trade], p. 5.

<sup>528</sup> In this regard, seer Family & Children's Services, Women in Recovery, 2022; and Catholic Health Association of the United States, Tulsa's Women in Recovery provides alternative to prison, December 1, 2018. See also: Vera, Alternatives to incarceration for moms aim to strengthen families, August 10, 2015.



the United States, in the state of Oklahoma, between 2009 and December 2018, nearly 400 women completed the program, with a recidivism rate of 6.7%<sup>529</sup>.

199. As pointed out by the Commission, the main advantage of these models is that they reduce: i) incarceration of people who have committed minor, non-violent offenses with their drug use; ii) relapse rates; and iii) financial costs tied to incarceration.<sup>530</sup> Nonetheless, there are criticisms regarding the use of drug courts. In this regard, the IACHR has made reference to the following: i) these models primarily respond to treatment of a judicial nature rather than to public health concerns; and ii) there are often human rights violations in treatment centers<sup>531</sup>.
200. Moreover, civil society has indicated that other major criticisms include: i) ineffective use of resources when people who do not have drug use problems choose to participate in these programs in order to avoid jail time; ii) the need to admit guilt to access treatment; iii) the lack of health professionals to determine whether or not someone is dependent on drugs; and iv) the judicial practice of imposing more severe penalties on those who do not complete their treatment program.<sup>532</sup> Specifically on the drug courts in Latin America and the Caribbean, the Social Science Research Council has indicated that: i) there is a lack of detailed and updated information; ii) various program entail severe hardships as punishment during the course of treatment; iii) programs require participants to refrain from using drugs during treatment and if not they may be punished; and iv) most countries do not have the capacity to provide adequate treatment for all participants<sup>533</sup>.

### 3. Post-sentencing measures

201. The IACHR has received information on measures in Bolivia and Costa Rica with a gender approach applied after sentencing and that lead to the release of women who have been convicted. In particular, Bolivia implemented pardons that include the gender approach and are presented as measures applied after sentencing,<sup>534</sup> which have resulted in a decrease in the number of women deprived of liberty. In this regard, between 2012 and 2021, nine

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<sup>529</sup> Catholic Health Association of the United States, [Tulsa's Women in Recovery provides alternative to prison](#), December 1, 2018.

<sup>530</sup> In this regard, IACHR, [Report on Measures to Reduce Pretrial Detention in the Americas](#), paras. 147 and 149. Also, WOLA, IDPC and Dejusticia, [Alternatives to incarceration for women involved in the drug trade](#), p. 5.

<sup>531</sup> IACHR, [Report on Measures to Reduce Pretrial Detention in the Americas](#), paras. 150-152.

<sup>532</sup> WOLA, IDPC y Dejusticia, [Alternatives to incarceration for women involved in the drug trade](#), pp. 5-6.

<sup>533</sup> Social Science Research Council, [Drug Courts in the Americas](#), October 2018.

<sup>534</sup> On pardon as a non-custodial measure applied post-sentencing, see: UNODC, [Toolkit on Gender-Responsive, Non-Custodial Measures](#), August 2021, pp. 44 and 56.

Presidential Decrees<sup>535</sup> were issued that include clauses benefiting: pregnant women with breastfeeding children, female heads of household, mothers and fathers responsible for the care of minor children, among other groups.<sup>536</sup> Specifically, the Pardon and Amnesty Decree in force since February 2021 incorporated for the first time in the clause on exclusions preventing this benefit from being granted to persons under certain circumstances a proviso that exclusion does not apply to groups in vulnerable situations. That exception allows granting the pardon to: i) pregnant women; ii) women older than age 55; and, iii) persons responsible for the care of children under the age of 12 or disabled persons who cannot care for themselves alone.<sup>537</sup> In this context, according to data from the General Directorate of the Penitentiary System provided to civil society, between 2012 and 2021 a total of 2,392 women benefited, representing 24% of the total number of people benefitting from this provision<sup>538</sup>.

202. For its part, with respect to Costa Rica, the IACHR appreciates the criminal policy adopted by the country for the benefit of women in at-risk situations involved in the commission of drug crimes. In particular, in 2013, Law No. 9161 was adopted, amending Article 77 of Law No. 8204, governing criminal conduct related to drugs. With this reform, consideration was given to applying alternative measures for the benefit of women convicted for introducing drugs in prison facilities and who meet one of the following conditions: i) are in a situation of poverty; ii) are “heads of household in vulnerable conditions;” iii) are responsible for persons in a vulnerable situation, such as minors, seniors, and persons with a disability; or iv) an older person “under conditions of vulnerability.” The alternative measures to be considered, besides house arrest, include assisted release, “trust centers,” and “restricted” release with electronic devices.<sup>539</sup> In this scenario, according to the most up-to-date information available, in mid-2017 the implementation of this law permitted the release of at least 120 women<sup>540</sup>.

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<sup>535</sup> In particular, the Presidential Decrees (DP) are: i) DP No. 1445 of 2012, ii) DP 1723 of 2013; iii) DP No. 2131 of 2014; iv) DP No. 2437 of 2015; v) DP 3030 of 2016; vi) DP No. 3519 of 2018; vii) DP No. 3756 of 2019; viii) DP No. 4226; and ix) DP No. 4461 of 2021. See: Government of Bolivia, Diplomatic Note No. MPB-OEA-NV116-21, June 1, 2021, pp. 11-12; and IACHR, Information provided to the IACHR by the Fundación Construir organization of Bolivia via e-mail, June 16, 2022.

<sup>536</sup> In this regard, WOLA and Equis, Experiencias de amnistías, indultos, y reducciones de penas relacionadas con delitos de drogas en las Américas, January 7, 2020.

<sup>537</sup> In this regard, Bolivia, Supreme Decree No. 4461, adopted February 18, 2021. See also: Cladem Bolivia, et al., Contributions from Civil Society to the Rapporteurship on the Rights of Persons Deprived of Liberty, April 12, 2021, p. 26.

<sup>538</sup> IACHR, Information provided to the IACHR by the Fundación Construir organization of Bolivia via e-mail, June 16, 2022.

<sup>539</sup> IACHR, Report on Measures to Reduce Pretrial Detention in the Americas, para. 211. See also: Costa Rica, Legislative Decree No. 9161 incorporating the amendment of Article 77 - File No. 17.980, adopted July 30, 2016.

<sup>540</sup> See WOLA, Criminal Record Reform in Costa Rica: A Step toward Proportionality and Improved Prospects For Women's Lives after Prison, June 29, 2017, cited in: UNODC, Toolkit on Gender-Responsive Non-Custodial Measures, August 2021, p. 75.

## ***B. Obstacles to the implementation of alternative measures with a gender approach***

### **1. Challenges in accessing alternative measures**

203. The IACHR notes with concern that despite efforts made by some States in the region to implement alternative measures with a gender perspective, in seeking to access them women face judicial decisions influenced by gender stereotypes and material obstacles, particularly given the need to demonstrate roots in the community, the lack of financial resources to support these measures, and the lack of an appropriate home.

#### **A) Judicial decisions influenced by gender stereotypes**

204. The Commission has received information indicating that the application of alternative measures for the benefit of women is frequently limited due to gender stereotypes on the role of women in judicial decisions. In particular, the data indicate that judicial authorities' decisions are influenced by gender stereotypes, resulting in denials of the use of alternatives based on moral arguments regarding female conduct, such as the “bad mother” concept according to which a women who committed a crime is dangerous and as such cannot carry out her role as a mother. According to these prejudices, women in conflict with criminal law have been unscrupulous regarding the future of their children, have a “harmful personality,” or would represent a “moral danger” for them<sup>541</sup>.

205. Additionally, according to available information, judicial authorities usually reject the use of alternatives for mothers who are unable to prove they were responsible for the care and upbringing of their children prior to their incarceration. Some judges even establish requirements not defined in the law – for example – the requirement that a pregnancy be an at-risk pregnancy or that a child have health problems.<sup>542</sup> In addition, even in countries where there are no restrictions on access to alternatives by type of crime, these stereotypes are used more frequently when the application of alternatives is being analyzed for women accused or convicted of drug-linked crimes, given that justice officials reject requests for alternative measures based on the “dangerousness” of these crimes or the risk to the children “if their mother is released.”<sup>543</sup> Regarding the factors in this phenomenon, the IACHR notes that the lack of training and awareness on the part of

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<sup>541</sup> In this regard, see: WOLA, et al., Regional Response to the Consultation Questionnaire on Women Deprived of Liberty, 2021, April 23, 2021, p. 41; and MPD, Argentina, Ref.: Consultation Questionnaire on Women Deprived of Liberty, April 9, 2021, pp. 8-9. See also: Provincial Criminal Defense Public Service – Judicial Branch of the Province of Santa Fe, Argentina, Consultation Questionnaire on Women Deprived of Liberty, April 12, 2021, pp. 69-70.

<sup>542</sup> In this regard, Parliament of Uruguay – Parliamentary Commissioner for the Prison System, Informe especial: prisión domiciliaria asistida para madres con hijos a su cargo en el proceso penal, October 28, 2021, p. 25.

<sup>543</sup> IACHR, Information provided to the IACHR by the APT expert during the second IACHR meeting of experts on women deprived of liberty, June 4, 2021.

judicial authorities appears as the principal cause leading to the use of gender roles when deciding on the application of alternative measures.

206. In view of this and in order to eradicate gender stereotypes that prevent women from benefiting from alternatives to incarceration, the Commission urges the States to ensure mandatory and ongoing training on inter-American standards on human rights, gender, interculturality, intersectionality, and deprivation of liberty in the training given to authorities charged with criminal prosecution and responsible for making decisions. Similarly, the States should develop strategic gender-awareness plans for justice officials on the importance of independence and autonomy in women's actions, promoting the use of measures alternative to prison for the benefit of women.<sup>544</sup> Added to the above, the IACHR calls on the States to establish accountability mechanisms in response to the conduct of officials who prevent women from benefiting from alternative measures based on stereotyped assertions, insinuations, and allusions.

## **B) Material obstacles**

207. The Commission notes that there are material obstacles that prevent women from benefiting from alternative measures to prison, primarily related to: i) the requirements on having roots in the community; ii) limited financial resources to support the costs of some alternative measures; and iii) also, in the case of house arrest, the lack of someone who helps with household tasks and the lack of a suitable home. Regarding roots in the community, judicial authorities frequently require women to have roots as a requirement for granting alternatives to pretrial detention. This requirement may sometimes be an impediment to accessing a benefit given the requirement to have proof demonstrating one's roots.<sup>545</sup> Thus, for example, when a woman does not have a fixed home, work, or family or social group, the judicial authorities consider the woman to lack roots, leading to the automatic assumption that there is a flight risk.<sup>546</sup> In this regard, the IACHR recalls that the requirement to demonstrate roots in the community may constitute a discriminatory measure when this is not within the reach of persons in vulnerable economic situations<sup>547</sup>.

208. The lack of financial resources to fund the costs of alternatives to incarceration also prevents women from accessing: i) release on bail; ii) electronic monitoring in countries where beneficiaries must pay for it; or iii) security in order to gain access to house arrest

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<sup>544</sup> Along similar lines, IACHR, Report on Measures to Reduce Pretrial Detention in the Americas, para. 83.

<sup>545</sup> CSS, Response to the Consultation Questionnaire on Women Deprived of Liberty, Colombia, April 10, 2021, p. 18.

<sup>546</sup> In this regard, see IACHR, Information provided to the IACHR by the expert from the WOLA organization during the second meeting of experts on women deprived of liberty, June 4, 2021; Government of Costa Rica, Diplomatic Note No. CROEA-AA-576-21, April 9, 2021, p. 22; MPD, Argentina, Ref.: Consultation Questionnaire on Women Deprived of Liberty, April 9, 2021, p. 25; Provincial Criminal Defense Public Service – Judicial Branch of the Province of Santa Fe, Argentina, Consultation Questionnaire on Women Deprived of Liberty, April 12, 2021, p. 69.

<sup>547</sup> IACHR, Report on Pretrial Detention in the Americas, OEA/Ser.L/V/II, Doc. 46/13, approved December 30, 2013, para. 323.

when applicable.<sup>548</sup> In addition, the IACHR has received information indicating that judges sometimes require women to demonstrate that they have sufficient resources to guarantee their subsistence during the implementation of alternatives. This leads to the refusal to grant these measures when women lack an employment contract or bank account<sup>549</sup>.

209. In this regard, the Commission reiterates that the deposit of a bond or security as a way to ensure appearance at trial may represent a discriminatory measure when it does not take accused women's personal circumstances into consideration<sup>550</sup>. Along the same lines, the UNODC has referred to the high probability that women are unable to pay the required bond due to their economic disadvantage in most societies.<sup>551</sup> Specifically in the case of electronic monitoring, the IACHR recalls that States should take the measures necessary to ensure that the application of these devices is adapted to the criteria of material equality and do not constitute a discriminatory measure against those who are not financially able to pay for them. Thus, when the inability to pay has been demonstrated by the potential beneficiary, some other non-custodial security measure should be used or there should be no charge to use the referenced devices<sup>552</sup>.
210. In addition, in the specific case of house arrest, in order to grant this alternative justice systems frequently require that women: i) have someone who works with them on daily household tasks; and ii) have suitable homes, i.e., they are fixed, verifiable, located in areas that security forces can access without risk, and in the case of electronic monitoring, have appropriate conditions for the installation of sensors.<sup>553</sup> These requirements would exclude women who lack a fixed domicile and those who live in areas considered unsafe.
211. In this context, the IACHR notes that these requirements produce discriminatory effects as they mean that only women with support networks and guaranteed economic resources are in a position to seek alternatives to prison, i.e., women who – per IACHR analysis throughout this report – represent a minority in custody. This has a differentiated impact on

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<sup>548</sup> In this regard, see: IACHR, Situation of Human Rights in Guatemala, para. 409; IACHR, Information provided to the IACHR by WOLA during a technical meeting on women deprived of liberty, February 10, 2022; and Vera Institute of Justice, Overlooked: Women and Jails in an Era of Reform, 2016, p. 29. See also: Prison Policy Initiative, Prisons and jails will separate millions of mothers from their children in 2022, May 4, 2022; and Prison Policy Initiative, How does unaffordable money bail affect families? August 15, 2018.

<sup>549</sup> IACHR, Information provided to the IACHR by the representative from the Fundación Construir organization of Bolivia during the second meeting of experts on women deprived of liberty, June 4, 2021.

<sup>550</sup> In this regard, IACHR, Report on the Use of Pretrial Detention in the Americas, OEA/Ser.LV/II, Doc. 46/13, approved December 30, 2013, para. 323.

<sup>551</sup> UNODC, Handbook on Women and Imprisonment, p. 109.

<sup>552</sup> IACHR, Report on Measures to Reduce Pretrial Detention in the Americas, para. 134.

<sup>553</sup> In this regard, MPD, Argentina, Ref.: Consultation Questionnaire on Women Deprived of Liberty, April 9, 2021, p. 25; IACHR, Information provided to the IACHR the expert from the WOLA organization during a technical meeting on women deprived of liberty, February 10, 2022; and WOLA, et al., Regional Response to the Consultation Questionnaire on Women Deprived of Liberty, 2021, April 23, 2021, p. 42.

most women involved in the commission of crimes due to factors related to the lack of employment opportunities, social exclusion, and poverty. In particular, deposit of bail or security as a measure to ensure appearance at trial, may constitute a discriminatory measure when it fails to take into consideration the personal circumstances of the women accused.<sup>554</sup> Similarly, the UNODC has noted that women are more likely to be unable to pay the required bail bond due to their economic disadvantage in most societies<sup>555</sup>.

212. In view of this, the Commission emphasizes that the State should guarantee that women are not discriminated against in the application of alternatives to incarceration due to their social vulnerability. In this sense, as indicated by the UNODC, the IACHR affirms that the lack of a suitable home, a job, economic resources to pay for measures, or a family that offers its support should in no case be considered risk factors preventing the use of alternatives. On the contrary, challenges of this kind should be addressed with the support of social assistance institutions and the community, in order to promote these women's reintegration in society and prevent repeat offenses.<sup>556</sup> Specifically in the case of electronic monitoring, the IACHR recalls that the States should adopt the measures necessary to ensure that the application of these devices is adapted to the criteria of material equality and do not constitute a discriminatory measure against those persons who are not financially able to pay for them. Thus, if the potential beneficiary's inability to pay has been demonstrated, another non-custodial security measure should be used or there should be no charge for using the referenced devices<sup>557</sup>.

## 2. Challenges in implementing measures given the lack of devices

213. The IACHR expresses its concern regarding the lack of available information confirming the implementation of mechanisms with a gender perspective for the supervision of measures and the monitoring of women during the application thereof. In particular, the information received indicates that – with the exception of Costa Rica and Argentina – there are few support and monitoring mechanisms in the region with a gender approach, which characteristically focus on monitoring house arrest. In this regard, only Costa Rica and Argentina provided specific data on this subject. In addition, with regard to monitoring, only countries that provide support to women beneficiaries have such programs, while the remaining States did not provide specific information in this regard. This situation has a profound effect on women subject to house arrest.

