

# **Problematizing penal responses to drug-related crimes in Argentina: policy recommendations to reduce the criminalization of women**

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## **Abstract**

Since the consolidation of the prohibitionist model in the 1970s, Latin America has predominantly approached the “drug-problem” through a punitive paradigm. Even though over the last decade some countries have implemented alternative policies, the punitive response is still hegemonic in the region. One of the main visible consequences of this is the increasing criminalization of women from low social classes. Like other Latin American countries, Argentina has witnessed a substantial rise of female incarceration rates for drug-related offenses. Since the defederalization of the Law of Drugs in 2005, a strong punitive turn towards minor drug offenses has been observed, which has in turn exacerbated class and gender inequalities. Over the last 20 years, the number of women imprisoned for these offenses grew by 101%, and around 40% of the women currently in prison are prosecuted or serving sentences for drug-related offenses.

However, this significant and constant increase of women criminalization has received little attention from public opinion and also from decision-makers concerned about drug trafficking and citizen security. This is basically the result of the generalization and radicalization of the prohibitionist paradigm that frames how the drug-problem is defined and approached. This policy paper addresses the overcriminalization of women due to drug-related offenses in Argentina, underlining the negative effects of the implementation of this punitive model. It also reviews innovative initiatives adopted in some Latin American countries that can serve as alternative models to punitive responses. Finally, it provides a series of policy recommendations that can contribute to reduce the levels of criminalization of women and to interrupt the cycle of marginalization and inequality that imprisonment is intensifying among them. These recommendations target two different yet complementary areas of public policy: the first ones aim at making legislative changes and the second ones are focused on law enforcement.

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# **Problematizing penal responses to drug-related crimes in Argentina: policy recommendations to reduce the criminalization of women**

Martina Lassalle

Drug-related crimes are one of today's most relevant issues regarding security governance in Latin America. All countries of the region are dealing with this question which is associated with high incarceration rates, with growing levels of lethal violence, with political and governmental corruption and with very high profits for certain groups. Since the 1970s, the "drug-problem" has been mostly approached from a prohibitionist and punitive paradigm. Even though over the last decade some countries have implemented alternative policies, this approach is still hegemonic in the region. One of the main visible consequences of this is the dramatic increase in the criminalization of vulnerable groups, in particular of women from low social classes. According to data published in the fifth edition of the World Female Imprisonment List, the number of women incarcerated in the Americas (excluding the U.S) climbed 150% between 2000 and 2022<sup>2</sup>. Many studies elaborated by civil society organizations showed that about half of the women incarcerated in the region are prosecuted or serving sentences for minor drug offenses. These studies also highlighted the negative effects that incarceration has on the life of these women, their children and on the communities they belong to.<sup>3</sup>

Argentina is naturally not an exception in this context: between 2002 and 2022, the number of women behind bars increased by 78%, a percentage that rises to 100% if we only consider women incarcerated for drug-related offenses. In the province of Buenos Aires, this increase is even more acute: between 2007 and 2022, the female population incarcerated for these offenses grew by 126%<sup>4</sup>. However, this significant and constant increase in women criminalization has received little attention from public opinion and also from decision-makers concerned about drug trafficking and public safety. This is basically the result of the generalization and radicalization of the prohibitionist and punitive paradigm that frames how the drug-problem is defined and approached in the country. Furthermore, it is linked to the assumption that crime is an already constituted phenomenon and that the penal system simply "reacts" to it (Garland, 2001; Pavarini et. Al, 2006). However, what this approach does not consider is that penal criminalization<sup>5</sup> may amplify and deepen the conflicts it seeks to solve, especially in terms of the stigmatization of different groups and the production of criminal careers (Becker, 1963; Goffman, 1986). This has important material and symbolic consequences for those entering the penal circuits and also for the rest of the citizenship.

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<sup>2</sup> These reports are elaborated by the Institute for Crime & Justice Policy Research of the University of London.

