



Women and drugs in the Americas

A policy working paper

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Americas**

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January 2014

The **Organization of American States** (OAS) brings together the nations of the Western hemisphere to promote democracy, strengthen human rights, foster peace, security and cooperation and advance common interests. The origins of the Organization date back to 1890 when nations of the region formed the Pan American Union to forge closer hemispheric relations. This union later evolved into the OAS and in 1948, 21 nations signed its governing charter. Since then, the OAS has expanded to include the nations of the English-speaking Caribbean and Canada, and today all of the independent nations of North, Central and South America and the Caribbean make up its 35 member states.

The **Inter-American Commission of Women** (CIM) is the main hemispheric policy forum for the promotion of women's rights and gender equality. Created in 1928 - in recognition of the importance of women's social inclusion to democratic strengthening and human development in the Americas - CIM was the first inter-governmental organization established to promote women's human rights and gender equality.

Women and drugs in the Americas: A policy working paper

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Introduction

During the sixth summit of the Americas (April 2012, Cartagena), leaders of various countries of the Americas issued a mandate to the Organization of American States (OAS) to analyze current drug policies and explore new approaches, with a view to developing viable alternatives that would effectively regulate the production, trade, and consumption of drugs of illicit substances while alleviating the violence and harm associated with current approaches to this issue.

Since then, the hemispheric response to the “World Drug Problem”¹ has been a changing landscape, and many more leaders have since called for reform of international and national-level drug policies to include more effective and humane alternatives to dealing with this global crisis. Previous measures to suppress drug production and consumption have been extreme, and have often proved ineffective. Methods such as aerial fumigation to suppress cultivation or mass incarceration as a response to drug consumption and small scale trafficking, have taken governments and societies further away from their original objective of preventing drug misuse and guaranteeing universal access to health and treatment for addiction, as set out in the 1961 convention on narcotic drugs. These first UN conventions of 1961 and 1971, prepared primarily from a punitive and prohibitionist perspective, created and sustained a ‘War on Drugs’ mentality. The ‘War on Drugs’—a rhetorical device coined under former US President Nixon’s leadership – has been progressively abandoned by the

1. The International Drug Policy Consortium (IDPC) has suggested that the use of the word “problem” in the CICAD/OAS Report on ‘The Drug Problem in the Americas’ is ‘simplistic, attempting to capture a range of complex issues in one simple phrase and without ever defining “the problem.” In fact, the study presents a more sophisticated analysis than the title implies. It begins from the premise that there is not one problem related to drugs but rather multiple issues and that each country faces a different set of challenges that necessitate inter-related but distinct policy solutions.’ (Source: IDPC. “Launching the debate: The OAS Reports on Hemispheric Drug Policy” (IDPC Advocacy Note), 2013, <http://idpc.net/publications/2013/07/idpc-advocacy-note-launching-the-debate-the-oas-reports-on-hemispheric-drug-policy>). Taking into account the difficulties inherent in categorizing an issue as multi-layered and inter-connected as drugs, this paper discusses ‘the illicit drugs trade’ when directly referring to the commercialization of illicit substances and ‘the complex issue of drugs’ when referring to women’s involvement, the impact of drug policies and other more abstract issues.

majority of States in the region (including the United States), who now recognize a need for drug policy reform and a more realistic, evidence-based approach to the changing and growing phenomenon of illicit drugs and their related issues. This paradigm shift has generated a number of alternative proposals and responses to the complex issue of drugs, including the promotion of a public health approach that favours treatment instead of incarceration, the safeguarding of human rights, and the endorsement of human rights-based and harm-reduction strategies to address the violence inherent in the trafficking of illicit substances, as well as the stigma attached to their use.

At the United Nations (UN) General Assembly in September 2013, Colombia, Mexico, and Guatemala, among other States, spoke of the urgent need to explore alternatives to the “War on Drugs.” Uruguay presented a proposal to create the world’s first national, non-medical, regulated market for cannabis. This bill has since been signed into law, the regulation for which is currently being designed and is expected to take effect later this year. Uruguay’s non-punitive response to drug use comes at a time when many transit countries, including Guatemala, have experienced a gradual shift in attitudes and approaches around mitigating the harms of the drugs trade on their local communities. In transit countries, the negative effects of the illicit drugs industry on human and economic development are most keenly felt, and exacerbated by punitive policies that tend to affect vulnerable members of society who might participate in the drug trade due to financial crises and coercion at the lower level of the commercialization ladder.

Claims by the media, paired with the scarce data available suggest that in the last two decades, the participation of women in the trade of illicit drugs has increased significantly. Nevertheless, while this participation is visible in the news, it has been largely absent from the research and other activities of most governmental and inter-governmental bodies.² In general, we know relatively little about the people that participate in the question of illicit drugs – be they men or women. As usually happens in other areas, we understand even less about women’s participation and we tend to interpret it through assumptions and stereotypes that on the one hand, complicate an adequate understanding of the social, economic, and cultural factors that determine this participation and, on the other hand, produce negative effects for women in terms of increased social stigmatization of their participation.³

2. According to CICAD, prevention programs exist in the Americas, such as campaigns through audiovisual media and community-based, but many have yet to be evaluated.

3. Anitua, G, y V. Picco. “Género, drogas y sistema penal: Estrategias de defensa en casos de mujeres “mulas.”” In *Violencia de Género: Estrategias de litigio para la defensa de los derechos de las mujeres*. Buenos Aires: Defensoría General de la Nación (Ministerio Público de la Defensa), 2012, p.219.

This paper has been prepared⁴ at the request of the Member States of the Inter-American Commission of Women (CIM) following a meeting of its Executive Committee in February 2013. During that meeting, the CIM Secretariat presented a preliminary literature review and some of the limited data available from the Americas on women's involvement at all levels of the question of illicit drugs. As a follow up to this initial presentation and in the context of the 43rd regular session of the General Assembly of the OAS (La Antigua, Guatemala, June 2013), with the aim of raising awareness among OAS Delegates and other stakeholders, the CIM and the Inter-American Drug Abuse Control Commission (CICAD/OAS) organized a round-table discussion on women and drugs in the Americas. The event brought together representatives from government, academia, civil society and the international community in order to share existing knowledge on how women participate in the illicit drugs industry and identify areas where research, public policy and specific programs are needed.

Thus the paper attempts to follow-up these initial activities, and aims to bring together all of the information that has been collected during the ensuing period. It includes information that OAS Member States have provided on women's involvement in drug related crimes, and at certain levels within the chain of commercialization. The paper aims to contribute to the work of the CIM and the CICAD within the OAS, Member States and other bodies in addressing the question of illicit drugs. It offers a country-by country review and analysis of available information, including reflections on the efficacy of current drug control policies and their consequences, as well as recommendations for public policy and other areas from a gender, development and human rights perspective.

4. The paper was prepared by Nischa Jenna Pieris, Specialist with the Inter-American Commission of Women, and was reviewed by a group of experts that included Damon Barrett (Harm Reduction International), Corina Giacomello (Autonomous University of Chiapas, Mexico), Diana Esther Guzmán (Center for the Study of Law, Justice, and Society/DeJusticia), Marie Nougier (International Drug Policy Consortium), Coletta Youngers (Washington Office on Latin America/WOLA), Carlos Zamudio (Collective for an Integral Drug Policy in Mexico/Cupihd), and Eka Iakobishvili (Independent Expert on Human Rights, Prisons, and Gender). The CIM is grateful to this group of experts for their support and feedback during the organization of the CIM round-table in June 2013 and the preparation of this paper. The paper was translated, edited and printed thanks to a contribution from the Department of External Relations of the Government of Mexico.



2.

The international legal and policy framework: Status and trends

The existing body of international human rights law includes a number of agreements that are directly related to the issue of women and drugs – including, but not limited to the Inter-American Conventions on the Granting of Civil and Political Rights to Women (1948), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), the American Convention on Human Rights (1969), the Convention on the Elimination of all Forms of Discrimination against Women (1979), the Convention on the Rights of the Child (1989), and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (1994). While none of them specifically mentions the issue of drugs, all of these agreements contain provisions on issues that are directly relevant, including the right to personal liberty and freedom of association, the right to be free from arbitrary arrest or detention, the right to the presumption of innocence, the right to due process, legal assistance, and prompt resolution of any pending charges, the right of persons deprived of liberty to humane treatment, reformation and social rehabilitation, the right to equality, including equality before the law, and non-discrimination, the right to live a life free of violence, and, in the case of children, the right to be cared for by his or her parents.

A full analysis of the relevance of international human rights law to the complex issue of drugs is beyond the scope of this paper, but it is important to bear in mind that policy and programmatic responses should respect the provisions of these laws in order to avoid violations of human rights from such measures as invasion of privacy, arbitrary search and seizure or detention, extended pre-trial detention, custodial violence, and/or separation of children from their primary care-givers.

Within this broad human rights framework, and in an effort to bring the question of illicit drugs and State responses under a frame of reference that effectively addresses the problems while prioritizing respect for human rights, inter-governmental bodies such as the UN and the OAS have adopted conventions, resolutions, declarations and other agreements on a broad cross-section of issues related to illicit drugs and their production, transportation, distribution and use.