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<sup>554</sup> In this regard, IACHR, Report on the Use of Pretrial Detention in the Americas, OEASer.LV/II, Doc. 46/13, approved December 30, 2013, para. 323.

<sup>555</sup> UNODC, Handbook on Women and Imprisonment, p. 109.

<sup>556</sup> In this regard, UNODC, Handbook on Women and Imprisonment, p. 105.

<sup>557</sup> IACHR, Report on Measures to Reduce Pretrial Detention in the Americas, para. 134.



## A) Scarcity of supervision measures with a gender approach

214. The Commission received official information from Costa Rica and Argentina indicating the incorporation of a gender perspective in the monitoring of alternative measures as well as actions adopted to provide support to women. In particular, Costa Rica indicated that in the context of supervision, the Women's Care Level – part of the Ministry of Justice and Peace – coordinates care at the technical, professional, and administrative level for women in criminal proceedings, including those benefiting from alternatives, among other issues.<sup>558</sup> In addition, women subject to non-custodial sentences who are in at-risk situations<sup>559</sup> may access the support and services of the “Network for the comprehensive care of women linked to a criminal proceeding and their dependent family members in vulnerable situations” (RED).<sup>560</sup> In this scenario, the RED provides economic subsidies, professional training, financial counseling, and support for childcare<sup>561</sup>.
215. With regard to Argentina, the State reported on the mechanism monitoring the application of house arrest that, while intended for everyone, does provide specific activities with a gender approach. In this regard, the purpose of the Directorate for Care of Persons under Electronic Monitoring (DAPVE) is to implement and oversee the use of house arrest with electronic monitoring and, in this context, an interdisciplinary team supervises women.<sup>562</sup> In addition, support for women includes addressing various topics through programs linked to their social reintegration in the areas of employment, health, raising children, and social ties.<sup>563</sup> In particular, the IACHR emphasizes the participation of civil society organizations in the following activities: i) workshops led by the “Yo No Fui” organization that works on artistic and productive projects; and ii) workshops of the “Cosiendo Redes” organization on employment training in the textile industry<sup>564</sup>.

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<sup>558</sup> Government of Costa Rica, Diplomatic Note No. CROEA-AA-576-21, April 9, 2021, pp. 22-23.

<sup>559</sup> In particular, to participate in the RED, women must be in one of the following situations: i) single parent family with minor children living in poverty; ii) victim of family or gender violence; iii) history of or current drug use; iv) linked to drug crimes; v) extreme poverty; and vi) unemployment. In this regard, WOLA, La Red Interinstitucional para la atención integral de mujeres vinculadas a un proceso penal en Costa Rica, June 2017, p. 2.

<sup>560</sup> In particular, the Network is an inter-institutional and intersectoral coordinating mechanism that relies on the participation of various bodies such as: the National Institute of Women (INAMU) – which coordinates the RED, the Institute of Alcoholism and Drug Dependency (IAFA), Costa Rican Institute on Drugs (ICD), Mixed Institute of Social Assistance (IMAS), National Children's Trust (PANI), National Apprenticeship Institute (INA), Ministry of Justice and Peace (MJP), Public Defenders Office of the Judicial Branch, and the Chamber of Commerce. In this regard, Government of Costa Rica, Diplomatic Note No. CROEA-AA-576-21, April 9, 2021, p. 23.

<sup>561</sup> In this regard, Government of Costa Rica, Diplomatic Note No. CROEA-AA-576-21, April 9, 2021, pp. 22-23; and WOLA, La Red para la atención integral a mujeres vinculadas a un proceso penal y sus familiares dependientes en situaciones de vulnerabilidad en Costa Rica, Junio de 2017, p. 2.

<sup>562</sup> In this regard, Government of Argentina, Diplomatic Note No. IF-2021-34330903-APN-DCIMD#MRE, April 20, 2021, pp. 13-17.

<sup>563</sup> In this regard, see the subsection on “Programs for women subject to alternatives and other parole benefits” in Chap. V.

<sup>564</sup> In this regard, Government of Argentina, Diplomatic Note No. IF-2021-34330903-APN-DCIMD#MRE, April 20, 2021, pp. 13-17.

216. Despite the above, based on the responses to the questionnaires, the Commission notes with concern that there are few mechanisms for the supervision of alternative measures. In particular, besides Argentina and Costa Rica, the IACHR received official information confirming the existence of such mechanisms in Colombia,<sup>565</sup> Ecuador,<sup>566</sup> El Salvador,<sup>567</sup> Mexico,<sup>568</sup> Paraguay,<sup>569</sup> Nicaragua,<sup>570</sup> and Uruguay.<sup>571</sup> These mechanisms are responsible for monitoring the application of house arrest for all beneficiaries and are usually in charge of organizations created to carry out such control<sup>572</sup> or judicial authorities,<sup>573</sup> sometimes with the support of security forces.<sup>574</sup> However, the IACHR notes that they lack a gender perspective as they make no provision for the specific needs of women and fail to establish: i) specific authorities for monitoring women; ii) distinctions in the monitoring of women, given the failure to adopt measures that respond to their needs; and iii) specific gender-based programs.
217. In view of the above, the Commission notes that the failure to adopt measures to ensure appropriate supervision of the use of alternatives with regard to women and their monitoring represents one of the major challenges in the implementation of these measures. In this regard, it recalls that the widespread lack of clear and reliable records on the degree of compliance with the obligations imposed in the context of the application of alternative measures results in the lack of effective mechanisms to control such measures, as well as inadequate coordination among the authorities involved. In view of this, the IACHR urges the States to prioritize the financing and establishment of alternative measures that are respectful of the gender and intersectionality approaches, that consider the specific needs of women, with an emphasis on those who are particularly at risk because they face multiple factors of discrimination, such as mothers and trans women. To that end, the States should produce statistics that incorporate such approaches in data

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<sup>565</sup> Government of Colombia, Note MPC/OEA No. 530-2021, April 12, 2021, p. 22.

<sup>566</sup> Government of Ecuador, Diplomatic Note No. 4-2-102/2021, April 12, 2021, p. 7.

<sup>567</sup> Government of El Salvador, Diplomatic Note No. MPOEA-OEA-106/2021, September 21, 2021, p. 2.

<sup>568</sup> Government of Mexico, Diplomatic Note No. OEA1121, April 12, 2021, p. 20.

<sup>569</sup> Government of Paraguay, Diplomatic Note No. 495-21/MMP/OEA, April 27, 2021, p. 15.

<sup>570</sup> Government of Nicaragua, Diplomatic Note No. MPN-OEA/LAR/21-00097, April 7, 2021, p. 29.

<sup>571</sup> National Drug Board, Uruguay, Mujeres, Políticas de Drogas y Encarcelamiento, November 1, 2019, p. 47.

<sup>572</sup> In particular, the Department of Testing and Probation (DPLA) in El Salvador, the System Control and Surveillance System of the Federal Prison System in Mexico, and the Office for the Supervision of Probation (OSLA) of Montevideo, Uruguay.

<sup>573</sup> Specifically, in Colombia (with support of the INPEC), Ecuador (with support from the Security area of the Under-Directorate for Social Rehabilitation of the SNAI), Nicaragua, and Paraguay.

<sup>574</sup> In particular, in Colombia, Ecuador, and Uruguay (in the rest of the country outside Montevideo).

collection and reliable, complete, and systematic information on the results obtained from the application of such measures<sup>575</sup>.

218. In addition, the Commission urges the States to adopt effective measures to ensure the monitoring of women benefiting from alternatives to prison. The purpose here is to ensure that these women are not prevented from exercising their human rights and to avoid affecting the rights of those in their care. In particular, States should undertake the efforts necessary to ensure efficient coordination among the authorities related to criminal justice and other support agencies that provide assistance in the implementation of these measures, as well as between these entities and civil society organizations. In this regard, the involvement of civil society and community mechanisms is essential for: i) ensuring full community integration; ii) ensuring a more solid monitoring structure on compliance with alternative measures; iii) providing more support for the work of building awareness of the advantage of their use; and iv) generating greater trust among beneficiaries with regard to their use<sup>576</sup>.

## C. Alternative measures and parole benefits with a gender approach in northern Central America

### 1. Practices of the States

219. The Commission notes with concern that although the laws of the States in northern Central America make provision for measures alternative to incarceration and prison benefits limiting the use of detention,<sup>577</sup> only some of the alternatives provide for a gender perspective and are temporary in nature and only take women's reproductive function into account. In particular, in the area of alternative measures with a gender perspective, Honduran criminal procedure law establishes that pretrial detention cannot be ordered against pregnant women and mothers who are nursing their children, except in the case of drug trafficking crimes or crimes related to criminal groups, among others.<sup>578</sup> In Guatemala, the legal system allows pregnant convicted women or women in the post-partum period up

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<sup>575</sup> In this regard, IACHR, Report on Measures to Reduce Pretrial Detention in the Americas, para. 116.

<sup>576</sup> In this regard, see: IACHR, Report on Measures to Reduce Pretrial Detention in the Americas, para. 119.

<sup>577</sup> In this regard, Guatemala reported that prior to issuance of a judgment, the Code of Criminal Procedure governs the institution of "dejudicialization" that can benefit anyone subject to prosecution and encompasses: i) application of the criterion of timeliness; ii) mediation; and iii) conditional suspension of criminal prosecution. In addition, as a prison benefit, references was made to the "remission of sentences" allowing convicted persons to reduce the amount of their sentence after certifying their participation in employment or studies. For its part, Honduras indicated that the Penal Code provides the following alternatives or benefits for convicted persons: i) suspended sentence; ii) replacement of sentence with house arrest, weekend detention, permanent location or expulsion from national territory; iii) conditional suspended sentence; and iv) conditional release. See: Government of Guatemala, Diplomatic Note No. NV-OEA-MI-No.161-2022, August 4, 2022, pp. 2,4; and Government of Honduras, Diplomatic Note No. SEDH-PM-054-2022, August 9, 2022, p. 3.

<sup>578</sup> Government of Honduras, Diplomatic Note No. DNDDHH-LI-316-2021, May 19, 2021, p. 9. Also see: Honduras, Code of Criminal Procedure: Decree No. 9-99-E, December 30, 1999, Arts. 173, 183, and 184.

to 40 days after giving birth to serve their sentences in health centers “in custody, for the time strictly necessary.”<sup>579</sup> With regard to El Salvador, the available data indicate that there are no alternatives with a gender approach<sup>580</sup>.

## 2. Specific challenges in the implementation of alternatives

### A) Obstacles to accessing measures

- 220.** Besides the obstacles identified with respect to the Americas, the IACHR notes that in this subregion the priority use of incarceration for crimes linked to drugs or organized crime is generally the main specific challenge to women’s access to these alternative measures.<sup>581</sup> In addition, specifically, according to official data, incarcerated women in Honduras face a lack of public policies for their benefit.<sup>582</sup> For its part, in Guatemala, deficient training of judicial officials and material obstacles of a financial nature make it difficult for women to benefit from alternatives to incarceration. Specifically on deficient training of judicial officers in Guatemala, in its response to the consultation questionnaire, the State referred to the need to “continue with training for justice administrators in order to provide knowledge on international human rights standards with respect to women in order to produce awareness among them.” This should be done by “avoiding any machismo bias or discrimination that might jeopardize the objectivity of judicial proceedings involving women and their access to an alternative measure to avoid the deprivation of liberty<sup>583</sup>”.
- 221.** With regard to material obstacles of a financial nature that women face in seeking access to alternatives in Guatemala, the IACHR has pointed out that the use of electronic monitoring devices represents serious challenges for people who lack the financial resources to pay for them, in that the Telematic Control Implementation Law establishes that the use of the respective devices must be financed by the beneficiaries themselves, in the absence of an opinion issued by a competent judge based on a prior socioeconomic study.<sup>584</sup> In addition, according to civil society, the use of house arrest requires payment of a bond. These requirements could not be met by most women deprived of liberty.

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<sup>579</sup> Honduras, Decree No. 17-73 – Penal Code, adopted July 5, 1973, Article 46.

<sup>580</sup> The IACHR emphasizes that the State did not provide information on this subject. In addition, current criminal and procedural law was consulted.

<sup>581</sup> On this point, see the subsections on “Excessive use of pretrial detention and failure to apply alternative measures,” and Policies against organized crime and their impact on the incarceration of women” in Chap. II.

<sup>582</sup> Government of Honduras, Diplomatic Note No. SEDH-PM-054-2022, August 9, 2022, p. 4.

<sup>583</sup> Government of Guatemala, Diplomatic Note No. DAJCC-Seprem 003-2021, April 14, 2021, p. 18.

<sup>584</sup> IACHR, Situation of human rights in Guatemala. OEA/Ser.LV/II. Doc. 208, December 31, 2017, para. 409.

Moreover, to obtain this money in the form of a loan, banks would require women to have property, which is impossible for the large majority of women who commit crimes<sup>585</sup>.

## **B) Scarcity of support and monitoring mechanisms**

**222.** The Commission notes that the scarcity of mechanisms to support women subject to these measures and to monitor their use is another of the challenges impeding the implementation of alternative measures for the benefit of women in this subregion. In this regard, the official information received indicates that none of three countries would provide support enabling women subject to these measures to access their rights. With regard to monitoring, only El Salvador has a specific mechanism, while Honduras and Guatemala face challenges to monitoring the use of alternative measures. However, it notes that El Salvador's mechanism lacks a gender approach as it does not consider authorities nor specific actions for monitoring women.<sup>586</sup> In particular, in El Salvador, the supervision of measures alternative to prison is the responsibility of the Department of Probation and Assisted Release (DPLA), which is an auxiliary body of the judiciary that collaborates with the Prison Supervision and Penalty Enforcement courts in this task<sup>587</sup>.

**223.** As for Honduras, the IACHR notes that the official information indicates that supervision of the implementation of alternative measures is the responsibility of the Judicial Branch through the Penalty Enforcement Courts, as well as the DINAF.<sup>588</sup> In addition, the monitoring of alternative measures includes the participation of human rights institutions such as the National Mechanism to Prevent Torture (MNP CONAPREV) through its 20 Local Boards – one of them specifically for women – the National Commission on Human Rights (CONADEH), and civil society organizations such as the Center for the Prevention, Treatment, and Rehabilitation of Torture Victims (CPTRT) and Cozumel Trans.<sup>589</sup> Nonetheless, according to information from the MNP CONAPREV, the entities that administer justice are “inefficient” in creating an institution to monitor alternative

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<sup>585</sup> IACHR, Information provided to the IACHR by the representative of the Colectivo Artesana of Guatemala during the second IACHR meeting of experts on women deprived of liberty, June 4, 2021.

<sup>586</sup> On this point, see the subsection on “Challenges in implementing measures given the lack of mechanisms.”

<sup>587</sup> Government of El Salvador, Diplomatic Note No. MPOEA-OEA-106/2021, September 21, 2021, p. 2.

<sup>588</sup> Government of Honduras, Diplomatic Note No. 336-DPM-DGPE-2022–Annex “Oficio SEDH-PM-056-2022,” September 7, 2022, p. 9.

<sup>589</sup> In this regard, Government of Honduras, Diplomatic Note No. DNDDHH-LI-316-2021, May 19, 2021, p. 10; and Government of Honduras, Diplomatic Note No. SEDH-PM-054-2022, August 9, 2022, p. 5.

measures.<sup>590</sup> Finally, with regard to Guatemala, the Commission was informed regarding the lack of mechanisms to monitor alternative measures<sup>591</sup>.

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<sup>590</sup> IACHR, Information provided to the IACHR by the representative of the National Mechanism to Prevent Torture of Honduras during the second IACHR meeting of experts on women deprived of liberty, June 4, 2021.

<sup>591</sup> IACHR, Information provided to the IACHR by the representative of the Colectivo Artesana of Guatemala during the second IACHR meeting of experts on women deprived of liberty, June 4, 2021.







# **SOCIAL REINTEGRATION OF WOMEN**

## V. SOCIAL REINTEGRATION OF WOMEN

224. In this chapter, the Commission analyzes the obstacles that women face in seeking reintegration in society. In this regard, it addresses the inadequate implementation of social reintegration programs based on general obstacles in the establishment of these programs, the failure to adopt programs with a gender perspective, the reinforcement of gender stereotypes in these policies, and restrictions on women's participation. In this context, the IACHR analyzes the challenges that women face during the process of transitioning between life in prison and the outside. In particular, it examines the lack of support networks, social stigmatization, and obstacles to the exercise of their economic and social rights. It also examines the specific situation faced by trans women. In addition, the Commission presents the principal practices seen in the region to promote the social reintegration of incarcerated women, both for those subject to alternative measures and those who have been released. Finally, the IACHR refers to the social reintegration of women in northern Central America.

### A. *Principal obstacles to women's social reintegration*

#### 1. Challenges in implementing programs

225. The Commission notes that the following challenges arise when implementing programs for women's social reintegration: i) general obstacles to establishing programs of this kind; ii) the limited number of programs with a gender perspective; iii) programs that reinforce gender stereotypes; and iv) restrictions on women's participation.

##### A) General obstacles to establishing programs

226. The Commission has received information indicating that the main general obstacles to appropriate implementation of social reintegration programs are as follows: i) the limited number of prison programs focusing on social reintegration; and ii) the lack of resources dedicated to the operation of such programs. In particular, regarding the limited number of programs, in its Report on Poverty and Human Rights, the IACHR indicated that a serious problem is the lack of public policies designed to promote the rehabilitation and social readjustment of persons sentenced to prison.<sup>592</sup> In this regard, the Commission was informed that in some of the region's countries there is a failure to incorporate a social reintegration approach in prison policies, leading to a lack of programs for this purpose,

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<sup>592</sup> IACHR, *Poverty and Human Rights*, para. 422.

which occurs in Bolivia,<sup>593</sup> Mexico,<sup>594</sup> Suriname,<sup>595</sup> and Venezuela at least.<sup>596</sup> For example, in Mexico, the limited number of such programs means that less than half of the incarcerated population participates in reintegration activities. In particular, according to data from the 2021 National Survey of the Population Deprived of Liberty (ENPOL) disclosed by civil society, only 44.5% of women and 36.1% of men participated in job-related, educational, and cultural activities<sup>597</sup>.

227. In addition, the Commission notes that, according to available information, there is often a failure to make budgetary allocations for social reintegration programs. The result is that detention centers lack human, financial, and material resources to carry out sustainable reintegration projects over time. This means that detained persons have few opportunities to gain access to education and training to facilitate their re-entry into society.<sup>598</sup> For example, the IACHR received information indicating that in Ecuador, due to insufficient programs and few staff assigned, only 50% of the prison population is able to access social reintegration activities.<sup>599</sup> Similarly, according to data from the Defender's Office of the Province of Santa Fe in Argentina, there is limited staff and not enough quotas to offer women employment opportunities, training, housing plans, and comprehensive follow-up on gender violence.<sup>600</sup> Along the same lines, in Colombia, there are not enough teachers in prisons, impeding access to educational activities<sup>601</sup>.

228. In addition, the Commission received information indicating that the lack of resources allocated to social reintegration programs also has an impact on limited supplies for work, study materials, Internet access, and sufficient and appropriate space for conducting activities.<sup>602</sup> Additionally, as the IACHR was informed, the result of a lack of financial

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<sup>593</sup> Cladem Bolivia, *et al.*, Contributions from Civil Society to the Rapporteurship on the Rights of Persons Deprived of Liberty, April 12, 2021, p. 25.

<sup>594</sup> IACHR, Information sent to the IACHR by Equis – “Buenas prácticas en materia de reinserción social,” June 18, 2022. See also: Instituto Nacional de Estadística y Geografía, Encuesta Nacional de Población Privada de la Libertad (ENPOL), 2021.

<sup>595</sup> Government of Surinam, Diplomatic Note No. PVOAS-SUR28521, April 9, 2021, p. 6.

<sup>596</sup> OVP, Ref.: Responses to the Consultation Questionnaire on Women Deprived of Liberty - State: Venezuela, April 2021, p. 9.

<sup>597</sup> IACHR, Information sent to the IACHR by Equis – “Buenas prácticas en materia de reinserción social,” June 18 2022. See also: Instituto Nacional de Estadística y Geografía, Encuesta Nacional de Población Privada de la Libertad (ENPOL), 2021.

<sup>598</sup> On this subject, Penal Reform International and Thailand Institute of Justice, The rehabilitation and social reintegration of women prisoners, 2019 [“Penal Reform International and TIJ, The rehabilitation and social reintegration of women prisoners], p. 8.

<sup>599</sup> IACHR, Report on the Situation of Persons Deprived of Liberty in Ecuador, para. 173.

<sup>600</sup> In this regard, Provincial Criminal Defense Public Service – Judicial Branch of the Province of Santa Fe, Argentina, Consultation Questionnaire on Women Deprived of Liberty, April 12, 2021, pp. 73-74.

<sup>601</sup> CSS, Response to the Consultation Questionnaire on Women Deprived of Liberty, Colombia, April 10, 2021, p. 22.

<sup>602</sup> In this regard, CSS, Response to the Consultation Questionnaire on Women Deprived of Liberty, Colombia, April 10, 2021, pp. 21-22; and ASOPAZH and CEMH, Consultation Questionnaire on Women Deprived of Liberty, April 10, 2021, p. 16.

resources is that persons deprived of liberty obtain little or no compensation for work-related activities carried out in prison. This situation has a differentiated and even disproportionate impact on women, given that they usually carry out poorly compensated or uncompensated activities, such as those related to cleaning, cooking, or giving manicures<sup>603</sup>.

229. On this subject, the Commission recalls that according to the ACHR and other international instruments,, the purpose of a prison term is the social reintegration of persons. In this regard, the Mandela Rules provide that social reintegration can be achieved through: [i] “a pre-release regime organized in the same prison or in another appropriate institution;” or [ii] “release on trial under some kind of supervision which must not be entrusted to the police but should be combined with effective social aid.”<sup>604</sup> In this regard, considering the limited financial resources of most persons deprived of liberty and that their incarceration presents a risk of severing their ties with the community, it is essential that the States adopt comprehensive public policies on social reintegration in order to keep them from becoming mired in a cycle of social exclusion and criminal recidivism<sup>605</sup>.

230. In particular, the States should offer programs and activities within prison institutions. In this regard, the Principles and Best Practices provide that incarcerated persons have a right to participate in healthy and constructive cultural, sports, and social activities. For their part, the Mandela Rules establish that prison authorities should implement employment and educational programs and other activities that contribute to the moral, spiritual, and social characters of prisoners.<sup>606</sup> In view of this, the States’ obligations include: i) strengthening outside contact with relatives; ii) offering programs and opportunities tailored to their conditions; and iii) analyzing the factors that may impede social reintegration upon release.<sup>607</sup> With regard to work programs in prison, in accordance with international precedents, the States primarily have the following obligations: i) to facilitate working conditions so that prisoners are able to rejoin the labor market;<sup>608</sup> and ii) to compensate the work done adequately and equitably<sup>609</sup>.

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<sup>603</sup> In this regard, IACHR, Information provided to the IACHR by experts from APT, Corpora en Libertad of Mexico, and CELS of Argentina during the third IACHR meeting of experts on women deprived of liberty, March 23, 2022; and CSS, Response to Consultation Questionnaire on Women Deprived of Liberty, Colombia, April 10, 2021, p. 21.

<sup>604</sup> IACHR, “Observations on Advisory Opinion to the Inter-American Court of Human Rights,” para. 143. In this regard, see American Convention, Article 5.6; UN, International Covenant on Civil and Political Rights, General Assembly Resolution 2200 A (XXI), December 16, 1966, Article 10. (3); y UN, Mandela Rules, Rule 87.

<sup>605</sup> In this regard, IACHR, Poverty and Human Rights, para. 422.

<sup>606</sup> IACHR, Principles and Best Practices, Principle. XIII; and UN, Mandela Rules, Rule 4.1 and 4.2.

<sup>607</sup> IACHR, Observations on Advisory Opinion to the Inter-American Court of Human Rights, para. 144.

<sup>608</sup> In this regard, UN, Basic Principles for the Treatment of Prisoners, Resolution 45/11, December 4, 1990, Principle 8, and Council of Europe – Committee of Ministers, Recommendation Rec (2006)2 European Prison Rules, January 11, 2006, Principle. 7.

<sup>609</sup> In this regard, IACHR, Principles and Best Practices, Principle. XIV; and Council of Europe – Committee of Ministers, Resolution (76) 2 on the treatment of long-term prisoners, February 17, 1976.

## B) Limited number of programs with a gender perspective

231. The Commission notes with concern the extremely limited number of social reintegration programs that respond to women's needs. In this regard, based on the information gathered for the preparation of this report, it notes that because women represent a small percentage of the prison population (8% in the region),<sup>610</sup> the authorities focus on the needs of men. Consequently, most programs implemented do not consider women's needs, particularly the reasons that led them to commit crime, the serious impact of their incarceration, and the greatest difficulties they face when seeking to reenter society.<sup>611</sup> Similarly, the UNODC has indicated that pre-release preparation and post-release assistance policies are usually structured around the needs of men and rarely consider the needs of women.<sup>612</sup> In addition, the then Rapporteur on Violence against Women found that women in prison generally do not receive orientation or adequate rehabilitation resources to prepare them for their release and life after prison<sup>613</sup>.

232. In this scenario, women face greater challenges than men to social reintegration in the community.<sup>614</sup> Specifically, the failure to adopt programs with a gender perspective means that women lack sufficient rehabilitation opportunities and those that do exist are less varied and of lower quality than those offered to men. In this regard, as reported to the IACHR, this situation means that sometimes women do not feel motivated to join reintegration programs or decide to abandon them, considering that upon release they will not have the opportunity to use the skills or knowledge acquired.<sup>615</sup> In the specific case of drug addicted women, according to United Nations sources, the result of the lack of adequate harm reduction services in prison<sup>616</sup> is often that the factors that led to their criminal activity are repeated and increase in prison and following their release, putting them at high risk of repeated offenses. For example, a Canadian study revealed that women who were released and did not participate in drug abuse treatment programs were ten times more likely to return to prison after one year than men who did participate in such programs<sup>617</sup>.

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<sup>610</sup> On this point, see the section on "Growth of the female prison population" in Chap. II.

<sup>611</sup> See also: Penal Reform International and TIJ, The rehabilitation and social reintegration of women prisoners, p. 14.

<sup>612</sup> UNODC, Handbook on Women and Imprisonment, p. 22.

<sup>613</sup> Special Rapporteur on Violence against Women, Report on "Pathways to, causes, conditions, and consequences of incarceration for women," para. 67.

<sup>614</sup> On this point, see the section on the "Transition between life in prison and life on the outside." See also: UNODC, "Women and Drugs. Drug use, drug supply and their consequences." p. 36; and Special Rapporteur on Violence against Women, Report on "Pathways to, causes, conditions, and consequences of incarceration for women," para. 67.

<sup>615</sup> In this regard, see: Government of Ecuador, Diplomatic Note No. 4-2-102/2021, April 12, 2021, p. 19; and Penal Reform International and TIJ, The rehabilitation and social reintegration of women prisoners, pp. 11, 14, 17.

<sup>616</sup> On this point, see the section on "Lack of health care with a gender approach" in Chap. III.

<sup>617</sup> In this regard, UNODC, Handbook on Women and Imprisonment, p. 14; and Special Rapporteur on Violence against Women, Report on "Pathways to, causes, conditions, and consequences of incarceration for women," para. 71.



233. On this subject, the Commission emphasizes the advantages of establishing reintegration programs with a gender approach, notably: i) they reduce levels of depression; ii) they promote security inside prisons by providing tools for improving women's behavior; iii) when work is compensated, it helps prisoners meet their financial responsibilities for those in their care; iv) sometimes job-related activities make it possible to generate resources for the prison systems themselves, for example, through maintenance activities; v) they allow the development of skills that will benefit women's inclusion in the labor market; and vi) they reduce recidivism rates<sup>618</sup>.
234. In view of this, the IACHR calls on the States to incorporate the gender perspective in the design and implementation of social reintegration programs. Such programs should: i) take women's needs into account; ii) address the factors that have led to their involvement in crimes; iii) provide a broad supply of programs that enhance their strengths by promoting their employment in tasks that do not reflect gender stereotypes; and iv) be offered for the period before and after release. In this regard, the Bangkok Rules indicate that such programs should be prepared and implemented by prison authorities in cooperation with the parole and social assistance services, local community groups, and civil society organizations.<sup>619</sup> In addition, when women enter prison, authorities should develop individualized plans<sup>620</sup> that are adapted to the specific needs of each woman and address: i) ethnic-racial, religious, and cultural backgrounds; ii) physical and mental health; iii) need to receive psychological treatment or treatment for addictions; iv) caregiving responsibilities and family relationships; v) financial responsibilities; vi) legal advice; vii) housing for their release; viii) job possibilities; ix) education; and x) personal identification.
235. In this regard, interventions are essential upon entering prison and should receive greater emphasis in the period prior to release. Similarly, the same level of intensity should be maintained once women are released, as the skills and tools received for achieving successful reintegration will be put to the test during that stage. In this sense, considering that monitoring people after their release is particularly important, the States should: i) provide support services and activities;<sup>621</sup> and ii) provide continuity in medical treatments after release.<sup>622</sup> Specifically, attention should be given to ensuring that the social, psychological, and medical needs of women who have been released are covered. To that end, it is necessary to generate a multidimensional support network bringing together

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<sup>618</sup> In this regard, Penal Reform International and TIJ, *The rehabilitation and social reintegration of women prisoners*, pp. 2, 6, and 29.

<sup>619</sup> In this regard, see: UN, *Bangkok Rules*, Rules 41, 42, and 46.

<sup>620</sup> In this regard, see: UN, *Mandela Rules*, Rules 59 and 60.

<sup>621</sup> UN, *Mandela Rules*, Rules 90 and 108.1.

<sup>622</sup> IACHR, *Observations on Advisory Opinion to the Inter-American Court of Human Rights*, para. 148. In this regard, UN, *Mandela Rules*, Rules 90 and 108.1; and Council of Europe – Committee of Ministers, *Recommendation Rec (2006)2 European Prison Rules*, January 11, 2006, Principle 42.3.

various public services and community groups that provide follow-up for women after they return to the community. It is also particularly important to ensure that activities taken up in prison are linked to services outside so as to guarantee continuity of care and monitoring of women who have been released<sup>623</sup>.

### C) Reinforcement of gender stereotypes in reintegration programs

**236.** The Commission notes that the gender stereotypes present in prison systems are also reflected in policies on social reintegration. In particular, based on the information gathered, the IACHR notes that reintegration programs offered to women are often limited to activities that reflect traditionally assigned gender roles, with emphasis on tasks that women usually carry out in the home, limiting their development of new skills.<sup>624</sup> Similarly, the then Special Rapporteur on Violence against Women pointed out that in various prisons there are fewer programs for women, those that do exist are less varied or of lesser quality than those offered to male prisoners, limiting job-related and educational opportunities offered to gender stereotypes. In particular, they only offer professional opportunities suited to traditionally female occupations, such as hairdressing, sewing, selling vegetables, and meal services while men have the opportunity to learn construction, welding, and carpentry<sup>625</sup>.

**237.** In this regard, according to civil society there is a widespread lack of technological and technical training for women offered in the region's prisons, where women participate in courses and workshops on cooking, cleaning, beauty, sewing, craftwork, handicrafts, and tailoring.<sup>626</sup> For example, in Bolivia, women have access to primary and secondary school and technical level programs such as hairdressing while men are able to study university careers not provided for women as they represent a small percentage of the prison population.<sup>627</sup> In this context, incarcerated women perform job-related and education

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<sup>623</sup> In this regard, see: UNODC, Handbook on Women and Imprisonment, 2014, p. 79.

<sup>624</sup> In particular, in addition to the information obtained based on responses to the questionnaires and meetings of experts and technical meetings, see: Organization of American States (CIM-OAS). Women, Drug Policies, and Incarceration: A Guide for Policy Reform in Latin America and the Caribbean, 2016, p. 32; Special Rapporteur on Violence against Women, Report on "Pathways to, causes, conditions, and consequences of incarceration for women," para. 68; UNODC, Criminal Justice Handbook Series: Roadmap for the Development of Prison-Based Rehabilitation Programmes, 2017, para. 87; WOLA, IDPC, Dejusticia and CIM, Women, Drug Policies, and Incarceration, 2016, p. 32; and CELS, MPD and PPN, Las mujeres en prisión. Los alcances del castigo, 2011, p. 103.

<sup>625</sup> Special Rapporteur on Violence against Women, Report on "Pathways to, causes, conditions, and consequences of incarceration for women," para. 68.

<sup>626</sup> In this regard, IACHR, Information provided to the IACHR by the representative from the Colectivo Artesana of Guatemala during the third IACHR meeting of experts on women deprived of liberty, March 23, 2022; IACHR, Information provided to the IACHR by a woman who was released and is a member of the *Mujeres libres* organization of Colombia during a technical meeting, October 14, 2021; CSS, Response to the Consultation Questionnaire of Women Deprived of Liberty, Colombia, April 10, 2021, p. 21; Provincial Criminal Defense Public Service – Judicial Branch of the Province of Santa Fe, Argentina, Consultation Questionnaire on Women Deprived of Liberty, April 12, 2021, pp. 72-73.