2.1. UN Conventions and other framework agreements

The UN System UN has adopted three key Conventions, of which every OAS Member State is a Party:

- **The 1961 Single Convention on Narcotic Drugs** (and a 1972 protocol amending it), which primarily covers the production and distribution of opium and its derivatives and coca and its derivatives, notably cocaine, and cannabis.⁵
- **The 1971 Convention on Psychotropic Substances** covers a wider range of manufactured psychoactive medications used pharmaceutically, including amphetamines and benzodiazepides, as well as LSD and other psychedelic substances.⁶
- **The 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances** focuses primarily on promoting efforts to suppress illicit trafficking and includes provisions attacking money-laundering and precursors to drugs controlled under the 1961 and 1971 Convention.⁷

Since their adoption, these conventions have provided the dominant framework for drug control in the international sphere, and have contributed to the creation of the so-called “War on drugs” mentality leading to prohibitionist policies and harsh punishments for drug-related crimes including, in many cases, consumption. Over the last few years however, countries within this hemisphere and in other regions have been taking advantage of the flexibility of these international agreements in order to create a more inclusive, development-focused debate on the future of drug control policy at the international and national levels. In addition to placing new topics and approaches on the international drugs policy agenda, these debates have also attempted to include new groups of stakeholders in the definition of international drugs policy – including academic and research institutions, human rights groups and other civil society organizations, and networks of current and former drug users and people incarcerated for drug related crimes, in order to build a broader and more

5 . *Single Convention on Narcotic Drugs* (1961): http://www.unodc.org/pdf/convention_1961_en.pdf

6 . *Convention on Psychotropic Substances* (1971): http://www.unodc.org/pdf/convention_1971_en.pdf

7 . *Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (1988): http://www.unodc.org/pdf/convention_1988_en.pdf

participatory framework for exploring and implementing policy alternatives to the approaches set out in the above-mentioned agreements.

- UN General Assembly Resolution S-20/2, “Political Declaration” (1998)⁸

In this political declaration, despite taking a predominantly security-focused approach, UN Member States collectively encourage the United Nations as an inter-governmental entity to “Undertake to ensure that women and men benefit equally, and without any discrimination, from strategies directed against the world drug problem through their involvement in all stages of programs and policy-making” (par 4).

2.2. Resolutions of the UN Commission on Narcotic Drugs

In terms of the participation of women, until recently very little had been done to include women’s rights and gender equality in the international legal and policy framework, which reflects the predominant belief that illicit drugs are a “man’s world,” dominated and populated exclusively by men. While men certainly outnumber women, as stated in the introduction the situation is beginning to change, and this change has been recognized in an increasing number of international agreements:

- Resolution 55/5 of the UN Commission on Narcotic Drugs (CND) “Promoting strategies and measures addressing specific needs of women in the context of comprehensive and integrated drug demand reduction programs and strategies,” calls on UN Member States to adopt drug control measures that respond to the needs of women. This resolution focuses almost exclusively on drug dependence treatment and demand reduction programs for drug dependent women. This was an important step forward in weaving gender-specificity into policy and programs to respond to the different needs of men and women undergoing treatment for drug dependence. It also takes into account prevention mechanisms such as enhanced educational and employment opportunities for women, and the role that these play in ‘significantly (decreasing) the risk of their drug abuse and dependence and their involvement in drug-related crimes.’
- CND Resolution 52/1 “Promoting international cooperation in addressing the involvement of women and girls in drug trafficking, especially as couriers,” highlights key issues related to women’s involvement in the illicit drugs industry, with particular

8. United Nations General Assembly Resolution A/RES/S-20/2 “Political Declaration” (1 October 1998): <http://www.un.org/documents/ga/res/20sp/a20spr02.htm>

emphasis on women as couriers. The resolution mentions the need for more evidence-based research on women's involvement in the question of illicit drugs, and urges more education-based prevention and other initiatives to reduce women's participation in drug-related crime.

2.3. Other related international agreements

- Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Belém do Pará Convention)⁹

The Belém do Pará Convention (1994), establishes that women have the right to live a life free of violence and that violence against women constitutes a violation of human rights and fundamental freedoms. While the Convention does not specifically mention the issues of drugs or organized crime, the violence that is implicit in both of these worlds necessarily impacts women, although the specific manifestation and magnitude of this violence require further study. In the context of the debate on drugs and policy reform, what little information we do have indicates that many of the women deprived of liberty for drug related crime have been used – often through direct threats or other forms of coercion – as mules or human couriers by the authors of organized crime, including in many cases their partners or other family members, who see them as vulnerable and exploitable. It is in this wider context of violence against women that the debate on drugs and women's involvement must be viewed.

- The Inter-American Program on the Promotion of Women's Human Rights and Gender Equity and Equality (IAP)¹⁰

The IAP promotes making both women and men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programs in the political, economic and social spheres, so that women and men benefit equally and inequality is not perpetuated. The stereotyping of women as caregivers who remain in the private sphere is a harmful socio-cultural pattern that vilifies women who come into contact with criminal justice systems, especially for drug-related crime. The IAP also specifically calls for an elimination of such stereotyping that 'denigrates the image of women, particularly in educational materials and those disseminated by the media.'

9. Belém do Pará Convention (1994) <http://www.oas.org/en/mesecvi/docs/Convention-Text-EN.pdf>

10. *Inter-American Program on the Promotion of Women's Human Rights and Gender Equality and Equity* (2000): [http://www.oas.org/en/CIM/docs/PIA\[EN\].pdf](http://www.oas.org/en/CIM/docs/PIA[EN].pdf)

- The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules)¹¹

The United Nations Rules for the Treatment of Women Prisoners (more commonly called The Bangkok Rules) were adopted by 193 countries participating in the UN General Assembly in 2010 (A/RES/65/229), and provide UN Member States and their penal systems with a comprehensive set of standards for the specific characteristics and needs of women offenders and prisoners. They offer detailed guidelines to policy makers, legislators, prison staff, parole and probation officers, and sentencing authorities on how to meet the gender-specific needs of women deprived of liberty in penitentiary centers, as well as promoting the need to reduce the imprisonment of women through non-custodial correction measures. The rules also outline measures for the care and humane treatment of their children whether or not they live with their mothers in prison.

A few noteworthy rules are:

(Rule 2, paragraph 2) “Prior to or on admission, women with caretaking responsibilities for children shall be permitted to make arrangements for those children, including the possibility of a reasonable suspension of detention, taking into account the best interests of the children.”

(Rule 4) “Women prisoners shall be allocated, to the extent possible, to prisons close to their home or place of social rehabilitation, taking account of their caretaking responsibilities, as well as the individual woman’s preference and the availability of appropriate programs and services.”

(Rule 15) “Prison health services shall provide or facilitate specialized treatment programs designed for women substance abusers, taking into account prior victimization, the special needs of pregnant women and women with children, as well as their diverse cultural backgrounds.”

The implementation of these rules in the Americas has met with differentiating responses. Jennifer Fleetwood and Andreina Torres’ ethnographic account of women imprisoned in Ecuador (carried out before the creation of the Bangkok Rules) highlighted the gaps in the criminal justice system to accommodate the needs of mothers and their children. Women’s caring responsibilities were not taken into account in sentencing, nor were they recognized or met by the prison. Approximately 16% of inmates had their children stay with them while imprisoned, for all or part of their sentence.”¹²

11. *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules)* (2011): <https://www.un.org/en/ecosoc/docs/2010/res%202010-16.pdf>

12. Fleetwood, J. y A. Torres. “Mothers and Children of the Drug War: A View from a Women’s Prison in Quito, Ecuador.” en D. Barrett (ed.) *Children of the Drug War*. New York: International Debate Education Association, 2011, <http://www.childrenofthedrugwar.org/p/download.html>

2.4. The Inter-American System and the Declaration of Antigua

In June 2013, the Member States of the OAS gathered at the 43rd General Assembly in La Antigua, Guatemala in order to launch a hemispheric debate on new approaches to the question of illicit drugs in the Americas. The Assembly brought to light the deep differences and divisions between the countries of the hemisphere in terms of how to address this issue, but despite tense negotiations the Assembly resulted in the pioneering “Declaration of Antigua Guatemala: ‘For a comprehensive policy against the world drug problem in the Americas’” (AG/DEC.73).¹³

The Declaration of Antigua acknowledges the enormous human and financial toll taken by illicit drugs and existing attempts to control them, and for the first time at the international level declares that “...it is essential that the Hemisphere continues to advance in a coordinated manner in the search for effective solutions to the world drug problem with a comprehensive integrated, strengthened, balanced and multidisciplinary approach with full respect for human rights and fundamental freedoms that fully incorporates public health, education, and social inclusion, together with preventive actions to address transnational organized crime, and the strengthening of democratic institutions, as well as the promotion of local and national development.”

The Declaration further encourages “...the consideration of new approaches to the world drug problem in the Americas based on scientific knowledge and evidence” and reiterates “...the importance of participation by civil society in addressing the world drug problem, including the design, execution, and evaluation of public policies, based on their experience and knowledge.” It also attempts to foster “...broad and open debate on the world drug problem so that all sectors of society participate and continue offering, as the case may be, their experience and knowledge of the different aspects of the phenomenon and thereby contribute to the strengthening of national strategies, as fundamental elements for the effectiveness of public policies.”

In terms of the participation of women, the Declaration stresses that “...public policies to address the world drug problem must necessarily be designed and implemented with gender awareness, where appropriate,” and encourages OAS Member States “...in accordance with their domestic law, to continue strengthening measures and policies, including a gender perspective, as appropriate, to reduce overcrowding in prisons, while promoting greater access to justice for all, and establishing penalties that are reasonable and proportionate to the severity of the crime, and supporting alternatives to incarceration in appropriate cases, particularly by increasing access to rehabilitation, comprehensive health care, and social reintegration programs; and, in that regard, they encourage member states to strive to incorporate the relevant provisions of the United Nations Standards and Norms into their practices.”

13. *Declaration of Antigua* (2013): <http://scm.oas.org/ag/documentos/>

2.5. Gaps and challenges

Still absent from the current legal and policy framework is any consideration of the nature of women's participation in the question of illicit drugs, the differential impact of current drug policies on women, from a gender and human rights perspective, or the real and potential harms that may result from the incarceration of women for drug-related crimes, and the effects that this can have on families and societies at large. Nowhere in the conventions and international agreements are there mandates or commitments relating to understanding the global crisis of controlled substances and their commercialization through the lens of gender and human rights. The conventions concentrate their efforts on channelling security strategies and organize their policy recommendations around punishing those involved rather than taking a more pragmatic, "harm reduction"¹⁴ approach that many research institutions in the fields of health and human development have promoted since the 1990s.

As mentioned previously, in June 2013, CIM and CICAD organized a side-event to the 43rd OAS General Assembly in the form of a round-table discussion entitled "Women and Drugs in the Americas: A Working Analysis,"¹⁵ which brought together a panel of experts that had conducted pioneering research and led various programmatic and advocacy initiatives to highlight the effects of drug policy and legislation on women as producers, suppliers, micro-traffickers, couriers and consumers of drugs. During the round-table discussion, panellists stressed the importance of incorporating differentiating criteria into analyzing and effectively addressing the situation of women and men within the question of illicit drugs, including through the revision and/or formulation of laws and policies within the framework of existing international human rights law.

The recommendations that emerged from this round-table discussion, which are discussed at greater length in Section 5, are the starting points for strengthened institutional responses and public policies on the question of illicit drugs, and it is hoped that this paper will also provide a road map for strengthening international agreements and cooperation on these issues.

14. The International Harm Reduction Association, released a position statement on "Harm Reduction". This term refers to programs, policies, and practices that aim to primarily reduce the adverse health, social, and economic consequences of the use of legal and illegal psychoactive drugs without necessarily reducing consumption itself. This approach is based on a strong commitment to public health and human rights. See: <http://www.ihra.net/what-is-harm-reduction>

16. For more information, please see: <http://www.oas.org/en/CIM/security/WomenandDrugs.asp>



3. The Situation of Women and Drugs in the Americas

3.1. General overview: What we know and what we don't

After fifty years of drug policy focused on eradicating the global illicit drugs industry, and despite the billions of dollars spent on drug law enforcement, numerous arrests and incarcerations and an incalculable death toll, the levels of supply and demand for drugs have not significantly decreased. As a consequence of this approach however, levels of citizen insecurity have never been higher and prohibitionist drug policies have led to numerous negative social and economic consequences, including decreased productivity and participation in the formal economy, an overtaxed penal system and breakdown in family structures, which in the case of women often results in separation of children and other dependents from their primary care-givers.

The landmark agreements contained in the Declaration of Antigua came on the heels of the first *OAS Report on the Drug Problem in the Americas*, which took a multi-disciplinary approach to analyzing the current situation of illicit drugs in the hemisphere, as well as the impact of international and national control efforts. The report states very clearly that there is no single “Drug Problem in the Americas,” but many different problems that are related to: a) the different stages of cultivation, production, distribution (transit and sale) and use of controlled drugs; and b) the multiple ways in which these different stages affect the countries of the region. Some of the main conclusions of this report are:

- The health problems associated with substance abuse, which are present in every country of the region, vary in terms of the number of people affected. This number is greater in North America, where levels of consumption¹⁶ are higher.

- By contrast, the impact on the economy, social relations, security and democratic governance is greater in the countries where cultivation, production and transit take place - located in South America, Central America, Mexico and the Caribbean.
- The profits of illicit drugs accrue more highly in North America, as the sale of drugs generates much higher revenues, reaching 65% of the total, while growers and producers generate and receive about 1% of total revenue.
- Most of the people that act as producers, traffickers and dealers, including the assassins who work for organized gangs, come from economically and socially vulnerable areas and, in most cases, have had fewer opportunities, including family poverty and lower levels of education.
- The criminal violence associated with the production and transit of drugs is carried out primarily by organized transnational gangs, which can carry out acts of extreme violence and have diversified their activities to cover a wide range of offences, in addition to drug trafficking, including human trafficking and smuggling.
- The uncertainty caused by the activity of these groups or “cartels” affects citizen security, both in real physical terms (quantitatively affecting crime rates) and also in terms of people’s perceptions of insecurity. The corruption, violence and impunity that accompany this situation – including that which is tolerated or perpetrated by the State – undermines the rule of law and democratic governance and lowers levels of confidence and trust in State institutions.
- The reduction or elimination of this violence and insecurity is dependent on the reduction of economic and social vulnerability, which demands comprehensive attention from the State and civil society in the fields of education, employment, equitable rural development, equal opportunities and urban standards of living, as well as strengthened international cooperation to ensure that approaches are consistent across States, while also taking into account the realities of different States, regardless of whether their primary role is production, transit, sale, use or control.
- The issue of drugs requires a flexible approach, allowing countries to adopt the policies best suited to their realities. The challenges faced by production, transit and consumer countries are very different and demand appropriately tailored solutions.
- Greater flexibility in State and regional approaches to the question of illicit drugs could lead to significant changes in national legislation and international law. For

16. The CICAD Report outlines the different patterns of drug use. It is here important to note that most people do not consume drugs, and those who do tend to use them recreationally and sporadically without problems.

- “Experimental Use: An individual tries a drug to experience its effects, and after a few times, stops using.
- Social or regular use: The person continues to use the substance after experimenting with it, and makes it a part of his or her habitual lifestyle
- Harmful use: The WHO defines this as a pattern of use that causes harm, whether mental or physical
- Abuse and Dependence: The American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders classifies these two categories as diseases associated with psychoactive substance use.”

example, existing trends point toward the decriminalization or legalization of the production, sale and consumption of marijuana, which would entail enormous changes in the allocation and use of State resources for the question of illicit drugs – including the resources that are currently used by justice and penal systems.

Despite alluding at times to ‘vulnerable populations,’ the main report does not incorporate a gender perspective or an analysis of women’s participation in the question of illicit drugs, though it did acknowledge the actual and potential harms that existing drug policies can have upon local communities, and “vulnerable” members of society. The report includes a section on drugs and development, which focuses on the problem through an international human development lens:

Drug policies should be “humanized” and designed from a standpoint of social integration and sustainable human development. The active exercise of democratic citizenship, the respect for human rights recognized in every country’s laws, and the promotion of legitimate opportunities for everyone- these are principles that should guide states in formulating policies on drugs.

As part of a series of studies that fed into the main analytical report, a study on “Drugs and Development,” citing a report prepared by the Transnational Institute and the Washington Office on Latin America, acknowledges that “...Some studies estimate that around 70 percent of women in prison—many of them heads of household— are there for nonviolent microtrafficking offenses.”

As mentioned previously, the nature and extent of women’s participation in the question of illicit drugs has been largely absent from the research, actions, and other activities of the UN and other inter-governmental bodies and national governments. Information on women’s participation in the cultivation of crops deviated to illicit markets and the production of illicit drugs is less available, as research has focused more closely on two issues: i) women who have been incarcerated for drug trafficking and distribution crimes; and ii) women who use drugs and their access and response to different types harm reduction and drug dependence treatment programs.

Over the last decade or so, a number of academic and drug policy organizations (most of them non-governmental), have conducted research on some of these questions, primarily in national and/or state-level detention centers, with women who have been incarcerated for drug related crimes.

For example, the **Washington Office on Latin America** (WOLA) and The Transnational Institute (TNI) conducted a study, *Systems Overload: Drug Laws and Prisons in Latin America on the impact of the “war on drugs” on justice and prison systems in Latin America* (Argentina, Bolivia,

Brazil, Colombia, Ecuador, Mexico, Peru, and Uruguay).¹⁷ While not carried out from a gender perspective, the study does include a methodology for gathering qualitative data through a set of interview questions conducted with persons deprived of liberty, on their involvement in the drug industry and their experiences within penitentiary systems. WOLA also produces regular analysis and commentary on drug policy issues from a human rights perspective

Similarly, the **Transnational Institute** (TNI), established a “Drugs & Democracy”¹⁸ program that analyzes trends in the illegal drugs market, as well as the short- and long-term effects of global drug policies. TNI considers the human rights of all actors in the illegal drugs market, and advocates an approach based on harm reduction. They regularly work with WOLA on publications and events.

Following the study on drug laws and prisons, the research team was institutionalized as **The Research Consortium on Drugs and the Law** (Colectivo de Estudios Drogas y Derecho, CEDD)¹⁹ with researchers from eight Latin American countries coming together to analyze the impact of criminal law and legal practice surrounding illicit drugs. CEDD’s latest research critically examines whether the principle of proportionality is applied in drug related crimes and punishments. The studies find that punishment for drug offenses and the treatment of offenders is disproportionate, which often generates more harm than the intended benefit.

The **International Drug Policy Consortium** (IDPC) is a global network of over 100 NGOs that has focused its efforts on ensuring that national and international drug policies are grounded in the principles of human rights and human security, social inclusion, public health, development and civil society engagement. It facilitates networking and collaboration between civil society stakeholders, and seeks to empower civil society and the most affected populations to better engage with and influence policy-making processes. In parallel, IDPC also intervenes directly with high-level policy-making processes by providing analysis and expertise to governments and UN agencies on effective and more humane drug policy options. CIM/OAS has been in collaboration with IDPC who participated in the General Assembly Roundtable “Women and Drugs in the Americas: A Working Analysis”. In 2012, IDPC published a briefing paper on addressing the negative consequences of global drug control across the world, with a focus on women. They recently published a second briefing paper, *Women, drug offenses and penitentiary systems in Latin America*,²⁰ making recommendations to the OAS and other

17. TNI and WOLA. *Systems Overload: Drug Laws and Prisons in Latin America*. Amsterdam: Transnational Institute and the Washington Office on Latin America, 2011, http://www.druglawreform.info/images/stories/documents/Systems_Overload/TNI-Systems_Overload-def.pdf

18. *Drugs and Democracy*: <http://www.tni.org/work-area/drugs-and-democracy>

19. CEDD: <http://drogasyderecho.org/cedd-home.html>

20. IDPC. *Women, drug offenses and penitentiary systems in Latin America*. Washington, D.C.: International Drug Policy Consortium, 2013, <http://idpc.net/publications/2013/11/idpc-briefing-paper-women-drug-offenses-and-penitentiary-systems-in-latin-america>

stakeholders in addressing the negative consequences caused specifically to women by the current drug control system.

Harm Reduction International (HRI) has conducted work on women and drugs that includes a study on the incarceration of women for drug offences in the Europe and Central Asia region,²¹ which, while mainly quantitative in nature, employs a gender-based methodology. This study has been instrumental in offering a regional comparison to the Americas, and it highlights the global phenomenon that the majority of women deprived of liberty throughout the world are serving or awaiting sentences for drug related crime. HRI also contributed to the panel discussion organized by CIM/OAS as a side event to the general assembly.