<sup>627</sup> IACHR, Information provided to the IACHR by the expert from the Fundación Construir organization of Bolivia during the third IACHR meeting of experts of women deprived of liberty, March 23, 2022.

activities with limited social recognition and deficient financial compensation, which reinforces their disadvantaged economic position and puts them in a situation of economic dependence on men.<sup>628</sup> In contrast, given that incarcerated men have access to a greater variety of educational and job-related programs, they have greater opportunities for generating income both while in prison and upon their release<sup>629</sup>.

**238.** Bearing this in mind, the Commission notes that the reinforcement of gender stereotypes in reintegration programs puts up barriers that hinder women's full reintegration in society, as the tools and skills acquired generally correspond to work that, besides reflecting traditionally assigned gender roles, are poorly compensated. At the same time, this has a negative impact on women's ability to cover their basic needs, deal with their financial responsibilities for those in their care, and achieve the economic independence they need to remove themselves from violent situations that may have influenced their involvement with criminal activities.

**239.** In view of the above, it is particularly important to adopt government measures to prevent job-related, educational, and training programs offered to women deprived of liberty from being defined by any kind of bias based on gender prejudices. Specifically, employment and training programs offered to women should correspond to market demands and be designed to increase their real chances of earning fair wages after they are released. On this subject, according to the UNODC, some possible areas of vocational training could include the following: management skills; accounting; revenue management; community project development; use of microcredit facilities; computer skills; electro-technology; health; painting and decoration; food services; horticulture; hairdressing; gardening; childcare; and sewing. It is also important for women to participate in physical activities as an effective way to prevent the development of psycho-social disabilities such as depression while maintaining women's physical health and promoting teamwork<sup>630</sup>.

#### **D) Restrictions hampering women's participation**

**240.** The Commission has received information indicating multiple challenges faced by women seeking to participate in social reintegration programs, notably administrative requirements and priority given to convicted women. In addition to those challenges, there are specific obstacles faced by some groups of women based on different risk factors. In particular, with regard to requirements, incarcerated women are prevented from participating in educational programs due to the obligation to demonstrate their prior studies by submitting certificates or documents that they usually do not have. This situation may result in: i) delays in

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<sup>628</sup> In this regard, see: Organization of American States (CIM-OAS). *Women, Drug Policies, and Incarceration: A Guide for Policy Reform in Latin America*, 2016, p. 32; and UNODC, *Criminal Justice Handbook Series: Roadmap for the Development of Prison-Based Rehabilitation Programmes*, 2017, para. 87.

<sup>629</sup> UNODC, *Handbook for Prison Managers and Policymakers on Women and Imprisonment*, p. 38.

<sup>630</sup> In this regard, UNODC, *Handbook for Prison Managers and Policymakers on Women and Incarceration*, pp. 38, 41, 50.

processing registration at the respective educational level;<sup>631</sup> ii) the need to repeat educational levels;<sup>632</sup> or iii) the need to pay money to obtain certificates<sup>633</sup>.

241. In addition, according to the available data, social reintegration programs are sometimes focused on or give priority to convicted women, excluding those being prosecuted.<sup>634</sup> On this subject, the United Nations Special Rapporteur on Torture and other Cruel, Inhuman, or Degrading Treatments has referred to the discriminatory treatment endured by persons subject to pretrial detention due to the fact that authorities in some prisons believe that since these detainees have not been convicted, authorities have less responsibility for their treatment and, consequently, fewer resources need be assigned for their care.<sup>635</sup> In this regard, the Commission notes that this situation has a disproportionate effect on women because they are more likely to be held in pretrial detention compared to men<sup>636</sup>.
242. Moreover, some groups of women face specific obstacles based on different risk factors. In particular, detainee women who are mothers often find it impossible to participate in activities due to the lack of nurseries in the jails.<sup>637</sup> Similarly, women subject to house arrest are usually unable to participate in social reintegration activities due to difficulties obtaining permission from the courts.<sup>638</sup> Women housed in mixed detention centers, due to their small numbers, usually have little or no access to reintegration activities given that the educational and vocational programs offered focus on incarcerated men.<sup>639</sup>
243. In view of the above, the Commission calls on the States to adopt measures designed to eliminate barriers preventing women from accessing social reintegration activities. In particular, such measures would include: i) support to ensure that women are able to satisfy administrative requirements, such as extended deadlines for submitting

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<sup>631</sup> Government of Mexico, Diplomatic Note No. OEA1121, April 12, 2021, p. 24.

<sup>632</sup> In this regard, IACHR, Information provided to the IACHR by the expert from CELS of Argentina, March 23, 2022; and the Secretariat of Social Development, Mexico City, Diagnóstico para detectar las necesidades específicas de las mujeres en proceso de liberación a fin de generar un programa piloto de intervención para lograr su reinserción social que evite su revictimización y las dote de herramientas para su empoderamiento y la prevención de la violencia de género, 2020 [hereinafter “Diagnóstico para detectar las necesidades específicas de las mujeres en proceso de liberación”], p. 46.

<sup>633</sup> IACHR, Information provided to the IACHR by the representative of the Colectivo Artesana of Guatemala during the third IACHR meeting of experts on women deprived of liberty, March 23, 2022.

<sup>634</sup> In this regard, IACHR, Information provided to the IACHR by the expert from CELS of Argentina, March 23, 2022; and Penal Reform International and TIJ, *The rehabilitation and social reintegration of women prisoners*, p. 10.

<sup>635</sup> United Nations Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mission to Nigeria, March 4-10, 2007, November 22, 2007, AHRC/73/Add.4.

<sup>636</sup> On this point, see the section on “Growth of the female prison population” in Chap. II.

<sup>637</sup> On this point, see the subsection on “Challenges in accessing education” in Chap. III.

<sup>638</sup> On this point, see the subsection on “Aspects of concern on house arrest” in Chap. IV.

<sup>639</sup> UNODC, *Handbook for Prison Managers and Policymakers on Women and Incarceration*, p. 38.

documentation, free processing, and help provided for program registration; ii) nurseries set up to care for children; iii) a guarantee that women subject to house arrest obtain prompt authorization to participate in these activities; and iv) a guarantee that women housed in mixed detention centers have access to a wide range of social reintegration programs, under conditions equal to those for men.

## 2. Transition between life in prison and life on the outside

244. In its 2017 Report, the IACHR indicated that the differentiated effects faced by women deprived of liberty include greater difficulties with regard to social reintegration.<sup>640</sup> In particular, the Commission notes that challenges in implementing programs for the social reintegration of women as indicated above<sup>641</sup> are reflected in multiple difficulties that hinder their social reintegration and at the same time exacerbate their at-risk situation prior to detention, characterized primarily by exclusion, poverty, and violence.<sup>642</sup> In this regard, the UNODC has emphasized that the greatest challenges for women's reintegration as a consequent of the lack of a social reintegration approach in policies for women perpetuates the structural discrimination against them, once again putting them in a socially and economically disadvantaged situation.<sup>643</sup> This situation could also contribute to their recidivism.<sup>644</sup> In particular, the IACHR notes that the principal difficulties include: i) loss of ties and lack of support networks; ii) social stigma; iii) discrimination due to a criminal record; iv) limited employment opportunities; v) economic disadvantages; vi) lack of housing; and vii) loss of personal identification documents. Added to this are the specific barriers faced by trans women.

### A) Loss of family ties and lack of support networks

245. In Chapter II, the Commission indicated that when women are sent to prison, family ties are ruptured due to obstacles to maintaining adequate contact, which represents one of the most detrimental consequences of female incarceration.<sup>645</sup> In this regard, the IACHR notes that this loss of family and social contact leads to the loss of family and social ties and a lack of support networks. Similarly, the UNODC has pointed out that the principal causes hindering women's reintegration include lack of support from their families and safety

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<sup>640</sup> IACHR, Report on Measures to Reduce Pretrial Detention in the Americas, para. 196.

<sup>641</sup> On this point, see the section on "Challenges in implementing programs."

<sup>642</sup> In this regard, see "Factors leading to female incarceration," in Chap. II.

<sup>643</sup> In this regard, UNODC, Handbook on Women and Imprisonment, p. 14. See also: UNODC, "Women and Drugs. Drug use, drug supply and their consequences", p. 36; and Prison Policy Initiative, Prisons and jails will separate millions of mothers from their children in 2021, May 5, 2021.

<sup>644</sup> In this regard, UNODC, Handbook on Women and Imprisonment, p. 14; and Special Rapporteur on Violence against Women, Its Causes and Consequences, Report on "Pathways to, causes, conditions, and consequences of incarceration for women," para. 66.

<sup>645</sup> In this regard, see: "Effect of incarceration on women and those in their case," in Chap. II.

networks, which are weakened by their incarceration.<sup>646</sup> This situation is particularly serious given that support networks are indispensable for ensuring that women are successfully reintegrated in society. On this point, the Commission indicated that the maintenance of family ties is a basic tool of social reintegration and thus constitutes a component guaranteeing one of the purposes of imprisonment.<sup>647</sup> In this regard, in the Case of López et al. v. Argentina, the Court found that in view of Article 5.6 of the ACHR, which considers social reintegration as the purpose of imprisonment, the State must guarantee “as much contact as possible with family members, representatives, and the outside world.”<sup>648</sup>

246. Similarly, the Bangkok Rules recognize the importance of providing women with space to reconnect with their families and communities before they are released. In particular, they point out that prison authorities should encourage and, if possible, facilitate visits with women to ensure their psychological welfare and social reintegration. In addition, considering that a disproportionate number of women have been the victims of violence in their homes, they should be consulted regarding those who are allowed to visit them. In addition, prison authorities should as much as possible provide incarcerated women with options such as home visits, open prisons, transition shelters, and community-based programs and services in order to facilitate their transition from incarceration to release, reduce stigmatization, and reestablish as soon as possible their contact with family.<sup>649</sup> In view of the preceding, the Commission reiterates that in involving the family in the context of social reintegration, the States should adopt measures targeting the following two types of obligations: i) the strengthening of family relations through visits or any other means; and ii) the inclusion of the family in the process of a gradual return to life in society.<sup>650</sup> To do so, it is crucial to have multidisciplinary teams made up, in particular, of female social workers.

## B) Social stigma

247. The Commission notes that when leaving prison, women face the combined stigma of their gender and of being former detainees, which is an obstacle to their reintegration in society. In particular, that stigma is based on widespread social distrust of those who have been incarcerated regardless of their procedural status. In the case of women, added to this are prejudices based on having failed to do what is traditionally expected of women in society

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<sup>646</sup> In this regard, UNODC, *“Women and Drugs. Drug use, drug supply and their consequences”*, p. 36.

<sup>647</sup> IACHR, *Observations on Advisory Opinion to the Inter-American Court of Human Rights*, para. 35.

<sup>648</sup> IACHR, *Observations on Advisory Opinion to the Inter-American Court of Human Rights*, para. 146.

<sup>649</sup> UN, *Bangkok Rules*, Rules 43, 44, and 45.

<sup>650</sup> IACHR, *Observations on Advisory Opinion to the Inter-American Court of Human Rights*, para. 147.



according to society's gender stereotypes.<sup>651</sup> This situation is reflected in discrimination and multiple challenges in interpersonal, social, community, and workplace settings, which aggravates their at-risk situation while at the same time it may cause them to face social isolation. In addition, according to data available to the IACHR, this situation has a disproportionate effect on women involved in drug-related crimes, who face social stigmas that are reflected in additional challenges to obtaining employment that does not involve them once again with these crimes in order to ensure their subsistence<sup>652</sup>.

### C) Employment discrimination based on a criminal record

248. The Commission notes that women who are convicted face discrimination when seeking access to work because they have criminal records, regardless of the seriousness of the crimes that caused their conviction and the time they were in prison. On this subject, there are notable initiatives undertaken by Costa Rica and the United States that focus on preventing people from being discriminated against because they have criminal records. In this regard, Law No. 9361 of Costa Rica amended the judicial record to allow criminal records to be eliminated or reduced for non-violent offenders in "vulnerable situations."<sup>653</sup> In the United States, there are Ban the Box and Fair Chance strategies in effect, in the context of which more than 100 jurisdictions amended their legislation to limit questions on background in hiring processes<sup>654</sup>.

249. In particular, based on available data, the IACHR notes that criminal records represent an obstacle in the search for employment for those who have been convicted, amounting to a "second conviction" as both private companies and government offices ask for one's criminal record during hiring processes.<sup>655</sup> In this context, most people with records,

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<sup>651</sup> In this regard, IACHR, Information provided to the IACHR by women who were released in Brazil, Chile, Colombia, El Salvador, and Mexico during a technical meeting, October 14, 2021; UNODC, Handbook on Women and Imprisonment, p. 21; and Secretariat of Social Development, Mexico City, Diagnóstico para detectar las necesidades específicas de las mujeres en proceso de liberación, pp. 49-51, 65. See also: Special Rapporteur on Violence against Women, Report on "Pathways to, causes, conditions, and consequences of incarceration for women," para. 74; and IDPC, Punitive Drug Laws: 10 Years Undermining the Bangkok Rules, p. 18.

<sup>652</sup> In this regard, CIM-OAS, Women, Drug Policies, and Incarceration: A Guide for Policy Reform in Latin America and the Caribbean, 2016, p. 32; WOLA, IDPC, Dejusticia and CIM, Women, Drug Policies, and Incarceration, 2016, p. 32; and IDPC, Punitive Drug Laws: 10 Years Undermining the Bangkok Rules, p. 18.

<sup>653</sup> In particular, the option of deleting criminal histories is based on criteria that take into account the length of the sentences, the crime committed, and the "situation of vulnerability." Thus, in the case of crimes committed by persons in at-risk situations, the enforcement judge may order deletion of their criminal history once they finish their term. Although the reform does not target women, they would likely benefit from the provision on vulnerability. In this regard, WOLA, IDPC, Dejusticia, and CIM, Eliminating Barriers to Re-Entry: Criminal Record Reform in Costa Rica, December 2017, pp. 2-3.

<sup>654</sup> In this regard, IDPC, Punitive Drug Laws: 10 Years Undermining the Bangkok Rules, pp. 19-20.

<sup>655</sup> In this regard, WOLA, IDPC, Dejusticia, and CIM, Eliminating Barriers to Re-Entry: Criminal Record Reform in Costa Rica, December 2017, pp. 1, 3; and IDPC, Punitive Drug Laws: 10 Years Undermining the Bangkok Rules, pp. 19-20. See also: Special Rapporteur on Violence against Women, Report on "Pathways to, causes, conditions, and consequences of incarceration for women," para. 72.

particularly women, are often excluded from the job market in the formal economy, even for several years after serving their sentences.<sup>656</sup> This has a more profound effect on women, in that most of them were already excluded from access to formal employment prior to their detention, in addition to which they are usually the primary person financially responsible for those in their care.<sup>657</sup> In this scenario, some women only manage to find jobs in which they are subject to exploitative conditions<sup>658</sup> or they may be able to access poorly compensated jobs that don't ask for their criminal record (generally associated with cleaning).<sup>659</sup> The result of this situation is that women continue to face social exclusion, which could lead to their being once again forced to participate in illegal activities in order to ensure their subsistence and that of their families. This perpetuates the close link between poverty and criminality<sup>660</sup>.

#### D) Limited job opportunities given limited training

**250.** The IACHR was able to observe that, in addition to the obstacles women face in obtaining formal employment due to social stigma and discrimination based on criminal records, there are obstacles linked to the scarcity of job offers in which they may be included due to their limited professional training. In particular, the information received indicates that the failure to implement reintegration programs with a gender approach in prisons along with the adoption of programs that reinforce gender stereotypes<sup>661</sup> causes women to lack complete and sufficient professional training, which limits their ability to access jobs, as the skills they acquire in detention are primarily linked to domestic labor.<sup>662</sup> Along the same lines, the then Special Rapporteur on Violence against Women stated that women who have been released may encounter obstacles when seeking

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<sup>656</sup> In this regard, , IACHR, Information provided to the IACHR by women released from prison in Brazil, Chile, Colombia, El Salvador, and Mexico during a technical meeting, October 14, 2021; IACHR, Information provided to the IACHR by WOLA during a technical meeting on women deprived of liberty, February 10, 2022; and CSS, Response to the Consultation Questionnaire on Women Deprived of Liberty, Colombia, April 10, 2021, p. 23.

<sup>657</sup> In this regard, see: "Factors leading to female incarceration" in Chap. II.

<sup>658</sup> CSS, Response to the Consultation Questionnaire on Women Deprived of Liberty, Colombia, April 10, 2021, p. 23.

<sup>659</sup> IACHR, Information provided to the IACHR by a women who was released and belongs to the Mujeres Libres organization of Colombia during a technical meeting, October 14, 2021. Also, IACHR, Information provided to the IACHR by the WOLA representative during a technical meeting on women deprived of liberty, February 10, 2022.