The **Avon Global Center for Women and Justice** (at Cornell Law School) works with judges, legal professionals, and governmental and non-governmental organizations to improve access to justice in an effort to eliminate violence against women and girls. They recently published a report on *Women in Prison in Argentina: Causes, Conditions and Consequences*,²² which looks at the general profile of deprived of liberty in the country and assessed the causes and consequences of their imprisonment.

The **Center for Research, Teaching, and Economics** (CIDE) has conducted theoretical and empirical research on populations deprived of liberty that helps provide a basis for decision-making in the public, private, and social sectors and, aims to increase the quantity and quality of information available to the public on drug policy and the prison population, as well as other national and international issues, in order to encourage more informed and participatory debate. As an academic institution, the CIDE has carried out research²³ into the general prison population in deferral prison centers throughout Mexico, and pays particular attention to the problem of mass-incarceration for non-violent 'crimes against health', including drug related crime. Their data is sex and age disaggregated.

The **Collective for an Integrated Drug Policy** (Cupihd)²⁴ conducts research, education, and action aimed at transforming drug policy with a focus on harm reduction and respect for human rights. CUPiHD carries out research on micro-trafficking in Mexico, including the phenomenon of

21. HRI. *Cause for Alarm: The Incarceration of Women for Drug Offences in Europe and Central Asia, and the need for Legislative and Sentencing Reform*. London: International Harm Reduction Association, 2012. Available at: http://www.ihra.net/files/2012/03/11/HRI_WomenInPrisonReport.pdf

22. Avon Global Center for Women and Justice et al. *Women in prison in Argentina: Causes, Conditions and Consequences*. New York: Avon Global Center for Women and Justice and International Human Rights Clinic, Defensoría General de la Nación Argentina, The University of Chicago Law School International Human Rights Clinic, 2013, http://www.lawschool.cornell.edu/womenandjustice/upload/Argentina_report_final_web.pdf

23. CIDE. *Resultados de la Primera Encuesta realizada a Población Interna en Centros Federales de Readaptación Social*. Mexico City: Centro de Investigación y Docencia Económicas, 2012, http://www.miguelcarbonell.com/artman/uploads/1/encuesta_internos_cefereso_2012.pdf (only available in Spanish).

24. CUPiHD: <http://www.cupihd.org/portal/>

families who are all involved in the commercialization of illegal substances. It shows how women are often in administrative roles in the distribution of drugs, allowing them to conduct their business from home and tend to their children at the same time. CUIHD has also investigated the many ways in which youth participate in the drugs trade in Mexico City, and the vulnerability of young people in dangerous roles that leave them exposed to violence. CUIHD participated in the panel of the CIM/OAS roundtable discussion on women and drugs in the America.

The organizations and studies mentioned above are only some of numerous examples of research and policy work that has been carried out in the region. Most of the work carried out thus far, including by the preceding organizations, consists of isolated case studies, with results that are neither generalizable to the whole country nor comparable across countries. The lack of both quantitative and qualitative information on the participation of women in the question of illicit drugs, as well as the almost exclusive focus on female prison populations, is a significant obstacle to the formulation and implementation of effective and appropriate policies and programs.

Nevertheless, the studies conducted by these organizations, as well as other academic and research institutions, do allow us to draw some general conclusions about the nature and extent of women's participation in the illicit drugs industry:

In six sections, *The Drug Problem in the Americas* addresses a number of separate but related issues surrounding this 'hemispheric problem.' The section on 'Drugs and Development' details the socio-economic burden of the 'drug problem,' covering such topics as the 'overuse of criminal mechanisms and disproportionate sentencing' for drug-related crimes, stating that these strategies 'further overload judicial and corrections systems, and often have a greater impact on disadvantaged groups and racial minorities. In addition, criminal justice systems have tended to punish small-time producers and traffickers more aggressively.'

Most of the women who enter into the illicit drugs industry do so at this lower level, as human couriers or small-scale 'micro-traffickers,' and do not therefore occupy a leading role in the process of illicit commercialization. Though it is understood that men predominate, the consequences of criminal punishment are felt differently by women, often with greater impact on their children and families. Criminal mechanisms such as harsh prison sentences for women often result in the separation of families and/or the incarceration of babies and young children, or the abandonment of the incarcerated women by their families outside (women receive family visits less frequently than men). This gender-differentiated experience is suggested through the acknowledgement that long term incarceration not only creates an economic burden but "this suggests serious, far-reaching consequences not only for individual

offenders and their families, but for society as a whole.”²⁵ The CICAD report also acknowledges that (through a revision of information found in available studies which are later cited in this paper) an estimated average of around 70% of women in prison in the Americas—many of them heads of household— are there for nonviolent micro-trafficking offenses.

The above-referenced report by TNI and the WOLA profiles women participating in the drug industry as young, poor, illiterate or with little schooling, single mothers, and responsible for the care of their children or other family members. In most cases, these women do not have a prominent role in drug trafficking networks and are concentrated at the lower levels of the chain, where the rewards are few and violence is often most pervasive.

The **Centre for Law, Justice and Society** (DeJusticia) and CEDD published the report *Addicted to punishment: The disproportionality of drug laws in Latin America*,²⁶ which takes issue with the disproportionality of sentences for drug crimes, and comments on the problems of treating drug related offences as separate from the legal context of other crimes. It criticizes the worrying trend that in Latin America (as with other regions) drug trafficking is considered a more serious crime, punishable with harsher sentences than rape or murder. Furthermore, disproportionality exists within the different levels of drug-related crime. This leads to cases where micro-trafficking, or the possession and small-scale distribution of low quantities of drugs can be punished with disproportionately long sentences in comparison to larger scale trafficking and money laundering, or other serious crimes.

For example, the study demonstrates that average sentencing applied to drug trafficking in Peru in 2012 was 164% higher than the average sentence applied to rape. Similarly, the average sentence for drug trafficking in Bolivia in 2012 was 140% higher than that applied to murder. This tendency to regard and treat drug related crimes as a separate legal issue with higher categories of custodial punishment raises concern about the human rights implications of such practices and highlights the punitive approach that problematically criminalizes poverty.

Research conducted by institutions such as HRI points to the imprisonment of women for non-violent drug offences as arbitrary and disproportionate.²⁷ The impact of punitive approaches to minor drug offences is one that has been raised in several contexts, in reference to all levels of involvement in the commercialization of illegal drugs, including consumption and micro-

25. CICAD. “Drugs and Development” in *The Drug Problem in the Americas: Studies*. Washington, D.C.: Inter-American Drug Abuse Control Commission, Organization of American States, 2013, http://www.cicad.oas.org/main/policy/informeDrogas2013/drugsDevelopment_ENG.pdf

26. DeJusticia & CEDD. *Addicted to punishment: The disproportionality of drug laws in Latin America*. Bogotá: Colectivo de Estudios Drogas y Derechos, 2013, <http://www.opensocietyfoundations.org/sites/default/files/addicted-punishment-20130530.pdf>

27. HRI. “Drug offences, access to justice and the penalisation of vulnerability” (Submission to the UN Committee on the Elimination of Discrimination against Women General Discussion on “Access to Justice,” 18 February 2013), <http://www2.ohchr.org/english/bodies/cedaw/docs/Discussion2013/HarmReductionInternational.pdf>

trafficking. Among punitive approaches, there is a problem of proportionality of sentencing for non-violent drug offences. In this respect, there is a need for legislative frameworks to make a clear distinction between levels of involvement in the illicit drugs chain and ensure that sentencing for specific crimes is both proportional and consistently applied. For example, a distinction needs to be drawn between the level of criminal activity of non-violent micro-traffickers and how this differs from the criminal activity and/or responsibility of higher-level traffickers or leaders of gangs or cartels. There is also a need to ensure alternatives to incarceration for people that are dependent on drugs and that are arrested for crimes directly related to their drug dependence.

Punitive policy approaches to drug-related crime, including long sentencing and mandatory minimum sentencing, have proved largely ineffective as deterrents for those people whose lives are governed by poverty, violence and/or drug dependency. Studies have shown that those who are marginalized by the illicit drugs industry do not engage in a rational 'cost/benefit' analysis before trafficking drugs.

As yet, little work has been done, including research conducted, on alternatives to incarceration in cases of non-violent, drug-related crime that is not directly motivated by addiction. Women often participate at this lower level of commercialization of illicit drugs for reasons of poverty and/or coercion, and they often receive long custodial sentences when convicted of drug trafficking offenses. Despite the prevalence of these types of crimes and the impact of their sentencing, the gender-dimensions of current drug policies and legislation have yet to be comprehensively assessed.

Most of the research conducted thus far with female prison populations in the region indicates that a high percentage of women imprisoned in the Americas are serving sentences for non-violent drug-related offenses that in most instances are a direct result of poverty and lack of other types of opportunities, and/or women's experiences of violence and coercion by partners or other men.

On a global scale, there are over 500,000 women and girls held in prisons,²⁸ serving sentences, and awaiting trials. Women represent less than 10% of the global prison population. According to the Bangkok Rules, a considerable proportion of women deprived of liberty (considering the global female prison population as a whole) are in prison as a direct or indirect consequence of deprivation and/or discrimination. Women in prison have generally committed low-level, non-violent, 'petty' crime that is closely linked to poverty, such as fraud, theft and minor drug offences. Only a small proportion of the female prison population has committed violent crime.

28. PRI. *UN Bangkok Rules on women offenders and prisoners: Short Guide*. London: Penal Reform International, 2013, http://www.penalreform.org/wp-content/uploads/2013/07/PRI-Bangkok-rules-A5-booklet_SINGLES-LR.pdf

According to Jennifer Fleetwood and Nayeli Urquiza Haas, mandatory minimum sentences effectively rule out the significance of women's poverty or family responsibilities.²⁹

Treating as equal those who are historically non-equal only leads to further inequality and discrimination. Prisons have generally been designed to be used by men, who continue to form the vast majority of the global prison population.³⁰ The needs of women prisoners and their dependents tend to be overlooked by both the criminal justice and penal systems. With the female prison population growing at a faster rate than any other group deprived of liberty (the majority imprisoned for drug-related crimes), a need for gender-sensitive criminal justice systems is more pertinent than ever.

When women were interviewed in a study conducted by PIVOT about people deprived of liberty for drug-related offences in Canada, they reported that the most difficult aspect of imprisonment was being separated from their children: "One reason it is hard to go to jail is, if you are a parent, you get separated from your kids. So your kids get traumatized by that, it's a life experience that can't be reversed."³¹ The report uncovered that "The children of families affected by imprisonment have lower life expectancy than other children, and are six to seven times more likely than other children to end up in prison themselves."

Penal Reform International states that millions of children have a parent in prison, and tens of thousands of children live with their parents (in most cases, mothers) within prison walls.³² The Bangkok Rules promote alternatives to incarceration, especially in cases where children would suffer as a direct result of a mother's imprisonment. Gender-sensitive alternatives to prison for women with dependent children include counselling services with on-site childcare facilities to enable women to address the root cause of their criminal behaviour whilst also being able to care for their children. Prison is often an ineffective way to punish women for criminal activity. It has proven to limit their future opportunities and to cause family conflicts, regardless of whether children live with or apart from their imprisoned mothers.

29. Fleetwood, J. & N. Urquiza Haas "Gendering the Agenda: Women drug mules in resolution 52/1 of the Commission of Narcotic Drugs at the United Nations." in *Drugs and Alcohol Today* (Vol. 11, No. 4, 2011, pp. 194-203), http://www.academia.edu/1195305/Gendering_the_agenda_women_drug_mules_in_resolution_52_1_of_the_Commission_of_Narcotic_Drugs_at_the_United_Nations

30. According to the World Female Imprisonment List from the International Centre for Prison Studies (ICPS) in 80% of global prison systems, women constitute between 2-9% of the global prison population. The report also shows that the female prison population is growing in all regions since the last ICPS report in 2006. The region with the largest increase is the Americas, where the number of women and girls imprisoned has grown at a rate of 23% in comparison to 6% in Europe. (This increase is attributed to the high levels of participation in the illicit drugs industry in the region). See: Walmsley, R. "World Female Imprisonment List: Women and girls in penal institutions, including pre-trial detainees/remand prisoners." London: International Centre for Prison Studies, 2006 http://www.prisonstudies.org/images/news_events/wfil2ndedition.pdf

31. "Bennett, D & S. Bernstein. *Throwing Away the Keys: the Human and Social Cost of Mandatory Minimum Sentencing*. Vancouver: Pivot Legal Society, 2013, http://d3n8a8pro7vhmx.cloudfront.net/pivotlegal/pages/395/attachments/original/1372448744/Final_ThrowingAway_lo-res_-_v2.pdf?1372448744

32. For more information on justice for children of incarcerated parents, see PRI "Children of incarcerated parents," <http://www.penalreform.org/priorities/justice-for-children/what-were-doing/children-incarcerated-parents/>

A research brief published by the Quaker UN Institute detailed findings from a preliminary study of indigenous women imprisoned in a correction center in Oaxaca.³³ Documentation concerning indigenous women in prisons is extremely scarce, but the conclusions included:

- 71 % of convicted indigenous women were mothers. Even where women were not mothers, they normally performed a primary or active care-giving role within an extended family system.
- Indigenous women and men may be held for long periods without trial due to inadequate provisions of legal defence and a lack of understanding of the system.
- Indigenous women's poverty prevents them from being able to access adequate legal counsel. The lack of qualified interpreters means they are unable to participate fully in their own trials, or to understand the processes surrounding them.
- In some cases, they were forced to sign documents that they did not understand, which later turned out to be confessions that they could not retract during their trial or process.
- Records show that other inmates or witnesses may be called on to act as interpreters in court, which compromises impartiality and prejudices the woman's right to a fair trial.
- They are also unlikely to receive family visits or phone calls because of the prohibitive costs these impose on impoverished communities living at great distance from the prison. Investigations found that 24% of indigenous women are visited by their family just once a year. Generally, indigenous women in prison face abandonment.

Findings clearly highlight the difficult situation of indigenous and foreign women prisoners. As the population at the most marginalized end of society, they are often most greatly affected by adverse prison conditions and the failings of the judicial system. Whereas male prisoners are normally supported by their wives and families who bring them food and other provisions (including risking safety and liberty by smuggling drugs for male partners or family members), women tend not receive such care visits. In addition to the problems faced by all women prisoners, indigenous and foreign national women also suffer from isolation, abandonment, and loss of family ties.

Among the lines of action set out in the IAP is the development of mechanisms to give women ready and timely access to justice, in particular women with little or no income, by

33. Taylor, R. "Women in Prison and Children of Imprisoned Mothers" Washington, D.C.: Quaker UN Institute, 2004, <http://www.quino.org/resource/2004/6/women-prison-and-children-imprisoned-mothers-preliminary-research-paper>

adopting measures to render judicial proceedings more transparent, efficient, and effective. This resolve for judicial reform is a challenge for countries in the Americas who have adopted harsh drug laws that punish those who play lesser roles in the commercialization of drugs. For many people deprived of liberty for drug-related crimes, the judicial process is lengthy and the majority of those in prison are in pre-trial detention, awaiting court proceedings for many years before being granted a trial. The female prison population in Latin America has grown exponentially in recent years, from an estimated 40,000 women in 2006 to 74,000 in 2010. Most of these women are in pre-trial detention for drug-related crimes.³⁴

In addition to the potential breakdown of their families, abandonment by their partners and loss of property,³⁵ incarcerated women face disproportionate levels of social stigmatization. Women who commit crimes, even non-violent crimes that are motivated by economic need and/or violence or coercion, are seen as violating fundamental social and gender norms that prescribe certain types of behaviour as “appropriate” for women. In addition, a University of Waterloo (Canada) report on the reintegration of women prisoners points to a “...lack of recognition of systemic issues that play a role in a woman’s path to prison: poverty, a history of abuse, racism and discrimination — the outcomes of what happens when oppression is not addressed.”³⁶ Accordingly, women that have served time in prison may often face greater difficulties than their male counterparts in terms of social reintegration and reconnecting with their community on release. Traditional gender stereotypes dictate that women fulfill the role of a sacrificial care-giver in the private sphere – accordingly, they do not occupy public or visible spaces and do not engage in behaviours that would be seen as contradictory to this care-giving role, including consuming and/or transporting or selling drugs. When women break the law and are imprisoned, they defy and transgress these stereotypes and face a double punishment: they are both sanctioned by the law and condemned by a patriarchal society. In other words, the stigma attached to women who serve sentences for drug-related crimes, whether as producers, couriers, distributors or users, is necessarily compounded with gender discrimination.

The stigma associated with women and drug-related crime and their subsequent imprisonment is not only reflected in social rejection and alienation from their community, but it is often reinforced by State sanctions that serve to further marginalize those in need of accessing services for social reintegration, including mental health services for women that may have been physically and/or sexually abused while in custody. For example, a policy brief

34. Tomasini, D. “Mujeres y Prisión Preventiva: Presuntas inocentes sufriendo castigos anticipados y abusos” Open Society Justice Initiative, 2012, http://www.presunciondeinocencia.org.mx/images/stories/hoja_campania_global_mujer_prision_abril2012.pdf (only available in Spanish).

35. “Equal but different? An inspection of the use of alternatives to custody for women offenders” (Thematic Inspection Report). Government of the United Kingdom, Criminal Justice Joint Inspection, 2011. Available at: <http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmiprobation/joint-thematic/womens-thematic-alternatives-to-custody-2011.pdf>

36. Pedlar et al. “Uncertain Futures: Women Leaving Prison and Re-Entering Community.” Ontario: University of Waterloo, 2008, <http://www.ahs.uwaterloo.ca/uncertainfutures/>

published by IDPC³⁷ explains that in the United States, people with criminal records can be considered ineligible for food stamps or cash assistance, without taking into consideration the needs of their families, including any dependent children. Current drug policies and their implementation are often counter-intuitive, as in the case of parents denied access to welfare based on their criminal records. Legislation and policy around drug control may often serve to exacerbate expressions of discrimination based on sex, socio-economic status and ethnicity. Unable to break out of poverty through adequate employment in the formal economy, women with little to no education and responsible for their families can end up engaging further in the criminalized drug trade in order to survive.

In a series of testimonial videos produced by WOLA and TNI entitled “The Human Cost of the Drug War”,³⁸ there is a compelling example of the harsh cycle of poverty and socio-economic exclusion that leads to recidivism. The story is told by Rocío Duque, a single mother in Colombia, repeatedly imprisoned for 14 years for carrying a small quantity of cocaine paste, a job for which she commanded a modest fee. Her testimony shows how repeat offenders suffer social and State stigma and how recidivism can be inevitable when there are no social reintegration programs to support women in rebuilding their lives after they have served a prison sentence for drug-related crimes. In her own words:

I have a baby girl, she is three now. I left her to come here when she was 18 months old. She probably doesn't remember me anymore. The worst is that I was separated from my family. When you are in the same city you can receive several visits a month and make local calls. But here I am very far from my family. It has been 14 months since anyone has visited me. My dream is to get out of here. But I am frightened of facing society again. I don't know how my life will be.