<sup>660</sup> In this regard, IACHR, Information provided to the IACHR by a women who was released and belongs to the Mujeres Unidas por La Libertad organization of Mexico during a technical meeting, October 14, 2021. See also: WOLA, IDPC, Dejusticia, and CIM, Eliminating Barriers to Re-Entry: Criminal Record Reform in Costa Rica, December 2017, pp. 1, 3.

<sup>661</sup> On this point, see the subsections on "Lack of programs with a gender perspective" and Reinforcing gender stereotypes in reintegration programs" in this chapter.

<sup>662</sup> In this regard, IACHR, Information provided to the IACHR by women who were released in Brazil, Chile, Colombia, El Salvador, and Mexico during a technical meeting, October 14, 2021; and CSS, Response to the Consultation Questionnaire on Women Deprived of Liberty, Colombia, April 10, 2021, p. 23.

stable employment given the lack of opportunities to develop skills or the loss while in detention of skills acquired previously<sup>663</sup>.

## E) Economic disadvantages

251. The Commission notes with concern that in view of the obstacles mentioned women released from prison face economic disadvantages that may put their subsistence at risk and, as applicable, the subsistence of their families. In particular, according to available data, these disadvantages are mainly due to the following: i) lack of employment in the formal market to provide them with minimum, stable incomes;<sup>664</sup> ii) difficulties opening bank accounts;<sup>665</sup> and iii) inability to access bank loans, which may result in a lack of resources to set up their own individual enterprises<sup>666</sup>.

## F) Lack of housing

252. The Commission notes that the lack of housing is one of the main challenges faced by women who have recently been released from prison, as it puts them at serious risk of living on the street or exposed to violent situations. In this regard, the then Special Rapporteur on Violence against Women noted that once released women may encounter obstacles when seeking housing due to: i) a lack of sufficient economic resources to pay initial expenses; ii) verification of criminal records in the context of a rental application; or iii) sometimes the inability to return to their former home because they are no longer welcome there or for fear of violence.<sup>667</sup> In addition, the above difficulties are compounded by the lack of shelters financed by the States for homeless women who have no home or cannot live there.<sup>668</sup> In this regard, according to a study done in the United States, the rates for persons living on the street are especially high among women released from prison, who are more likely to be homeless than men released from prison.<sup>669</sup> In addition, in this

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<sup>663</sup> Special Rapporteur on Violence against Women, Report on “Pathways to, causes, conditions, and consequences of incarceration for women,” para. 72.

<sup>664</sup> In addition to the analysis in the previous subsections, see: Secretariat of Social Development, Mexico City, Diagnóstico para detectar las necesidades específicas de las mujeres en proceso de liberación, pp. 49-51.

<sup>665</sup> IACHR, Information provided to the IACHR by a women who was released and is a member of Mujeres Libres of Colombia during a technical session, October 14, 2021. See also: IACHR, Information provided to the IACHR by WOLA during a technical meeting on women deprived of liberty, February 10, 2022.

<sup>666</sup> In this regard, IACHR, Information provided to the IACHR by the representative of the Fundación Construir of Bolivia during the third IACHR meeting of experts on women deprived of liberty, March 23, 2022; and CSS, Response to Consultation Questionnaire on Women Deprived of Liberty, Colombia, April 10, 2021, p. 23.

<sup>667</sup> Special Rapporteur on Violence against Women, Report on “Pathways to, causes, conditions, and consequences of incarceration for women,” paras. 73 y 75.

<sup>668</sup> IACHR, Information provided to the IACHR by a women who was released and is a member of Mujeres Unidas por la Libertad of Mexico during a technical meeting, October 14, 2021.

<sup>669</sup> Prison Policy Initiative, Nowhere to Go: Homelessness among formerly incarcerated people, August 2018.

scenario, women released from prison may be the victims of situations of violence when they are exposed to being recruited by organized crime groups engaged in drug crimes or human trafficking<sup>670</sup>.

253. On this subject, the UNODC has established that prison authorities should collaborate with specialized community services and civil society organizations to help women after they are released in order to ensure they are housed in confidential shelters while they find adequate housing. In particular, such shelters should at a minimum have facilities and experienced staff to provide psychosocial support and legal advice. In addition, care should be taken to ensure that the protection provided does not take the form of extended detention. In this regard, the protection should be voluntary and if possible provided in secure shelters or homes administered by community services or civil society under a joint operation agreement<sup>671</sup>.

#### **G) Loss of personal identification documents**

254. The IACHR has received information indicating that in the context of their detention, various women sometimes lose their personal identification documents, which are difficult to obtain in a short period of time. In particular, according to civil society, women often encounter difficulties in acquiring new documents primarily due to: i) high processing costs; and ii) the need to apply for a birth certificate to process them, which they usually do not have at hand or that are expensive to obtain.<sup>672</sup> This situation makes it difficult for women released from prison to exercise their rights in the context of social reintegration, including access to support and health services, employment, and education.

#### **H) Specific situation of trans women**

255. The Commission was informed that trans women encounter specific barriers to their social reintegration, particularly in the workplace, based on the discrimination and social exclusion of which they are the victims during incarceration and extending to their release from prison. In this regard, the IACHR has indicated that in the region trans persons generally face the most severe forms of workplace discrimination for reasons related to their gender identity and expression. These causes are as follows: i) lack of access to employment; ii) inability to obtain identification that reflects their gender and name; and iii) harassment and bullying by employees. In this scenario, the lack of access to formal

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<sup>670</sup> In this regard, IACHR, Information provided to the IACHR by a women who was released and is a member of Mujeres Unidas por la Libertad of Mexico during a technical meeting, October 14, 2021.

<sup>671</sup> UNODC, *Handbook for Prison Managers and Policymakers on Women and Imprisonment*, p. 58.

<sup>672</sup> IACHR, Information provided to the IACHR by the WOLA representative during a technical meeting on women deprived of liberty, February 10, 2022.

employment usually exposes trans persons to dangerous working conditions and, in many cases, forces them to resort to sex work as a survival strategy<sup>673</sup>.

256. Considering these obstacles, the IACHR notes that this situation of workplace discrimination is more intense in the case of trans women released from prison, as they face two-fold discrimination because they are trans as well as former inmates. In particular, according to available data, the specific difficulties when seeking to be included in reintegration activities in prison<sup>674</sup> are reflected in greater barriers to their reintegration in society. In particular, they are more likely to encounter: i) a lack of access to formal employment; ii) difficulties in meeting their basic needs; iii) lack of housing or unstable housing; iv) greater discrimination because they have a criminal record; and v) the risk of returning to problematic use of drugs and alcohol.<sup>675</sup> In view of this, the Commission reiterates its call to combat discriminatory practices in the workplace with respect to the LGBTI population.<sup>676</sup> In addition, the States should adopt specific measures to protect the right of trans women released from prison to work under respectful conditions through the implementation of actions designed to break down prejudices regarding their gender identity and expression.

## ***B. Practices in the region***

### **1. Data on the participation of female detainees in reintegration programs**

257. Based on the information received for the preparation of this report, the IACHR notes that women's participation in social reintegration programs offered in prison varies widely in the region, ranging from 25% of the female prison population to 76% of incarcerated female convicts. For example, in Colombia, of the total number of convicted women (4,889), 76% participate in study programs, 51% in job-related activities, and 36.2% in psychosocial programs.<sup>677</sup> In Honduras, 64% of women who have been released participate in

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<sup>673</sup> IACHR-REDESCA, Report on Trans and Gender-Diverse Persons and their Economic, Social, Cultural, and Environmental Rights, OEA/Ser.L/V/II. Doc. 239, August 7, 2020, paras. 248 and 250.

<sup>674</sup> In particular, these difficulties consist of: i) impediments to working in activities usually offered in prison such as cooking and dressmaking based on the prejudice that trans women suffer from AIDS and can transmit it easily through lesions; ii) lack of access to activities due to the isolation to which they are usually subject; and iii) fear of being subject to violence at the hands of others who have been released. In this regard, IACHR, Information provided to the IACHR by a trans women who was released in Mexico during a technical meeting, October 13, 2021.

<sup>675</sup> In this regard, see: Government of Argentina, Diplomatic Note No. IF-2021-34330903-APN-DCIMD#MRE, IACHR, April 20, 2021, p. 20; and IACHR, Information provided to the IACHR by trans women who were released in El Salvador and Guatemala during a technical meeting, October 13, 2021.

<sup>676</sup> IACHR-REDESCA, Report on Trans and Gender-Diverse Persons and their Economic, Social, Cultural, and Environmental Rights, OEA/Ser.L/V/II. Doc. 239, August 7, 2020, para. 246.

<sup>677</sup> Government of Colombia, Nota MPC/OEA No. 530-2021, April 12, 2021, p. 23.

“reintegration processes.”<sup>678</sup> In Bolivia, approximately 50% participate in “occupational therapies.”<sup>679</sup> In Paraguay, 43% participate in educational programs.<sup>680</sup> In Mexico, on average, 37% of women participate in social reintegration activities.<sup>681</sup> In Brazil, 25% of women participate in work-related activities<sup>682</sup>.

## 2. Social reintegration programs with a gender perspective established in the region

### A) Programs offered to incarcerated women in detention

258. The Commission reiterates that the Member States’ responses to the questionnaires indicate a lack of the gender perspective in the large majority of social reintegration programs implemented in the region, to the extent that they do not consider the specific needs of women nor the differentiated impact of their incarceration.<sup>683</sup> However, it underscores and appreciates the efforts made by some States, civil society organizations, and academia designed to implement actions to promote the social reintegration of women, as for example in Argentina, Bolivia, Chile, Colombia, Costa Rica, the United States, Mexico, Panama, Paraguay, Venezuela, and Uruguay. In this regard, such programs focus on: i) employment; ii) education; iii) drug use; iv) gender violence; and v) cultural and recreational activities.

259. Specifically in the area of employment, the IACHR emphasizes the actions undertaken by the States of Paraguay, Uruguay, Bolivia, and Costa Rica and with the support of civil society in Chile and Venezuela. Their purpose is to strengthen women’s skills by carrying out activities in detention that could facilitate their future inclusion in the labor market following their release. With regard to Paraguay, the following stand out: i) the installation of the “Muã” (firefly) Prison Brand by the Ministry of Justice, in the charge of the “Princess Diana Foundation” organization, in which women in the “Casa del Buen Pastor” Women’s Prison Center participate by manufacturing products;<sup>684</sup> ii) “Latente,” an on-line platform of products

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<sup>678</sup> Government of Honduras, Diplomatic Note No. SEDH-PM-054-2022, August 9, 2022, p. 6.

<sup>679</sup> IACHR, Information provided to the IACHR by the Fundación Construir of Bolivia during the third IACHR meeting of experts on women deprived of liberty, March 23, 2022.

<sup>680</sup> The IACHR arrives at this percentage based on official data indicating that of a total of 737 incarcerated women, 317 participate in educational programs. See: Government of Paraguay, Diplomatic Note No. 495-21/MMP/OEA, April 27, 2021, pp. 2, 16-17.

<sup>681</sup> IACHR, Information sent to the IACHR by Equis – “Buenas prácticas en materia de reinserción social,” June 18, 2022.

<sup>682</sup> The IACHR arrives at this percentage based on official data indicating that of a total of 36,999 incarcerated women as of the first half of 2020, 9,401 were participating in occupational programs. In this regard, Government of Brazil, Diplomatic Note No. 120 Questionnaire, April 9, 2021, pp. 3 and 14.

<sup>683</sup> On this point, see the subsection on “Lack of programs with a gender perspective,” in this chapter.

<sup>684</sup> In this regard, Government of Paraguay, Diplomatic Note No. 495-21/MMP/OEA, April 27, 2021, p. 17; and Ministry of Justice, Paraguay, *Ministerio Dejusticia adjudica gerenciamiento de la marca penitenciaria Muã*, August 16, 2018.



manufactured by persons deprived of liberty housed in 18 of the country's prison centers, including women;<sup>685</sup> and iii) the project developing handicraft items that are marketed, implemented in the Prison Center for Women called "Hogar Nueva Oportunidad"<sup>686</sup>.

260. Regarding Uruguay, the following stand out: i) the occupational education program "Barrido Inclusivo" adopted by the Superintendency of Montevideo, in the context of which sidewalks are cleaned in exchange for compensation;<sup>687</sup> ii) the "Polo Industrial" installed in Unit No. 5 in Montevideo in which women do construction work, even in the community;<sup>688</sup> iii) the Sewing Workshop in Unit No. 5; and iv) preserves prepared by women detained in the Departments of Salto and Tacuarembó.<sup>689</sup> Bolivia has a noteworthy "Construyendo Libertad" project, with finances collected by the UNODC, implemented in the women's centers of Obrajes and Miraflores, in the context of which incarcerated women engage in activities and receive training in construction.<sup>690</sup> For its part, Costa Rica has the Semi-institutional Care Center (CASI La Mujer) which has projects for the occupational reintegration of women.<sup>691</sup> In addition, projects implemented by civil society notably include: i) the "Mujer levántate" program in Chile that promotes workplace inclusion of women;<sup>692</sup> and ii) the actions implemented by Venezuelan civil society organizations on workshops in various trades for women detainees<sup>693</sup>.

261. With regard to the education of incarcerated women, the IACHR emphasizes: i) the university education program for women in Paraguay;<sup>694</sup> ii) the training and professional development programs for incarcerated and released women offered by the "Roundtable on

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<sup>685</sup> Government of Paraguay, Diplomatic Note No. 495-21/MMP/OEA, April 27, 2021, p. 19.

<sup>686</sup> In this regard, see: Ministry of Justice, Paraguay, El Día de la Amistad recalca con importante nivel de pedidos de productos penitenciarios, July 28, 2020; and Swissinfo, De la cárcel a la pastelería, la reinserción de una mujer paraguaya, May 13, 2021.

<sup>687</sup> In this regard, see: Superintendency of Montevideo, Lanzamiento de Barrido Inclusivo 2021-2022, November 29, 2021.

<sup>688</sup> IACHR, Information sent to the IACHR via e-mail by Uruguay's expert on social reintegration, April 2, 2022.

<sup>689</sup> IACHR, Information sent to the IACHR via e-mail by Uruguay's expert on social reintegration, April 2, 2022.

<sup>690</sup> IACHR, Information provided to the IACHR by the representative of the Fundación Construir of Bolivia during the third IACHR meeting of experts on women deprived of liberty, March 23, 2022. See also: UNODC, Mujeres privadas de libertad realizan obra fina, instalaciones básicas y refacciones para mejorar sus condiciones de reclusión, June 24, 2019; and La Dirección General de Régimen Penitenciario y la UNODC capacitan en empoderamiento y construcción civil a 50 mujeres privadas de libertad, November 19, 2018.

<sup>691</sup> Government of Costa Rica, Diplomatic Note No. CROEA-AA-576-21, pp. 28-29.

<sup>692</sup> IACHR, Information provided to the IACHR by a woman released from prison who is a member of Mujeres Libres of Chile during a technical meeting, October 14, 2021. Also see: IACHR, Information provided to the IACHR by the WOLA representative during a technical meeting on women deprived of liberty. February 10, 2022.

<sup>693</sup> OVP, Informe Mujeres privadas de la libertad en Venezuela: Las voces de las mujeres detrás de las rejas, 2021, p. 54.

<sup>694</sup> In particular, two national universities conduct university courses at the Women's Prison Center "Casa del Buen Pastor." See: Government of Paraguay, Diplomatic Note No.495-21/MMP/OEA, April 27, 2021, pp. 18, 21.

work for women deprived of liberty” in Uruguay;<sup>695</sup> iii) Uruguay’s hairdressing training program “Sembrando Belleza por un Futuro,” organized by the Ministry of the Interior and the National Rehabilitation Institute (INR);<sup>696</sup> iv) occupational therapies and training programs implemented by the Bolivian prison system;<sup>697</sup> v) adoption of the “Education Model for Life and Work” in Mexico;<sup>698</sup> vi) handicrafts workshops offered at the Tepepan Women’s Center for Social Reintegration in Mexico City;<sup>699</sup> vii) the Brave Behind Bars program that provides computer education to women, established in the New England region of the United States;<sup>700</sup> viii) the initiative of the Catholic University of Chile to facilitate access to university education for women detainees through the ELEDUC program, also supported by the “Mujer Levántate” Foundation;<sup>701</sup> and ix) the university section in the Women’s Rehabilitation Center of Panama, in the context of a partnership between the Ministry of the Interior and the University of Panama.<sup>702</sup>

262. On reintegration programs designed to address drug use, the Commission highlights the actions implemented by Colombia, Costa Rica, and Uruguay. Specifically in Colombia, the INPEC has a program for intervening in problematic drug use implemented in the High- and Medium-Security Prison and Penitentiary for Women in Bogota, which adopts the “Therapeutic Community” model. Its objective is to promote the reintegration of incarcerated women by changing their lifestyle through the development of occupational, educational, and sports activities and psychosocial interventions.<sup>703</sup> For its part, Costa Rica, through the Institute on Alcoholism and Drug Dependence (IAFA) and the National Institute of Women (INAMU), has an approach to problematic drug use in women in criminal proceedings.<sup>704</sup> As for Uruguay, the program of the Seized Assets Fund, a part of the National Secretariat on Drugs, was created in 2006 to support programs with a gender perspective managed by the government and some civil society organizations and focused on prevention, treatment, harm

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<sup>695</sup> IACHR, Information provided to the IACHR by the representative of the “Mesa de trabajo sobre mujeres privadas de libertad” during a technical meeting held on April 1, 2022, and e-mails received on April 20 and May 10, 2022.