These few examples illustrate the human cost of the current system. IDPC has affirmed that in the United States, almost 70% of women imprisoned were found to be single parents responsible for young children prior to incarceration.³⁹

37. Kensey, J. et al. “Drug Policy and Women: Addressing the Negative Consequences of Harmful Drug Control.” Washington, D.C.: International Drug Policy Consortium, 2012, <http://idpc.net/publications/2012/11/drug-policy-and-women-addressing-the-negative-consequences-of-harmful-drug-control>

38. TNI and WOLA. “The Human Face of the Drug War: Drugs and Prisons in Latin America” is a series of video testimonials from people giving their personal account of years in prison serving sentences that are disproportionate to the drug-related crimes they have committed. Their testimonies reveal the human face and the human cost of current drug policies, which often violate the human rights of those implicated and tend to target the most vulnerable and poverty-stricken members of society. The videos are available at: <http://www.druglawreform.info/en/publications/the-human-face>

39. Kensey, J. et al., 2012, op.cit.

3.2. National-level perspectives and available information

As a follow-up to the CIM/CICAD Round-table discussion and in order to strengthen this assessment, the CIM circulated questionnaires to the 34 Member States of the OAS. Responses were received from 13 States and one response was also received from the Community of Police of the Americas (AMERIPOL). Beyond the individual information provided, the responses highlight that there is a significant dearth of data, information, policies and programs on the gender dimensions of the question of illicit drugs and that collecting qualitative data on the situation of women imprisoned for drug related crime would help member states to adopt the adequate prevention and other strategies needed to address this issue from a gender and human rights perspective.

The analysis that follows combines the information provided by OAS Member States through these questionnaires and, where available, specific case studies conducted, in general, by academic and research institutions or individual researchers. As stated previously, this information is not generalizable to the whole country or comparable across countries – the analysis aims solely to provide an overview of what we do know with a view to identifying data and information gaps and pointing to areas where gender-specific policies may be beneficial in formulating and implementing effective and appropriate responses.

Argentina

The Ministry of External Relations and Worship and the Ministry of Justice and Human Rights of the Government of Argentina have stated that “Women participating in the drug industry in Argentina do so at the most vulnerable links of the chain and with increased exposure to violence. These women are mostly on lower incomes and their motives are economic hardship in general heads of poor households are involved in economic crimes such as drug trafficking, to support their families.”

“Of the total female prison population, which as of 31 December 2012 amounted to 790 women, 65% are imprisoned in breach of Law N° 23.737 on Possession and Trafficking of Narcotics [Tenencia y Tráfico de Estupefacientes]”

68% of the female prison population is incarcerated for drug related crimes.⁴⁰

The recent quantitative and qualitative study (previously mentioned) conducted by the Avon Global Center for Women and Justice⁴¹ in collaboration with the National Public Defense Office

40. . Anitua & Piccom 2012, op.cit., p.219.

41. . Avon Global Center for Women and Justice, 2013, op.cit.

in Argentina and The University of Chicago Law School International Human Rights Clinic found that Argentina's laws governing pre-trial detention⁴² for drug offenders have also contributed to the mounting numbers of women in prison. A high number of pre-trial detainees from the study's General Prison Population Survey were being held for drug-related reasons: 41.43% of respondents were pre-trial detainees, and of these, 63.44% had been accused of drug-related crimes. Women drug offenders are often subjected to lengthy periods of pre-trial detention, which further expand the numbers of women in prison. Of the pre-trial detainees surveyed who had been accused of drug trafficking, 29.41% had been detained for one to two years and 11.76% had been detained for longer than two years.

The study comments that "Argentina's frequent use of pre-trial detention against women charged with drug trafficking crimes is inconsistent with international standards that require states to employ pre-trial detention as an exceptional circumstance and only to the extent strictly necessary and to implement, if possible, alternatives to pre-trial detention for women offenders."

Bolivia

A report from the Inter-American Commission on Human Rights (IACHR)⁴³ on the use of pre-trial detention in the Americas highlights that, of a total of 13,654 people deprived of liberty in Bolivia, 1,724 are women (13%), primarily for crimes related to drugs (48%) and theft (15%). In the case of men, 24% have been deprived of liberty for drug-related crimes.

Bolivia's Special Force to Fight Drug Trafficking [*Fuerza Especial de Lucha Contra Narcotráfico*] reports 4,317 people detained for drug related crimes in 2012, 1,009 of whom were women (23.4%). There was no further comment on how many of these people were convicted/sentenced/set free, and no information was provided as to their socio-economic backgrounds, the nature of their crimes or the length of their sentences. There was also no information given as to the percentage of the female prison population incarcerated for drug-related crimes, though it is suspected that most of the women in prison in Bolivia are either serving or awaiting a sentence for participation in the illicit drugs industry, including cultivation, production and/or distribution and sales activities.

The Bolivian congress passed Law 1008 Law for the Regulation of Coca and other Controlled Substances [*Ley del Régimen de la Coca y de las Sustancias Controladas*] in 1988, under strong

42. Pretrial detention refers to a person being charged for a certain offense and deprived of liberty for an indeterminate amount of time until they are offered a trial and either acquitted or convicted and sentenced.

43. IACHR. *Informe sobre el uso de la prisión preventiva en las Américas*. Washington, D.C.: Inter-American Commission of Human Rights, Organization of American States, 2013, p. 22, <http://www.oas.org/es/cidh/ppl/informes/pdfs/Informe-PP-2013-es.pdf> (only available in Spanish).

pressure from the U.S. government. The law defined the legal status of coca cultivation and its relationship to cocaine, and enacted a system of harsh penalties for drug trafficking offenses. The law allows for 12,000 hectares of coca cultivation for licit uses (coca is a traditional herb used by indigenous society for centuries), while all coca grown beyond that is considered illegal. The law also characterized narco-trafficking as a “crime against humanity,” and criminalized a wide range of drug-related activities, including manufacturing, distribution and sale. Under the original terms of the law, Bolivians charged with drug offenses – no matter how minor – were imprisoned without the possibility of pre-trial release. If acquitted, they remained in prison until the Supreme Court reviewed the trial court’s decision — a process that took years. The law presumed that anyone accused of breaching law 1008 was guilty and did not allow them to fully exercise their right to legal defence. It also prohibited bail or provisional liberty, and established a long judicial process. Some of the terms of Law 1008 have since been deemed unconstitutional and in direct conflict with rights guaranteed in the Bolivian Constitution and international law.

As a result of Law 1008, Bolivia’s prison population has significantly increased. In 1992 the population was 8,500 and 92% were in pre-trial detention. The harsh terms and consequences of Law 1008 prompted national and international outcry. The Bolivian legislature responded in 1996 by passing the Law of Judicial Bond. This law helped to mitigate some of the more draconian effects of Law 1008 by allowing for provisional liberty in many cases, eliminating the requirement of mandatory appeals, and authorizing increased judicial discretion.⁴⁴

According to WOLA and TNI, “...Law 1008 includes elements which in themselves violate constitutional and civil rights, and which; given the manner in which they are carried out, presuppose the systematic violation of human rights in the most vulnerable sectors of the population.”⁴⁵

The prison population incarcerated because of offenses defined in Law 1008 is made up mostly of the weakest, poorest...and easiest to replace links in the drug-trafficking chain.

The current government of Bolivia has expressed a resolve to repeal law 1008 and separate it into two different laws: one decriminalizing coca cultivation, and the other heavily penalizing trafficking in controlled substances. As TNI and WOLA have suggested in their report, while this proposed reform would reclaim the coca leaf for cultural practices amongst indigenous people, it would on the other hand reaffirm the ‘iron fist’ approach of imprisoning those whose

44. Andean Information Network. “Bolivia’s Prisons and the Impact of Law 1008,” 2004, <http://ain-bolivia.org/2004/07/bolivias-prisons-and-the-impact-of-law-1008/>

45. TNI & WOLA, 2010, op.cit.

socio-economic circumstances have led them to the production and trafficking of cocaine and cocaine derivatives. This does not address the issue of poverty and lack of opportunities in society for those who are disadvantaged. Bolivia's drug sentencing laws are still amongst the harshest and most disproportionate in the region.⁴⁶

Brazil

There has been an increase in the number of women convicted for drug trafficking. The IACHR⁴⁷ points out that, of a total of 549,577 people deprived of liberty, 30,039 are women (6.6%). Both for men (24.8%) and women (53.9%), the main cause of imprisonment was the (non-international) trafficking of narcotic drugs, though for women, the proportion in comparison with other types of crimes is much higher.

In most cases, they are involved in peripheral activities, occupying a marginal position in the structure of trafficking. The Secretariat for Policies on Women [*Secretaria de Políticas para as Mulheres*] and the Secretariat for Confronting Violence against Women [*Secretaria de Enfrentamento à Violência contra as Mulheres*] claim that women tend to have fewer resources for negotiating their freedom at the time of arrest.

A common situation is one where women are arrested while trying to bring drugs into prisons for their husbands/partners and/or family members. The contexts that facilitate the participation of women in drug trafficking reflect the scarcity of opportunities in the formal labour market, the enticement of belonging to a powerful network, the desire for status and power in a masculine culture, and the strong presence of trafficking in economically unstable communities.

A study of federal prisons for women⁴⁸ conducted in 2011 shows that an average of 60% of the total federal prison population are incarcerated for 'Drug Trafficking'. The study differentiates between 'drug trafficking' and 'international drug trafficking', for which only a small minority of women are imprisoned. Of the total female prison population, between 42-49% have not completed more than a primary school education.

46. DeJusticia & CEDD, 2013, op.cit.

47. IACHR, 2013, op.cit., p.22.

48. Departamento Penitenciário Nacional. *Mulheres presas. Dados gerais*. Brasília, Ministério da Justiça, 2011 (only available in Portuguese).

Chile

The IACHR⁴⁹ points out that, of a total of 10,781 people in pre-trial detention (2012), 1,317 are women (12.2%). In the case of both men and women, the main causes of pre-trial imprisonment were theft (men: 38%, women: 14.5%) and drugs (men: 26.7%, women: 68.8%).

According to the Office of the Police [*Caribineros*], the participation of women in drug trafficking in Chile reflects socio-cultural attitudes to the role that women occupy in Chilean family structure. Chile, in comparison to neighbouring production countries, Peru and Bolivia, is a drug transit and consumer country. Economic hardship and maintenance of the household (care, feeding and education of children) is one of the main reasons why women may begin micro-trafficking drugs.

Colombia

The Government of Colombia stated that between the last quarter of 2012 and the first quarter of 2013, 3,421 women were imprisoned. Of these, 2,738 (80%) were convicted for trafficking, manufacture or possession of drugs, 53 were sentenced for two or more offenses (i.e. drug trafficking, theft, arms trafficking, conservation or plantation financing, among others), and 29 were convicted for drug trafficking combined with “conspiracy” (meaning they were actively participating in a criminal network of organized (drug) crime).

Costa Rica

According to a study conducted in 2012 by the National Institute of Women [*Instituto Nacional de Mujeres/INAMU*], 65% of the 780 women currently incarcerated in the Buen Pastor Institutional Centre were held for drug-related crimes. Of these, 120 (23.5%) were condemned for smuggling drugs into penitentiary centers as first-time offenders. Most of these women are heads of household, living in poverty and are responsible for an average of one to four children. Their personal and family development is seriously affected as a result of the enforced separation from their mothers due to imprisonment. They also typically come from an impoverished educational background with little to no formal schooling, and they struggle with economic hardship.

Most of the women leave their children with relatives and in vulnerably, precarious situations which exacerbates a growing social problem where the social fabric is ruptured for children who are essentially orphaned by the imprisonment of a mother.

49. IACHR, 2013, op.cit., p.22.

In Costa Rica, activities related to the production and commercialization of illicit drugs is considered to be a serious felony and is punished with a minimum of 8 years in prison, without taking into consideration the nature of the crime committed or whether the person sentenced is in a situation of vulnerability.⁵⁰

A recent reform in the Costa Rican criminal drug law (Law 8204), aims to include proportionality and a gender approach, by decreasing prison sentences for ‘vulnerable women’ who attempt to smuggle drugs into male prison centers.

The bill, formally known as the “Reform of the law on narcotics, psychotropic substances, banned drugs, related activities, money laundering and financing of terrorism, Law Nb. 8204, adopted on 25th December 2001 to introduce proportionality and gender sensitivity” – was submitted to the Commission on Security and Drug Trafficking of the Legislative Assembly in June 2012. This aims to decrease the sentences for introducing drugs in penitentiary centers from 8-20 years to sentences of 3-8 years deprived of liberty, or to even consider alternative sentences to prison when the women charged fall under certain criteria of vulnerability, poverty, or in primary care giving roles to dependents.

This bill is a first step towards the legal recognition of gender-specific issues in drug related legislation and policy. The CIM/OAS awaits information as to how this is put into practice over the coming year.

Ecuador

The National Police of the Government of Ecuador reported that women are involved in the drugs trade not just through playing subordinate roles, but also as administrators, dealing from their homes as a more lucrative form of income than engaging with the legal economy. Women find themselves with limited job prospects and for these reasons, report engaging in micro-trafficking to subsidize their expenses as they are often primary caregivers and heads of household. They mostly participate as ‘mules’ and/or small scale dealers. The majority of women incarcerated from drug trafficking have engaged in this activity due to financial crisis and/or alter being influenced by family members.

A study conducted in El Inca, the only women’s prison in Quito, Ecuador, shows how prison demographics are profoundly shaped by the dynamics of drug production and prohibition.

50. IDPC. “Drug law reform in Costa Rica benefits vulnerable women and their families.” Washington, D.C.: International Drug Policy Consortium, 2013, <http://idpc.net/blog/2013/08/drug-law-reform-in-costa-rica-benefits-vulnerable-women-and-their-families>

In 2008, a census of inmates found that 80% of women were convicted or charged with drug offenses. Since then, the national average (including both men's and women's prisons) was 34% women have been disproportionately affected by drug interdiction policies and practices. Although most women imprisoned for drug offences were Ecuadorian, around one in four women in prison were foreign nationals.⁵¹

Quantitative research found that:

- 23% of women imprisoned in El Inca are foreign nationals
- 40% of the women imprisoned were Mothers of underage dependents
- 16% of which brought their children to live with them inside the prison

The study conducted by Fleetwood and Torres⁵² of women imprisoned in Ecuador revealed that the majority of women who brought their children with them did not have the resources or family support to arrange for the care of their children. As the study states:

For many, the alternative was to leave their children in the streets; others simply did not trust state funded services available for their children's care. Institutional ambiguity regarding the age limit of children allowed to live in prison with their mothers generated complex situations; a seven-year-old boy who suffered from learning disabilities and whose sexual behavior (as well as inmates' behavior toward him) was beginning to concern the authorities. Since children were not considered part of the prison population there was a lack of basic services such as food and accommodation. Women had to share prison food with their children or make arrangements to buy additional food. Mothers (along with their children) were also concentrated in one of the most crowded pavilions, characterized by a large number of poor, black and indigenous women. This pavilion was the most problematic in terms of general lack of basic necessities, intensity of conflicts and drug consumption. Bringing children up in this environment was a large price to pay for women who fought to be close to their children or simply had no other choice.⁵³

51. Fleetwood & Torres, 2011, op.cit.

52. Ibid.

53. Ibid.

El Salvador

In 2012 313 women were incarcerated for micro-trafficking, 77 for attempting to smuggle drugs into prison centers, 12 narcotics-related offenses, amounting to a total of 402 women imprisoned for drug related crime. Approximately 120.1 kg of drugs were seized from women, with a commercial value of US\$301,243.

As of 2013, 147 women participated in micro trafficking offences, 14 for attempting to smuggle drugs into prison centers, 7 narcotics-related offenses and 2 were convicted of money laundering. This amounts to 170 women in total incarcerated for drug related crime, with drug seizures in this area of 39.8 kg of drugs with a commercial value in the drug market of US\$50,800. Authorities have also seized US\$320,950 hidden in clothes and luggage.

Jamaica

In 2011, 105 women were admitted to prisons for drug-related offences. There was a decrease in the number in 2012 during which 89 women were admitted.

Mexico

Though the CIM has not received official communication from the government of Mexico regarding their experiences of the participation of women in the illicit trade and commercialization of drugs, a report and comprehensive study of the general prison population in Federal Prison Centers (CEFERESO) was conducted by the CIDE (Centro de Investigación y Docencia Económicas).⁵⁴ CIDE conducted quantitative and qualitative research in 8 such prisons and found that 80% of the female prison population were deprived of liberty for drug-related crimes compared to 57% of the male prison population. 98.9% of the women imprisoned for drug related crimes were first time offenders, and 92% of the crimes were committed unarmed and were non-violent.

According to an IDPC report on the current state of Mexico's drug policy, prison systems are overpopulated at the national average rate of 23%, a figure that is exacerbated by harsh and disproportionate sentences for drug-related crimes.⁵⁵

54. CIDE, 2012, op.cit.

55. IDPC. "México: Políticas de Drogas y Seguridad en el Primer Semestre del Gobierno de Enrique Peña Nieto" Washington, D.C.: International Drug Policy Consortium, 2013, <http://idpc.net/es/publications/2013/07/mexico-politicas-de-drogas-y-seguridad-en-el-primer-semestre-del-gobierno-de-enrique-pena-nieto>

Panama

According to the Panamanian Observatory on Drugs and the Executive Secretary of CONAPRED (National Council to prevent discrimination) women participate in the drugs trade for a number of reasons, ranging from naivety, ignorance, impulsiveness for drug use, as a result of being victims of violence, or because their partners or family members force them to engage as mules or micro-traffickers.

One of the most noteworthy factors is financial crisis, which leads to some women being prepared to risk their lives to earn money in order to support his family. The role they play in the drugs trade is less influential, as 'mules' or smaller scale dealers. The increase of women arrested for crimes related to micro-trafficking is significant and by no means accidental. Engaging with the drugs industry enables them to continue to fulfill their roles as mother, wife, grandmother and head of household. Often they sell drugs from home so they can attend domestic chores and childcare of children or grandchildren. Often they are in charge of distributing drugs that have been procured by male relatives.

Peru

The participation of Peruvian women in the drug industry has increased and this is reflected in the number of women prosecuted and imprisoned for crimes of this nature. The low level of education, poverty and social exclusion are predominant factors that contribute to this phenomenon. Women tend not to have a prominent role in the overall commercialization chain, but act instead as 'mules' or couriers, and intermediaries for the purchase and sale of illegal drugs.

Another example of participation of women in drug related crime is related to micro-trafficking where women, (mainly mothers, responsible as the primary carers and providers for their children) are pressured by their partners, dealers, or other family members sell drugs on the street. If arrested, their children are left unsupervised and without a functioning adult to care for them. In many cases, women face long sentences, especially if they involve bringing drugs into prison or detention centers.

Trinidad & Tobago

Information provided by the Organized Crime, Narcotics and Firearms Bureau (OCNFB) of the Trinidad and Tobago Police Service revealed that women are actively participating in the drug industry in varying roles and degrees.

- 1. Leading role** - The major purpose for women holding leading roles is the expectation of substantial financial gain. Women who have emerged as leaders in drug trafficking entities may have done so by association through a family or intimate relationship. They are reported to be daughters, sisters, and partners of deceased, incarcerated or otherwise incapacitated former male drug traffickers.
- 2. Significant role**- These women perform operational or management functions within a chain. For example, some women are facilitators in support of their intimate partners who hold leading roles. Their role in this instance is that of “financial controllers” and in other instances they participate in sales. They also play a significant role by recruiting others, especially young women. They often use coercion, intimidation as well as financial compensation to act as human couriers of drugs.
- 3. Lesser role**- Women performing this role act as “couriers” or “mules”. Intimidating tactics are mostly used to ensure their conformity and the rewards are usually financial or a favor.

Of a total of the 114 inmates incarcerated at the Women’s prison, 41 inmates representing 46.74%, are there for drug-related offences, though this data has not been disaggregated by level of participation in the illicit drug market.⁵⁶

United States

The CIM has not received any formal response to questionnaires specifically about the involvement and incarceration of women at all levels of the illicit drugs trade. While the focus of this report has been on micro-trafficking and sale of drugs by women, recent attention on the rights of women users of drugs in the US must be noted here. Some states (Wisconsin, Minnesota, Oklahoma and South Dakota, among others) have laws specifically granting

56. Source: Organized Crime, Narcotics and Firearms Bureau (OCNFB) of Trinidad and Tobago

authorities the power to confine, detain, and/or force treatment upon pregnant women for substance abuse. According to the New York Times,⁵⁷ other states use civil-confinement, child-protection or assorted criminal laws to force women into treatment programs or punish them for taking drugs, and the state of Wisconsin reserves the right to force them into treatment and penitentiary correction centers if they are deemed to be using alcohol or drugs 'problematically.' 'Problem use' is not defined in the clauses of this law and the charges made against pregnant women are largely discretionary and processed through the judicial system, rather than being medically assessed.