<sup>696</sup> Office of the President, Uruguay, Sembrando presentó iniciativa de formación laboral para mujeres privadas de libertad, April 21, 2022.

<sup>697</sup> Government of Bolivia, Diplomatic Note No. MPB-OEA-NV116-21, June 1, 2021, pp. 14-15. See also: Cladem Bolivia, et al., Contributions from Civil Society to the Rapporteurship on the Rights of Persons Deprived of Liberty, April 12, 2021, p. 28.

<sup>698</sup> National Human Rights Commission (CNDH MEXICO). Criterios para un sistema orientado al respeto de los Derechos Humanos: un modelo de reinserción social, June 2019, p. 42.

<sup>699</sup> Secretariat of Social Development, Mexico City, Diagnóstico para detectar las necesidades específicas de las mujeres en proceso de liberación, p. 46.

<sup>700</sup> MIT, Brave Behind Bars: Prison education program focuses on computing skills for women, January 19, 2022.

<sup>701</sup> Pontifical Catholic University of Chile, Una oportunidad de inserción para mujeres privadas de libertad, May 2, 2022.

<sup>702</sup> UNODC, Criminal Justice Handbook Series: Roadmap for the Development of Prison-Based Rehabilitation Programmes, p.36.

<sup>703</sup> Government of Colombia, Nota MPC/OEA No. 530-2021, April 12, 2021, p. 25.

<sup>704</sup> Government of Costa Rica, Diplomatic Note No. CROEA-AA-576-21, April 9, 2021, pp. 28-29.

reduction, and social reintegration. According to civil society, in the context of implementing these programs, it has been possible to reduce recidivism rates, drug dependency, and unemployment among women released from prison<sup>705</sup>.

**263.** With respect to assistance for gender-based violence, the IACHR highlights programs adopted in Argentina and Costa Rica, particularly: i) the reintegration program designed to provide care to the victims of gender-based violence adopted by the Federal Prison Service in Argentina;<sup>706</sup> and ii) care for gender-based violence provided to women in criminal procedures through Costa Rica's INAMU.<sup>707</sup> As for mental health care, at the Federal Social Rehabilitation Center No. 16 "Morelos Women's CPS" of Mexico, the psychology office conducts the National Program for the Prevention and Care of Addictions in the Prison System, which incorporates the gender approach in addictions prevention, diagnosis, treatment, and training.<sup>708</sup> Finally, the IACHR highlights the women's social reintegration programs focused on recreational activities implemented in Mexico. In particular, according to official data, women at the Social Rehabilitation Center (CERESO) in Guanajuato are able to participate in theatrical works in cooperation with the "Alquimia y Transmutación" group.<sup>709</sup> In addition, at the Tepepan Women's Social Reintegration Center in Mexico City, women participate in theatre, painting, singing, and dance workshops<sup>710</sup>.

## **B) Programs for women subject to alternatives and other parole benefits**

**264.** The Commission takes note of the efforts undertaken by Argentina and the State of California to establish social reintegration programs for women subject to measures alternative to prison or other parole benefits. Specifically, Argentina provided information indicating that the Directorate of Care for Persons under Electronic Monitoring (DAPVE) provides care to women subject to house arrest with electronic monitoring through reintegration programs and projects. These notably include: i) the "Roundtable Chat" mechanism to rebuild community networks; ii) the "Making a Future" program that promotes workplace inclusion and prioritizes women; iii) the workshops of the "Sewing Networks" organization targeting occupational training in the textile industry; iv) the workshops of the "Yo No Fui" organization that works on artistic and productive projects offered in the context of the Training Project for Women under House Arrest managed along with government

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<sup>705</sup> WOLA, IDPC, Dejusticia, and CIM, ¿Cómo incorporar una perspectiva de género en las políticas de drogas? La experiencia de Uruguay, June 2017, pp. 1, 3-4.

<sup>706</sup> Government of Argentina, Diplomatic Note No. IF-2021-34330903-APN-DCIMD#MRE, IACHR, April 20, 2021, pp. 20-21, 23-24.

<sup>707</sup> Government of Costa Rica, Diplomatic Note No. CROEA-AA-576-21, April 9, 2021, pp. 28-29.

<sup>708</sup> Government of Mexico, Diplomatic Note No. OEA1121, April 12, 2021, p. 25.

<sup>709</sup> Comisión Nacional de los Derechos Humanos, Government of Mexico, Criterios para un sistema orientado al respeto de los Derechos Humanos: un modelo de reinserción social, June 2019, p. 42.

<sup>710</sup> Secretariat of Social Development, Government of Mexico City, Diagnóstico para detectar las necesidades específicas de las mujeres en proceso de liberación, p. 47.

organizations; v) the “Parenting Roundtables” project that provides tools for raising children in the context of house arrest; and vi) the breast and cervical-uterine cancer awareness and prevention workshop<sup>711</sup>.

265. Added to the above, in the province of Buenos Aires, the Buenos Aires Parolees’ Trust has the “Women under Arrest Mechanism” in the context of which support is provided to women under house arrest. This is done, for example, through: i) management of procedures to obtain economic assistance for children; ii) coordination with the Public Defender’s Office on applying for permits to leave the home; iii) mental health care; and iv) protocol activation in cases of gender-based violence.<sup>712</sup> For its part, the State of California has the Women’s Reintegration Court for the monitored social reintegration of women beneficiaries and repeat offenders on parole. According to the UNODC, this program seeks to reduce recidivism and to support reintegration by offering a multi-institutional approach and providing access to services with a gender approach that include: substance abuse treatment, mental health services, housing, employment assistance, family reunification, and counseling on gender-based violence within the family<sup>713</sup>.

### C) Programs for women who have been released

#### I. Programs to facilitate the social reintegration of women

266. The Commission has received information indicating that Argentina, Costa Rica, Guatemala, Mexico, and Uruguay have policies to facilitate the social reintegration of women released from prison. Such programs focus on: i) general reintegration; ii) gender-based violence; and iii) care for women subject to criminal proceedings linked to drug use. In this regard, on general reintegration policies, the IACHR was informed of actions in Argentina, Costa Rica, Guatemala, and Uruguay. On this subject, in Argentina, the Gender Area of the National Directorate on Social Reintegration (DNRS) monitors women who have been released from the moment before their release. This includes: i) counseling for inclusion in social programs; ii) care in cases of gender-based violence; iii) consulting for processing identity documents; and iv) assistance on issues related to children<sup>714</sup>.

267. In Costa Rica, the Social Inclusion Unit is responsible for addressing women’s needs, notably including: i) interdisciplinary care at the individual, group, family, and community level; and ii) support for the economy of persons in at-risk situations for up to a year following completion of their sentence.<sup>715</sup> In addition, the “Inter-institutional Network for

<sup>711</sup> See, Government of Argentina, Diplomatic Note No. IF-2021-34330903-APN-DCIMD#MRE, IACHR, April 20, 2021, pp. 13-17.

<sup>712</sup> Under-Secretariat of Criminal Police on the Ministry of Justice and Human Rights of the Province of Buenos Aires, Argentina, *Guía para la investigación y el juzgamiento con perspectiva de género en materia de drogas*, March 2022, pp. 74-75.

<sup>713</sup> UNODC, *Module 7 – Alternatives to Incarceration, in Crime Prevention and Criminal Justice*, 2020, p. 34.

<sup>714</sup> Government of Argentina, Diplomatic Note No. IF-2021-34330903-APN-DCIMD#MRE, IACHR, April 20, 2021, pp. 23-24.

<sup>715</sup> Government of Costa Rica, Diplomatic Note No. CROEA-AA-576-21, April 9, 2021, p. 30.

Comprehensive Care of Women Linked to a Criminal Proceeding,” managed by the Public Defender’s Office, facilitates institutional collaboration to support women who have violated the law, including women who have been released.<sup>716</sup> On Guatemala, the State provided information indicating interinstitutional coordination to support women released from prison, with the participation of the Unit for Community Prevention of Violence of the Ministry of the Interior (Mingob) and various government bodies, including the Ministries of Social Development, Labor and Social Welfare, and Education, and the Technical Training Institute. Similarly, Guatemala has the Social Reintegration Program for Women Formerly Deprived of Liberty who left the Fraijanes I Rehabilitation and Social Reintegration Center.<sup>717</sup> For its part, in Uruguay, the “Panel on Women Deprived of Liberty” provides assistance on social reintegration for women who have been released from prison, by addressing specific situations and making referrals to the relevant services<sup>718</sup>.

268. For its part, on gender-based violence, Guatemala has the “Intégrate a la Prevención” project focused on preventing violence, with the participation of women who have been released.<sup>719</sup> Finally, with regard to care for women subject to criminal proceedings for crimes linked to drug use, the IACHR took note of the “Commission for the Care of Women in Vulnerable Situations in the Penal System and Their Dependent Relatives” of the Costa Rican Institute on Drugs, which provides care to women released due to reform of the Psychotropics Law,<sup>720</sup> in the context of the Network for Care of Women in Criminal Proceedings, the objective of which is, *inter alia*, to minimize the risks of recidivism. To that end, women in at-risk situations in conflict with the law for a non-violent crime related to their use may access a voluntary drug dependency treatment program<sup>721</sup>.

<sup>716</sup> In this regard, WOLA, The Inter-institutional Network in Support of Women Caught in the Criminal Justice System in Costa Rica, June 2017, p. 2.

<sup>717</sup> In this regard, Government of Guatemala, Diplomatic Note No. DAJCC-Seprem 003-2021, April 14, 2021, pp. 20-21. See also: Ministry of the Interior, Guatemala, Retoman programa psicosocial y socioeducativo de privadas del FI, March 18, 2021.

<sup>718</sup> IACHR, Information provided to the IACHR by the representative of the “Mesa de trabajo sobre mujeres privadas de libertad” during a technical meeting held on April 1, 2022, and e-mails received on April 20 and May 10, 2022.

<sup>719</sup> Government of Guatemala, Diplomatic Note No. DAJCC-Seprem 003-2021, April 14, 2021, p. 20. See also: Interior Ministry, Guatemala, Retoman programa psicosocial y socioeducativo de privadas del FI, March 18, 2021.

<sup>720</sup> On this point, see the subsection on “Special measures applicable to women convicted for drug crimes” in Chap. IV.

<sup>721</sup> In particular, the women who can participate in this program are those who: i) are responsible for single parent families; ii) are victims of violence; iii) have a record of drug abuse or are actively using drugs; iv) are in a situation of poverty, unemployment, or limited education; v) have chronic diseases or are in the terminal stage, or are disabled; or vi) are senior adults, indigenous, afro-descendant, migrants, or refugees; or belong to “excluded communities.” In this regard, Government of Costa Rica, Diplomatic Note No. CROEA-AA-576-, April 9, 2021, pp. 22-23; and Costa Rican Institute on Drugs, Costa Rica, Red para el Abordaje Integral a Mujeres en Situación de Vulnerabilidad Vinculadas a un Proceso Penal y sus Familiares Dependientes, May 3, 2022. See also: the section on “Few supervisory mechanisms with a gender approach” in Chap. IV; and WOLA, La Red Interinstitucional para la atención integral de mujeres vinculadas a un proceso penal en Costa Rica, June 2017.

## II. Civil society's support following the release of women

269. The Commission appreciates the initiatives of several civil society organizations to support the social reintegration of women released from prison, many of which are made up of former female inmates who have organized themselves. In particular, the IACHR has received information on organizations in Argentina, Brazil, Chile, Colombia, El Salvador, the United States, Honduras, Mexico, Venezuela, and Uruguay, as well as a regional network. They focus on: i) providing general support; ii) supporting reintegration in the job market; and iii) providing social assistance. In particular, 2019 saw the regional-level creation of the “Red de Mujeres Libertarias Fundiendo Rejas” (Network of Libertarian Women Melting Bars) made up of “Mujeres Libres” (Colombia, El Salvador, and Mexico), “Mujeres Unidas x la Libertad” (Mexico), “Amparar” (Brazil), “La Boussole” (Mexico), and “Colectivo Todxs Unidxs” (Argentina). In the context of this network, forums have been conducted for dialogue among former female inmates and their families. Each organization also provides assistance and support.<sup>722</sup> In addition, there are notable civil society efforts supporting workplace reintegration through: i) enterprises organized by women released from prison who are grouped in cooperatives in Argentina, with the support of the Released Inmates Trust;<sup>723</sup> ii) the “Libertarias” project of the Uruguayan organization “Horizonte de Libertades;”<sup>724</sup> and iii) support provided to trans women by the “Almas Cautivas” organization of Mexico, which seeks to establish partnerships with companies seeking contracts or promotion of their businesses<sup>725</sup>.

270. In addition, the IACHR emphasizes various projects led by civil society organizations in the United States to provide assistance to women who have been released. These notably include: i) the A New Way of Life Reentry Project, implemented in Los Angeles, California, which includes programs such as: safe houses for reintegration, educational and employment services, rehabilitation programs, and transportation assistance;<sup>726</sup> ii) the Salvation Army's Women's Restorative Justice Program for recently released women and their families in Winnebago County, Illinois, providing housing, food, transportation assistance, substance abuse support, and childcare assistance;<sup>727</sup> and iii) the

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<sup>722</sup> IACHR, Information sent to the IACHR by Equis – “Buenas prácticas en materia de reinserción social,” June 18, 2022. See also: WOLA, Relatoria: Primer encuentro de mujeres de las Américas que han estado en prisión “Mujeres libertarias fundiendo rejas.” November 1, 2019.

<sup>723</sup> IACHR, Information provided to the IACHR by the CELS of Argentina, March 23, 2022.

<sup>724</sup> Horizonte de Libertades, Libertaria. Piloto sociolaboral para jóvenes trans y mujeres privadas de libertad, June 10, 2022.

<sup>725</sup> IACHR, Information provided to the IACHR by Almas Cautivas of Mexico during a technical meeting on trans women released from prison, October 13, 2021.

<sup>726</sup> University of California at Los Angeles (UCLA), Replication Model Study, January 2018, p. 20.

<sup>727</sup> The Salvation Army of Rockford & Winnebago County, Women's Restorative Justice Program, 2022.



Community Love Fund created by the National Council in 2021, which provides economic support to released women and sometimes to female inmates<sup>728</sup>.

### 3. Monitoring mechanisms

271. The IACHR notes that with the exception of Argentina,<sup>729</sup> Guatemala,<sup>730</sup> Honduras,<sup>731</sup> Mexico,<sup>732</sup> Nicaragua,<sup>733</sup> and Uruguay,<sup>734</sup> the States did not provide data certifying the existence of mechanisms to evaluate the effectiveness of social reintegration programs. However, of those countries, only Uruguay and Mexico include a gender perspective. In particular, in Uruguay, the Department of Gender and Diversity of the INR helps to mainstream the gender perspective in the INR's strategies. Its primary functions notably include: i) advising on the development of gender strategies designed for incorporation in the design of prison policies; and ii) monitoring and evaluating policies on the subject carried out by the INR's prison units and technical-administrative units.<sup>735</sup> In Mexico, the Federal Social Reintegration Center No. 16 is the only women's center that has indicators for monitoring women's reintegration, which consists of personalized monitoring of their experiences and takes into account progress made in the reintegration activities in which women participate<sup>736</sup>.

272. Based on the above, the IACHR notes with concern that this lack of monitoring mechanisms is reflected in the inability to evaluate the operation of reintegration policies in women and to have indicators analyzing recidivism in this population. In view of this, the Commission urges the States to dedicate efforts to evaluating the impact of social reintegration programs on the lives of released women, particularly by analyzing at least their recidivism levels and employment and unemployment rates. In particular, such

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<sup>728</sup> National Council, Basic Income Guarantee, 2022. See also: National Council, The National Council and The F4GI announce Guaranteed Income Program to support currently and formerly incarcerated women, February 23, 2022.

<sup>729</sup> In particular, in Argentina, the Social Inclusion Program crosschecks the SPF database to determine the percentage of people served by the DNRS team who return to prison, in order to establish cases in which the approach was insufficient. In addition, cases in which workforce integration is achieved are monitored. In this regard, Government of Argentina, Diplomatic Note No. IF-2021-34330903-APN-DCIMD#MRE, IACHR, April 20, 2021, p. 24.

<sup>730</sup> On this point, see the section on "Social Reintegration Programs in northern Central America" in this chapter.