These types of laws deprive women of a number of rights, including medical confidentiality, as often a social worker is at liberty to share a woman's confidential disclosure of having taken drugs to a medical and/or judicial authority. Imprisoning a pregnant woman for taking drugs (sometimes prescribed to combat another substance addiction) is largely derived from an arbitrary standard of punishment for a perceived 'moral' failing rather than a sanction based on evidence.

57. Eckholm, E. "Case Explores the Rights of Fetus Versus Mother" New York Times (23 October 2013), <http://www.nytimes.com/2013/10/24/us/case-explores-rights-of-fetus-versus-mother.html>



4. Public policy and other recommendations

After fifty years of drug policy focused on eradicating the global illicit drug market and despite the billions of dollars used on drug law enforcement, numerous arrests and incarcerations and a incalculable death toll, the levels of supply and demand for drugs have not significantly decreased. In addition, and as a consequence of this approach, levels of citizen insecurity have never been higher and prohibitionist drug policies have led to many negative social and economic consequences, including decreased productivity and participation in legitimate economic activities, an overtaxed penal system and breakdown in family structures, which in the case of women often results in separation of children and other dependents from their primary care-givers. As detailed in the 2008 UNODC World Drug Report,⁵⁸ there have been five notable unintended negative consequences of the current drug control system:

1. The creation of a criminal black market, where the value of a drug from original production to street retail can increase one hundred fold. Women who operate as mules or couriers are often at the most vulnerable and exposed end of this black market, and for this reason, often end up exploited by those higher up, and (in the same way as men at this lower level) end up imprisoned with disproportionately long sentences despite a lesser role in the chain of commercialization.
2. The 'policy displacement' problem where resources are poured into law enforcement and sanctioning participation in the black market. Public health,

58. UNODC. *World Drug Report 2008*. Vienna: United Nations Office on Drugs and Crime, 2008, http://www.unodc.org/documents/wdr/WDR_2008/WDR_2008_eng_web.pdf

which is the driving concern behind drug control, also needs resources, and this may have been forced to take the back seat in the past. Further lacking are gender-sensitive treatment programs which are overlooked in countries where resources for drug dependency treatment is already scarce.

3. 'Geographical displacement' or the 'balloon effect' whereby tighter supply controls in one area displace it to another. While the effect is an overall reduction in supply, the violence is merely displaced from one production country to another. In the second half of the 1990's, for example, while supply was reduced in Peru and Bolivia, this was displaced to Colombia. There are further examples of this in other of the world's drug producing countries.
4. 'Substance displacement,' where a drug with similar psychoactive effects is chosen to replace a drug that has been stringently controlled. Due to supply reduction efforts to suppress the availability of cocaine, drug users have begun to consume more amphetamine-type substances (ATS) such as ecstasy or MDMA as these substances can be produced anywhere and are therefore more readily available.
5. The disproportionately harsh treatment and misunderstanding of the needs and rights of drug users by those in authority as policy makers, legislators and law enforcement. People who suffer from drug dependency are often marginalized from mainstream society and stigmatized by an arbitrary moral standard that vilifies them as 'fallen' or 'immoral'. In practical terms, this often means that they lack access to treatment services and fall into a cycle of dependence.

Many research institutes, including the IDPC advocate for a more humane approach to drugs policy, where crimes of poverty such as drug-related crime among non-violent, low level and vulnerable participants (the category into which most women participants tend to fall) are not met with punitive approaches, but are weaved into the development agenda and treated under the auspices of social and economic development. Where policy has focused almost exclusively on demand and supply reduction through punitive law enforcement measures, this has had a negative effect on socio economic and human development and has often led to a violation of human rights.

It is essential to understand the nature and extent of women's involvement in the commercialization of criminalized substances in order to begin to design viable economic alternatives to entering this world. This issue is complex and transcends economic factors.

There is also a need to explore the role that unequal gender relations play in the increasing involvement of women in the illicit drugs industry. The situation of violence and social and labour exclusion that women face in the Americas and throughout other regions contribute to their exposure to this world. The collection of data, both quantitative and qualitative from women's penitentiary systems can assist governments to intensify their efforts to understand the causes for the apparent increase in women's criminality as regards drugs, and to seek alternative sentencing and custodial strategies for non-violent, low level involvement. However, these efforts will ideally pave the way to gender-inclusive and human rights-focused activities on the issue of drugs, such as gender-sensitive prevention programs and social rehabilitation for women who have been imprisoned for drug-related crimes.

The need to identify viable and innovative ways to increase the engagement of the international development community in addressing the production, trade and use of illicit drugs has become clear. In order to alleviate the serious negative effects that both drugs themselves and current drug policies have on the human development of individuals, families, and communities, especially those who have been affected by the confluence of poverty, crime and violence relating to drugs, and other associated illegal activities, there is an increasing call to governments to shift their focus away from arrests, prosecutions, and minimum sentences, and towards sentencing reform to facilitate wider access to justice.

While it is difficult to draw solid conclusions and recommendations from the limited data available, the CIM's work thus far on the participation of women in the world of illicit drugs does point to a number of general policy and programmatic guidelines. As the work of the OAS on the issue of illicit drugs continues and Member States continue to build on the commitments adopted in the Declaration of Antigua, it is hoped that the conclusions of this paper and the following recommendations will be taken into account:

- 1.** Information and data collection:
 - a. Strengthen information systems on drug production, distribution and use and prioritize the collection of data disaggregated by sex. One of the most significant obstacles to effective gender-responsive policy is the lack of information and understanding of women's participation in the world of illicit drugs.
- 2.** International cooperation and assistance:
 - a. Establish a permanent round-table or working group, within the framework of the OAS, on the issue of women and drugs in order to promote the visibility

of this issue and advocate for an effective response. This recommendation was issued by the Vice-President of Guatemala during the CIM/CICAD round-table. Ideally, this working group would combine expertise on human rights and drugs policy in order to support a more integral approach to the issue of illicit drugs. This would be established with a view to raising awareness among member States about the gender component of the drug problem and will inform policy that takes into account women's certain and specific needs when administering justice in the case of women imprisoned for drug related crime, and prevention programs to divert them from the illicit drug market;

- b. Increase coordination between government agencies, inter-governmental organizations and civil society actors, including international and national human rights groups and networks of women affected by drug control policy, to create and implement policies for addressing the drugs problem from a gender and human-rights perspective;
- c. Promote dialogue and information sharing not just between countries and among experts in the security fields, but also between international, government and non-governmental actors across disciplines (security, human rights, health, gender, etc.);

3. Public policy formulation and implementation:

- a. Involve women in the policy debate, especially those who have been affected by current drug policies. In the context of demand reduction, it is crucial to include networks of women who use drugs (for example: <http://www.talkingdrugs.org/womens-harm-reduction-group>);
- b. Reorient drugs policies to include a gender and human rights focus and develop adequate criteria for measuring their success. For example, rather than focusing on the numbers of drug arrests, drug seizures, and incarcerations, these criteria could measure the success of drugs policies using human development index objectives, including increased levels of socio-economic development, access to education, employment, and basic healthcare services, etc.;
- c. Engage civil society organizations at country and regional levels in policy formulation, implementation and monitoring – taking advantage of international human rights mechanisms (including women's rights instruments) to advocate for human rights and gender-sensitive approaches to drugs and criminal justice policies and procedures.

4. Proportionality in judicial treatment of drug-related crimes:

- a. Ensure that law reforms are integrated and coherent in order to avoid contradictions, such as removing criminal sanctions for people caught for drug use, while simultaneously charging people for the possession of small quantities of drugs for personal use;
- b. Revise legislation regarding criminal sentencing so that is proportional to the crime. In many countries of the Western hemisphere, maximum sentences for violent rape or murder are lower than for crimes involving the commercialization of drugs through production and distribution. Ensure that drugs policy incorporates a proportional response that upholds the human rights of all actors involved in any phase of the commercialization of illegal substances;
- c. In the case of non-violent crimes, identify alternatives to incarceration that could alleviate the burden on the justice and penal systems and avoid the preventable negative consequences of prolonged incarceration, including the separation of families;
- d. Consider that imprisoning mothers for non-violent offences can contravene the rights of their children, as established in the Convention on the Rights of the Child, and may have a detrimental effect on child health and development. Incarceration of mothers should be considered a last resort, and alternatives sought such as probation, or other non-custodial measures in the case of non-violent crimes that are motivated by poverty and/or violence/coercion. Where imprisonment is necessary, the needs of children should be prioritized and appropriately addressed (including allowing women to serve sentences in their home country if charges are made abroad, to be imprisoned close to their homes if in another part of the country, to have access to visitation or other privileges that would allow them to maintain contact with their families)
- e. In cases where women are incarcerated, ensure that governments adhere to the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules).

5. Alternatives to participation in the world of illicit drugs:

- a. Examine existing development-based alternatives to participation in the world of illicit drugs, analyze their efficacy, and prioritize the replication

and scaling-up of strategies that have been qualified as “successful” from a human rights and development perspective. A number of alternatives to incarceration and custodial methods are outlined in the United Nations UN Tokyo Rules;⁵⁹

- b. As alluded to by the CND, create viable and sustainable opportunities for economic stability and human and educational development for women, as a concrete tool for empowerment and alternative to drug use and drug-related crime.

59. *United Nations Standard Minimum Rules for Non-custodial Measures* (Tokyo Rules): http://www.unodc.org/pdf/compendium/compendium_2006_part_01_03.pdf