<sup>731</sup> On this point, see the section on "Social Reintegration Programs in northern Central America," in this chapter.

<sup>732</sup> See: Government of Mexico, Diplomatic Note No. OEA1121, April 12, 2021, p. 26; and IACHR, Information sent to the IACHR on "Buenas prácticas en materia de reinserción social, June 18, 2022.

<sup>733</sup> In particular, in Nicaragua, the effectiveness of educational programs is evaluated by "auxiliary monitoring and control instruments" consisting of an interdisciplinary team and evaluation, disciplinary, prophylactic, and prisoner councils. In this regard, Government of Nicaragua, Diplomatic Note No. MPN-OEALAR21-00097, April 7, 2021, pp. 39-40.

<sup>734</sup> Junta Nacional de Drogas, Uruguay, Mujeres, Políticas de Drogas y Encarcelamiento, November 1, 2019, p. 42.

<sup>735</sup> Junta Nacional de Drogas, Uruguay, Mujeres, Políticas de Drogas y Encarcelamiento, November 1, 2019, p. 42.

<sup>736</sup> IACHR, Information sent to the IACHR by Equis – "Buenas prácticas en materia de reinserción social," June 18, 2022.

monitoring and evaluation should incorporate the gender, intercultural, and intersectional approaches to address to various forms of discrimination that could limit women's participation in social reintegration programs.

## ***C. Social reintegration programs in northern Central America***

### **1. Social reintegration programs with a gender perspective**

#### **A) Measures adopted by the States**

**273.** The IACHR takes note of social reintegration policies targeting the general prison population and adopted by Guatemala and particularly appreciates the actions carried out for the reintegration of incarcerated and released women in Guatemala. In particular, to support the social reintegration of the general population, Guatemala reported that the Post-Prison Prevention Section of the Department of Community Organization for Prevention of the Ministry of the Interior is responsible for various programs, notably those linked to: i) education and training;<sup>737</sup> ii) mental health; iii) family reintegration; iv) workforce reintegration;<sup>738</sup> and v) psychosocial and socio-educational strengthening. In addition, specifically for the care of incarcerated women, Guatemala has programs and activities designed for their reintegration, some of which emphasize care for women linked to organized crime. In particular, these notably include: i) the Psychosocial and Socio-educational Strengthening Program; ii) the Project to Strengthen the Family Reintegration Program;<sup>739</sup> iii) the Reintegration Program in which both convicted women and women subject to pretrial detention participate; iv) the workshops offered by the Under-Directorate for Social Rehabilitation in the context of the “School for Mothers;” iv) other courses and workshops on the elimination of aggressive behaviors, secure attachment therapy, personal empowerment, leadership and addiction prevention and v) additional courses on cooking, dance, horticulture, and English, among others<sup>740</sup>.

**274.** Additionally, to care for women linked to organized crime, Guatemala has psychological care programs lasting six months, which in 2021 were directed to women in the Santa Teresa Pretrial Detention Center for Women. These consisted of: i) tools for coping with anxiety (52 women); ii) tools for coping with depression (54 women); iii) tools for personal empowerment, focused on the crime of extortion (55 women); and iv) the emotional intelligence program (53 women). In addition, the IACHR appreciates the measures adopted to promote participation in incarcerated women's workshops for mothers, consisting in the installation of nurseries for children up to the age of four who live with their

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<sup>737</sup> In particular, they cover courses in: decorative crafts, formal education, computers, English, and cooking cocina.

<sup>738</sup> For example, some of the crafts developed in courses can be sold at exhibitions.

<sup>739</sup> Government of Guatemala, Diplomatic Note No. DAJCC-Seprem 003-2021, April 14, 2021, pp. 19-20.

<sup>740</sup> Government of Guatemala, Diplomatic Note No. NV-OEA-MI-No. 161-2022, August 4, 2022, p. 6.

mothers in prison at the Fraijanes Female Orientation Center and the Santa Teresa Pretrial Detention Center for Women.<sup>741</sup> In addition, to support released women, the State referred to: i) the inter-institutional coordination strategy between the Unit for Community Prevention of Violence Unit of the Interior Ministry and various bodies, including the Technical Training Institute and the Ministries of Social Development, Labor and Social Welfare, and Education; and ii) the “Social Reintegration Program for Former Female Inmates who left the Fraijanes I Rehabilitation and Social Reintegration Center”<sup>742</sup>.

- 275.** With regard to Honduras, the State pointed to the existence of the following programs: i) educational - including informal education -; ii) professional technical training; iii) productive; iv) workforce; and v) recreational, sports, spiritual, cultural, and artistic activities; vi) training for persons with pre-release benefits on personal and social development; and vii) preparation for reintegration in terms of family, social, and workplace skills<sup>743</sup>.

## **B) Civil society support for women’s reintegration**

- 276.** The Commission appreciates the efforts made by civil society organizations in northern Central American designed to promote the reintegration in society of women released from prison. In particular, the following initiatives stand out: i) actions to help women obtain work, conducted by the “Colectivo Artesana” of Guatemala, by including women in work within the organization itself or operating as a link to other job opportunities;<sup>744</sup> ii) installation of the social reintegration center in San Pedro Sula by Prison Pastoral Care of Honduras, with financial support from the International Development Law Organization (IDLO), which trains and supports persons deprived of liberty, with emphasis on women;<sup>745</sup> iii) the program of the “COMCAVIS Trans” organization of El Salvador, which provides support to incarcerated and released trans women on the subject of food, training, and post-release support;<sup>746</sup> and, iv) the social reintegration pilot test implemented by Mujeres Libres El Salvador<sup>747</sup>.

<sup>741</sup> Government of Guatemala, Diplomatic Note No. NV-OEA-MI-No. 161-2022, August 4, 2022, pp. 4-6.

<sup>742</sup> In this regard, Government of Guatemala, Diplomatic Note No. DAJCC-Seprem 003-2021, April 14, 2021, pp. 20-21. See also: Ministry of the Interior, Guatemala, [Retoman programa psicosocial y socioeducativo de privadas del FI](#), March 18, 2021.

<sup>743</sup> In this regard, Government of Honduras, Diplomatic Note No. DNDDHH-LI-316-2021, May 19, 2021, p. 13; and Government of Honduras, Diplomatic Note No. SEDH-PM-054-2022, August 9, 2022, p. 6.

<sup>744</sup> IACHR, Information provided to the IACHR by the representative from the Colectivo Artesana of Guatemala during the third meeting of experts on women deprived of liberty, March 23, 2022.

<sup>745</sup> IACHR, Information provided to the IACHR the representative of the National Mechanism for the Prevention of Torture of Honduras, March 23, 2022. See also: La Prensa, [San Pedro tiene el primer centro de reinserción social y laboral](#), June 2, 2018.

<sup>746</sup> IACHR, Information provided to the IACHR by COMCAVIS Trans of El Salvador during a technical meeting with trans women who were released from prison, October 13, 2021.

<sup>747</sup> IACHR, Information provided to the IACHR by a women who was released in El Salvador during a meeting on October 14, 2021.

## 2. Monitoring mechanisms


277. The Commission notes that Guatemala and Honduras have processes to evaluate the effectiveness of social reintegration programs for released and incarcerated women, respectively. In particular, according to official data, the Post-Penitentiary Section of the Department of Community Organization for Prevention of the Ministry of the Interior of Guatemala monitors and evaluates everyone who participates in reintegration activities.<sup>748</sup> For its part, Honduras reported that the National Penitentiary Institute (INP), through alliances with civil society organizations, evaluates the effectiveness of programs prioritizing women who are mothers. In addition, it emphasized that in 2021, the INP and Ciudad Mujer signed an agreement to coordinate actions with a gender approach that benefit incarcerated women in the areas of education, employment, and health.<sup>749</sup>

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<sup>748</sup> Government of Guatemala, Diplomatic Note No. DAJCC-Seprem 003-2021, April 14, 2021, p. 21.

<sup>749</sup> Government of Honduras, Diplomatic Note No. SEDH-PM-054-2022, August 9, 2022, pp. 7-8.





# **CONCLUSIONS AND RECOMMENDATIONS**



## VI. CONCLUSIONS AND RECOMMENDATIONS

1. The Commission emphasizes that although women incarcerated in the region continue to represent a small percentage of the total number of persons deprived of liberty - 8% - in recent years their incarceration levels have increased by 56.1%. In this regard, with a rate of 30 for every 100,000 persons, the female incarcerated population rate in the Americas is the highest in the world. With respect to the causes for this trend, the IACHR finds that the increase in the number of women detained in the region is primarily due to the toughening of criminal policy on drugs and the lack of a gender perspective to address the problem. In addition, in northern Central America policies to combat organized crime – characterized by not including a gender approach – appear to be the cause for the increase in women's incarceration, particularly for the crime of extortion and drug-linked crimes.
2. In this scenario, drug crimes constitute one of the five principal causes for the detention of women in the region. Specifically, the IACHR notes that both drug policies and policies adopted to combat organized crime are characterized by: i) a lack of proportionality in the treatment of these crimes; ii) excessive use of pretrial detention; and iii) restrictions on benefits that limit the use of prison. Consequently, although women generally have no leadership role in criminal networks, they are more likely to be subject to criminal proceedings and arrested for those crimes than men. This is due to the judicial operators' failure to consider the circumstances surrounding the commission of crimes by women and the personal factors leading to their involvement with these activities, primarily linked to discrimination, exclusion, poverty, violence, and drug use, among other situations of concern.
3. For their part, in the context of their incarceration, the Commission notes that the treatment that women receive is generally the same as that given to the rest of the prison population, with no consideration for their gender and their special needs because of the failure to incorporate a gender perspective in prison policies. In this scenario, women face differentiated impacts, primarily caused by: i) the lack of a gender perspective in the compilation of prison data; ii) inadequate prison infrastructure; iii) submission to acts of violence; and iv) lack of attention to health with a gender approach. In addition, some women deprived of liberty belong to groups particularly at risk, which is reflected in numerous special needs and greater obstacles to accessing their rights. These groups include pregnant women, postpartum women, nursing mothers, women living with their children in prison, and trans women.
4. Thus, in view of the serious effects of female incarceration, the IACHR emphasizes the importance of prioritizing the use of alternative measures to prison. Although several States have adopted efforts to include the gender perspective in the regulation and application of alternatives, incarceration continues to be the priority response to specific crimes. In addition, the regulations that provide alternatives with a gender perspective do not incorporate this approach comprehensively given that the majority of measures adopted are based solely on the reproductive function or traditional caregiver role of women, leaving

aside those who do not meet those conditions. In particular, it is concerning that although provision is generally made for the special protection merited by pregnant women, mothers, or caregivers, the States usually do not include other differential criteria. Added to this, in accessing these measures, women face the use of gender stereotypes on the role of women limiting the use of alternatives and material obstacles that exclude them as beneficiaries. In addition, there is a widespread scarcity of supervision and monitoring mechanisms that are respectful of the gender approach.

5. Finally, in the area of women's social reintegration, the Commission notes that despite efforts made for this purpose, the following challenges arise when establishing reintegration policies: i) general obstacles in appropriate establishment of these programs; ii) lack of programs with a gender perspective; iii) programs characterized by reinforcing gender stereotypes; and iv) restrictions on women's participation. As a result, women face multiple challenges in the transition between life in prison and life on the outside. These notably include: i) the lack of support networks; ii) social stigma; iii) discrimination; iv) limited employment opportunities; v) economic disadvantages; vi) the lack of housing; and vii) the loss of personal identification documents.
6. In view of the analysis and conclusions presented in this report, based on the powers conferred by Article 41.b of the American Convention on Human Rights, the Inter-American Commission makes the following recommendations to the Member States of the OAS:

## ***A. Women's incarceration***

### **Measures of a general nature related to policies on combating crime**

7. Amend criminal law to harmonize penalties applicable to drug crimes so that such activities are not punished with higher penalties than those applicable to crimes that imperil human rights such as the right to life and the right to personal integrity.
8. Reform the system of criminal law on the subject of drugs to punish different types of conduct with different levels of penalties that take into consideration the differences between: i) drug crimes of low and high seriousness; ii) violent and non-violent crimes; and iii) different levels of participation.
9. Adopt the measures necessary, based on the principle of proportionality of penalties for crimes involving narcotics or participation in criminal organizations, to enable judges to impose non-custodial penalties on persons with a low participation within the criminal network who have committed non-violent crimes.
10. Adopt all the measures required to correct the excessive use of pretrial detention with respect to persons committing drug crimes or crimes linked to organized crime. In particular, repeal any provision governing the automatic application of such measures or preventing their replacement with alternative measures based on the type of crime.

11. Adopt all measures to guarantee that all persons convicted for drug crimes or crimes linked to organized crime are able to access prison benefits that reduce the use of detention, on a par with persons convicted for other crimes.
12. Implement actions to prioritize the release of accused and convicted women, taking into consideration the disproportionate impacts of their incarceration and the specific burdens they have historically borne based on their gender and the social roles traditionally assigned to them.

### **Inclusion of the gender perspective in the prosecution of women**

13. Take all measures necessary to eradicate gender stereotypes in processes in the administration of criminal justice. To that end, incorporate inter-American human rights, gender, intercultural, and intersectional standards in training for public officials that make up the criminal prosecution and judicialization systems. In addition, incorporate the topic of gender as one of the aspects to be evaluated in processes for appointing persons as members of the courts.
14. In judging women, adopt judicial, legislative, and any other type of measures designed to provide legal consequences for the context of risk that women face, to allow consideration of the specifics surrounding the commission of crimes such as attenuating circumstances to be considered by justice operators when judging them. In particular, implement actions to ensure that, when women are being judged, the courts have the ability to consider attenuating factors allowing for the imposition of penalties in proportion to the seriousness of the crime committed, including allowing – as appropriate – the imposition of prison terms below the amounts established in the legislation or dismissal or acquittal, based on the methods women use to commit the crimes and the personal circumstances that lead to involvement in unlawful activities.

## ***B. Situation of women deprived of liberty***

### **Incorporation of the gender perspective in prison policies**

15. Adopt prison policies with a gender perspective and that are respectful of the intercultural and intersectional approaches that take into consideration the historic discrimination and gender stereotypes that have affected women and have severely limited the exercise of their rights, as well as the risks they face in detention and the violation of their rights due to incarceration. In this respect, such measures should ensure that: i) the rights of incarcerated women are effectively respected and guaranteed; ii) the needs of women are considered and prioritized; and iii) women are protected against all forms of violence and exploitation.

## Data compilation with a gender approach

16. Allocate sufficient resources for collecting statistical data respectful of the gender approach and the intercultural and intersectional perspectives and analyze them systematically and comprehensively for the purpose of adopting measures that acknowledge the specific needs of women deprived of liberty. In particular, prison information systems should include indicators, at least, on: i) age; ii) gender identity or expression; iii) ethnic-racial origin; iv) nationality or migrant status; v) socioeconomic information; vi) family composition at the time of arrest; vii) number of incarcerated women who are pregnant, have minor children outside of prison, or are responsible for the care of other persons; viii) number of children living with their mothers in prison; ix) women's health status – including problematic use of drugs or other substances; and x) visits with women in detention.

## Adaptation of prison infrastructure

17. Adopt all infrastructure measures required to ensure effective separation between women and men. In particular, implement actions so that women are housed in women's centers or in sections different from those intended for men, which should be impossible to access by men in prison.
18. Allocate space exclusively for housing trans women and put an end to practices that result in housing them together with men or other LGBT persons without distinction, or that entail their isolation or restrictions on their access to facilities.
19. Adapt the infrastructure of detention areas set aside for women so as to take into account their specific needs, considering both their gender condition and the development of their mother-child relationships. In particular, make the necessary building modifications to guarantee sufficient sanitary facilities for personal hygiene.

## Actions to promote the maintenance of family ties

20. Implement actions to create and implement prison policies with a gender approach designed for the maintenance of family ties. In particular, such policies should focus on: i) ensuring that women are housed in facilities close to the home of relatives and others in their care; ii) facilitating visits; iii) ensuring appropriate conditions for visits by assigning adequate spaces for the purpose; iv) guarding this right against all arbitrary interference; and v) ensuring that visits are conducted at least with the frequency, methods, and duration indicated in prison regulations.
21. In the specific case of visits between mothers and their children, the States should also: i) allow direct contact among them; and ii) ensure that prisons have appropriate meeting facilities that include spaces friendly to young children.

## Duty to act with enhanced due diligence in response to acts of gender violence

22. Act with enhanced due diligence and, in this respect, adopt and apply a gender and intersectional perspective to prevent, investigate, punish, and make reparation for all acts of discrimination and violence perpetrated against women deprived of liberty. In particular, carry out the following actions:
- a) For the purpose of preventing acts of violence against incarcerated women, implement the safeguards established in international human rights law consisting of: i) ensuring that women are housed in areas exclusively for women; ii) ensuring the effective separation of women and men; iii) prohibiting male prison staff from entering and remaining there; iii) ensuring that management, direct custody, surveillance, and transfer functions related to women are performed by female staff, both in women's prisons and in areas set aside for women in mixed prisons; iv) ensure that reviews or personal checks are carried out by female staff trained in appropriate methods; and v) regulate the behavior of prison staff exhaustively to govern their conduct in the performance of their duties.
  - b) With regard to violence against trans women deprived of liberty, adopt specific measures to prevent it, including: i) performing personalized risk assessments when they enter prison; ii) taking actions to eliminate sources of risk; iii) implementing independent and effective procedures for submitting complaints on acts of violence; iv) compiling data on their situation; v) establishing awareness and training programs on diversity for State agents; and vi) developing comprehensive and differentiated policies to ensure appropriate treatment.
  - c) With regard to the duty to protect incarcerated women who are victims of violence, provide protection, support, and immediate medical care to those who report acts of violence. In particular, provide: i) protection against the possible risk of reprisals; ii) legal support for submitting complaints and appeals as necessary; and, iii) provide medical care for their physical and mental health, including ensuring respect for the sexual and reproductive rights of women who have become pregnant as a result of sexual violence against them, including the ability to interrupt a pregnancy free of charge and under safe conditions.
  - d) On the subject of judicial protection, create suitable and effective judicial entities and remedies to ensure that incarcerated women who are the victims of acts of violence have access to effective judicial protection.
  - e) With respect to investigation, develop protocols respectful of the gender approach so that such events are properly investigated and judged with a gender perspective and differentiated approaches. To that end, incorporate the inter-American standards in training for competent authorities.

## Health care with a gender approach

23. Adopt all measures necessary to ensure that incarcerated women have access to medical care on a regular and timely basis, which must be respectful of the gender and intersectional approaches and consider their special needs, particularly in the specialties of gynecology, mastology, and sexual and reproductive health at a minimum. Specifically, this obligation includes ensuring that female health professionals are available in the prisons for medical visits with sufficient regularity. In addition, when service cannot be provided in detention centers, implement actions to ensure prompt and regular transfer of incarcerated women to health facilities located in the community.
24. Ensure that all women deprived of liberty have appropriate healthcare services, which should be individualized, interdisciplinary, and respectful of their gender and take into consideration their specific needs. In addition, establish clear guidelines on the use of medications for incarcerated women, considering the need to evaluate the specific situation of each woman and prohibiting the use of medications as a priority and generalized response.
25. Ensure the availability of specialized treatment programs for incarcerated women who are drug users, which programs are voluntary and respectful of the gender approach and directed to harm reduction and rehabilitation. In addition, implement programs to prevent drug use.
26. With regard to trans women, adopt measures to ensure that all prisons guarantee the provision of health services that respond to their specific needs. In this respect, make it possible to carry out transition processes on an accessible, depathologized, non-discriminatory, and violence-free basis.

## Protection of groups particularly at risk

### Pregnant women, postpartum women, and nursing women

27. Adopt all measures to ensure appropriate resources and facilities for pregnant women, postpartum women, and nursing women before, during, and after childbirth. This includes assigning appropriate, clean, comfortable, and private areas for breastfeeding.
28. Guarantee pre- and post-natal medical care in the place of detention, at least in the specialties of gynecology, obstetrics, and mental health. Specifically, this care should be provided by duly qualified female medical staff equal to that available on the outside. When this is not possible, ensure women's frequent access to community health centers with specialized professionals.
29. Ensure access to a free and highly nutritious diet in sufficient quantities, to be prepared and supervised in the context of a special program under the charge of health professionals. In addition, assign hygienic spaces for appropriate food storage.



30. Prohibit the use of any means of physical coercion against pregnant women or women in the postpartum period, including shackles or handcuffs that impede their mobility. Said prohibition must govern during transfers to hospitals, during labor and childbirth, and immediately thereafter.

### Pregnant women

31. Guarantee access to specialized medical care at the time of childbirth. In addition, ensure that this occurs in a maternal center or hospital located in the community. When for *force majeure* reasons childbirth occurs in prison, the birth certificate must indicate as the place of birth the corresponding city, county, or municipality.

### Women who live with their children in prison

32. Adopt all measures to allow incarcerated women to care for and raise their children in detention contexts. In particular, implement actions to: i) encourage bonding and parental care skills; ii) allocate exclusive areas within prisons so they can pass the time together, to include cooking, education, recreation, and play areas; and iii) authorize mothers to accompany their children in the process of integration with the community, for example, allowing them to take them to school or kindergarten, plazas, and medical facilities in the community.

### Children who live in detention centers with their mothers

33. Adopt legislative, administrative, or any other type of measures to ensure that the decision made on having children stay with their mothers in prison: i) considers the living conditions and quality of care they can receive within the prison facility and possible alternatives for the child outside of prison; ii) is made individually with unrestricted respect for their best interests; and iii) respects the opinion expressed by the child who is in a position to form their own judgment according to their age and level of maturity, and the opinion expressed by the mother deprived of liberty.
34. When it is not possible for a child to stay in prison with their mother, both due to inadequate conditions of detention or the lack of persons to assume their care, adopt all measures to allow mothers to benefit from the application of alternative measures needed to ensure that children are raised and cared for by their mothers.
35. Adopt measures to ensure that children who live in prison with their mothers maintain personal relationships and direct contact with the parent who is not deprived of liberty, as well as other family members such as siblings and grandparents.
36. Implement actions to ensure that children who live in prison with their mothers are able to exercise their rights under conditions equal to those who live in the community. In particular, ensure that they are allowed to leave and have access to education, health services, recreational and cultural activities in the community. This should be done without

diminishing the obligation to assign exclusive spaces within detention centers so that they can exercise these rights while they are in the prison.

37. Adopt all measures to provide children with adequate medical and health care in view of their special needs based on their age and greater exposure to contracting disease in detention contexts. In particular, prisons should: i) have staff qualified in pediatrics; ii) provide appropriate services including initial medical check-up services upon entry; iii) ensure that quality medical services are continuous and free; iv) constantly supervise child development; and v) when medical care cannot be provided in prison, ensure immediate transfers to specialized health centers in the company of their mothers.

### ***C. Alternative measures to prison***

#### **Implementation of alternative measures with a gender perspective**

38. In accordance with legislation and international human rights law, incorporate a gender perspective and intercultural and intersectional approaches in the creation of alternative measures applicable both to women subject to pretrial detention and convicted women. To that end, laws enacted in this respect must take into consideration, besides the reproductive function, motherhood, and caregiver roles of women, the following factors: i) discrimination in the exercise of the rights that women face in prison due to the lack of prison policies with a gender perspective; and ii) differentiated impacts of women's incarceration that expose them to a greater risk of violence.
39. When evaluating the granting of alternative measures for women and determining the measure to be applied in accordance with the legislation and international human rights law, judicial authorities should consider various aspects such as: i) the particular position and historical disadvantage that women have in society; ii) at-risk situations due to socioeconomic vulnerability; iii) prior history of victimization; iv) other risk situations linked to their age, ethnic-racial origin, and place of origin; v) the lack of aggravating circumstances in the commission of the crimes; and vi) the differential and incremental impact of imposing prison terms with respect to persons in their care.
40. As an alternative to pretrial detention, consider the application of the following measures: i) a promise to appear for the proceeding and not obstruct the investigation; ii) the obligation to submit to the care or monitoring of a specific person or institution; iii) the duty to appear periodically before the judge and the authority designated by the judge; iv) a prohibition on leaving the defined territorial area without prior authorization; v) retention of travel documents; vi) provision by oneself or a third party of bail in a sufficient amount; vii) surveillance by means of some electronic tracking device; viii) arrest in one's own home or someone else's home; and ix) restorative justice programs.
41. As alternatives to prison sentences, take application of the following measures into account: i) verbal sanctions; ii) economic sanctions or fines; iii) community services; iv)

mediation with the participation of the victim; v) penalties depriving one of rights or establishing disqualifications; vi) restitution to the victims or compensation; vii) probation and judicial surveillance systems; viii) community programs and services; ix) the obligation to appear regularly at a specific center; x) submission to voluntary drug treatment; xi) restorative justice programs; xii) community care programs; and xiii) house arrest. In addition, the use of the following post-sentencing measures is recommended: i) total or conditional acquittal; ii) conditional release; iii) suspended sentence; and iv) pardons.

42. With regard to women accused or convicted of committing non-violent crimes, adopt community care programs that provide assistance, support, and voluntary treatment focused on the causes that led women to become involved in the commission of crimes. Such programs should last for a specific period of time and, once concluded, should allow acquittal or pardon of the women.
43. In the specific case of women subject to a criminal proceeding for drug use or possession or who have committed minor crimes due to their problematic or dependent use, establish voluntary and free treatments developed in the public health context and addressing the causes for women's involvement in addictive drug use. These should be out-patient programs to allow women to remain at large. In addition, in this context, guarantee women access to community services that consider gender issues and provide psychological support.

### **Actions to address challenges in the application of alternative measures**

44. Considering that the principal causes of female incarceration are drug-related crimes in most States in the region and are tied to organized crime in northern Central America, remove all legislative and practical obstacles that prevent women who commit these crimes from benefiting from alternatives to prison and parole benefits. In particular, adopt legislative provisions that make inapplicable to women with a limited level of participation in the criminal network, in at-risk situations, or responsible for the care of others any restrictions on alternative measures and prison benefits based on the type of crime or the amount of the penalty.
45. Adopt judicial, legislative, administrative, and other types of measures to ensure that women are not discriminated against in the application of alternatives to incarceration due to their social or economic vulnerability. In particular, if it is demonstrated that a woman lacks a suitable home, employment, economic resources to pay for the measures, or persons to provide them with support, judicial operators should use another non-custodial measure or, if not applicable, not charge for the use of the referenced devices.
46. In order to eradicate gender stereotypes that prevent women from benefiting from alternatives to incarceration, ensure mandatory and continuous training on inter-American standards on human rights, gender, interculturality, intersectionality, and deprivation of liberty in training intended for criminal prosecution authorities who are responsible for decision-making. In addition, establish accountability mechanisms with regard to the

conduct of officials who prevent women from benefiting from alternative measures based on stereotyped assertions, insinuations, and allusions.

### **Adoption of monitoring and support mechanisms**

47. In order to supervise the application of alternative measures for women and identify possible obstacles to their implementation, adopt all measures to establish mechanisms for the implementation and monitoring of alternative measures that are respectful of the gender, intercultural, and intersectional approaches. To that end, generate statistics that incorporate such approaches in data collection and produce reliable, complete, and systematic information on the results obtained with the application of such measures. In addition, implement actions to overcome identified obstacles in order to allow women to benefit from the use of these measures.
48. Implement actions to ensure that the monitoring of women benefiting from alternative measures meets the following characteristics at a minimum: i) that it is carried out by specific authorities trained in human rights, interculturality, and intersectionality; and ii) it is accompanied by the establishment of a multidisciplinary support team, as well as specific programs respectful of gender. In particular, it is recommended that such programs address – *inter alia* – needs linked to employment, professional training, financial advice, comprehensive health care, and positive child rearing.
49. Adopt effective measures to ensure the support of women benefiting from alternatives to prison, so as to ensure they are not prevented from enjoying their human rights, as well to prevent an impact on the rights of persons in their care. In particular, such measures should consider the specific needs of women, with emphasis on those in particularly at-risk situations, as well as their children and others in their care. To that end, ensure efficient coordination between criminal justice and other supporting entities that provide assistance in the context of implementing these measures and between these entities and civil society organizations.
50. In the case of women subject to house arrest, adopt actions that ensure that they and their families are not prevented from exercising their rights due to their being subject to this measure, particularly services linked to food, health, and employment, as well as those related to their responsibilities with respect to persons in their care, as applicable. This should be done by: i) timely granting of the corresponding judicial authorizations to exercise their rights outside the home; and ii) the proportion of social assistance and economic benefits they require to remain in their home along with their families.

### **Addressing factors involved with the commission of crimes**

51. In the context of the application of alternative measures, establish programs with a gender perspective that are respectful of the intercultural and intersectional approaches, directed to addressing the causes that have led to women's involvement in the commission of crimes.

Specifically, allocate adequate resources so that women beneficiaries are able to integrate with the community through the provision of different options that may include: i) psychological treatment; ii) care for the victims of gender-based violence; iii) education and training programs to increase employment possibilities; iv) housing programs; and v) health care.

## ***D. Social reintegration of women***

### **General measures**

52. Adopt comprehensive public policies directed to the social reintegration of persons deprived of liberty. In particular, offer programs inside prisons that make possible women's participation in work-related, educational, cultural, sports, and social activities. Such activities should contribute to their well-being during detention and promote their social reintegration upon release. To that end, the States should: i) strengthen outside contact; ii) analyze problems and factors that may present obstacles to the social reintegration of persons after they are released; and iii) strengthen social reintegration programs by allocating budget and personnel to guarantee their effectiveness.

### **Actions with a gender perspective**

53. In order to promote the reintegration of women in society, incorporate the gender perspective and the intercultural and intersectional approaches in the design and implementation of policies and programs on social reintegration. In particular, such programs should comprehensively address the factors that have led to women's detention and be offered both before and after their release. In addition, the offer should include, at a minimum, the following options: i) educational and professional training courses; ii) recreational and cultural activities, iii) job opportunities; iv) psychosocial support, v) treatment for substance abuse; vi) parenting programs; and vii) physical and sports activities.
54. In the context of developing reintegration programs for women, consider the actual chances they have of entering the labor market in jobs that do not reflect gender stereotypes. In particular, adopt measures to prevent offers of employment, education, and training from being defined by any type of bias based on gender prejudices. In this regard, work and training programs offered to women must correspond to market demands and be directed to increasing their real chances of earning a just wage after their release.
55. To promote the implementation of social reintegration programs for women, create areas for incarcerated women to express their opinions and listen in which they can show what their needs and preferences are, as well as strategies to promote their participation in these programs.

## Individualization of reintegration plans

56. In order to ensure the social reintegration of women, when women enter prison the competent authorities should develop individualized plans consistent with the specific needs of each woman. In particular, said plan should consider the approach to aspects related to: i) their ethnic-racial, religious, and cultural backgrounds; ii) their physical and mental health; iii) their need to receive psychological treatment or treatment for addictions; iv) their parental status, responsibilities for care, and family relations; v) financial responsibilities; vi) legal advice; vii) housing for their release; viii) possibility of entering the labor market; ix) education; and x) personal identification.

## Measures to facilitate the transition between life in prison and life on the outside

57. Adopt all measures to strengthen family relations and support networks of women deprived of liberty by facilitating visits or any other means of contact. In addition, include their families and persons of trust in the process of a gradual return to life in society.
58. Establish gradual processes for the de-institutionalization of incarcerated women by granting them temporary permits to leave prison to allow visits to their families and communities and their inclusion in activities of daily life prior to their release, for example, by allowing access to health services, work, study, and taking their children to school.
59. Ensure that women's social, economic, psychological, and medical needs are covered. To that end, create a network of cooperation between prison authorities, social assistance services, local community groups, civil society organizations, and persons detained for the purpose of having reintegration programs to monitor social reintegration and ensure continuous support for women released from prison, particularly in the area of housing, work, comprehensive health, education, training, and legal assistance.
60. To combat social stigmas against released women, adopt coordinated responses by public institutions and civil society organizations that provide women with tools and opportunities to ensure access to their rights, by promoting equality and non-discrimination. In particular, such programs should strengthen women's participation in social activities in their community and ensure equal access to social assistance, health care, and legal services.
61. Implement actions for the immediate elimination of criminal records once women complete their sentences, in the case of women who have been convicted for crimes involving small amounts and committed without the use of violence or women who demonstrate that when they committed the crime they were in a special at-risk situation. In addition, adopt measures to prevent criminal records from being used as a factor to be included in staff hiring processes.
62. To promote women's inclusion in the formal labor market as quickly as possible following their release, in addition to improving the supply of training courses offered in detention to



allow women to acquire a wide variety of skills, adopt the following measures: i) create a job quota for released women so they can work in public offices; and ii) establish partnerships with private companies where women can provide their services.

63. Implement actions to prohibit the exclusion of women released from prison from accessing bank accounts and loans. In particular, encourage banks to grant facilities so that women can both open their own accounts and apply for loans to carry out individual projects.
64. Collaborate with community services and civil society organizations to help women released from prison to access housing in shelters while they find a suitable home, which shelters should have facilities and experienced staff to provide psychosocial support and legal advice.
65. Grant facilities to released women so they can acquire new personal identification documents free of charge and immediately after being released.

### **Monitoring social reintegration programs for women**

66. Adopt all measures to evaluate the impact of social reintegration programs on the lives of women who have been released, specifically by analyzing at a minimum this population's levels of recidivism and employment and unemployment rates. In this regard, said monitoring and evaluation should incorporate the gender, intercultural, and intersectional approaches in order to address the various forms of discrimination that could limit women's participation in social reintegration programs.



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