<sup>3</sup> For instance, The Washington Office on Latin America (WOLA), Penal Reform International and the International Drug Policy Consortium have made important contributions (IDPC).

<sup>4</sup> Own elaboration based on the most recent data available from the National Statistical System on Penalty Execution.

<sup>5</sup> Penal criminalization is a two-dimensional process. Primary criminalization refers to the legal definition of certain behaviors as prohibited and punishable, while secondary criminalization refers to detention, prosecution and sentencing practices.

This policy paper addresses the overcriminalization of women due to drug-related offenses in Argentina, underlining the negative effects of the implementation of the prohibitionist and punitive paradigm. It also reviews innovative initiatives adopted in some Latin American countries that can serve as alternative models to punitive responses. Finally, it provides a series of policy recommendations that can contribute to interrupt the cycle of marginalization and inequality that imprisonment is intensifying among these women. These recommendations target two different but complementary areas of public policy: the first ones aim at making legislative changes and the second ones are focused on law enforcement.

### **i. The Argentinian drug policy and its impact on the overcriminalization of women**

In 2005, the National Congress passed a law (Law No. 26.052) that modified the Law of Drugs (Law No. 23.737), enabling its partial defederalization<sup>6</sup>. This gave the provincial judicial systems the possibility to investigate and judge some of the offenses included in this law—in particular, drug possession for personal use and retailing—, which impacted very quickly on incarceration rates. Between 2007 and 2022, incarcerations for drug-related offenses grew by 295% at the provincial levels (that is, for minor drug offenses), while it increased by 85% at the Federal level (that is, for drug trafficking). This trend has accentuated specially since 2016.

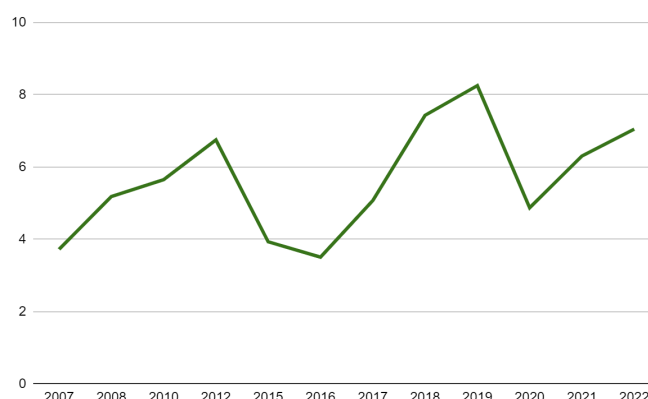
The acceleration of imprisonment at the provincial levels is particularly evident in Buenos Aires, the first province to adhere to the defederalization of the Law of Drugs in 2005. The overcriminalization of women has been a major consequence of this process: between 2007 and 2022, female incarceration rate due to drug-related offenses almost doubled, increasing from 3.7 to 7 inmates every 100,000 women.<sup>7</sup> Currently, 36% of the women in prison are prosecuted or serving sentences for drug-related offenses, while in the case of men, this percentage is 11%. Moreover, if we also consider women under house arrest, this proportion is even higher: 41% of the women prosecuted or convicted are related to drug offenses.

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<sup>6</sup> A concise and very clear analysis about the evolution of Argentina's criminal legislation on narcotic drugs can be found in Corda (2016). Also see Corbelle (2019) for an analysis about the social construction of the drug-problem in Argentina.

<sup>7</sup> It is important to mention that this rate only includes women who are currently in prison, but excludes the significant number of women who are under house arrest for these offenses, which increases the criminalization rate.

**Evolution of female incarceration rate due to drug-related offenses in Buenos Aires (2007-2022) - rate every 100,000 women**



Source: Author's elaboration based on data from the National Statistical System on Penalty Execution

Although the period generally shows an upward trend in women incarceration rates, there are some peaks that deserve attention. The first one was immediately after the defederalization law was passed. However, data shows that in 2012 and during four years, there was a significant decrease of women imprisonment rates due to these offenses. This decline, which brought the rate back to 2007 levels, stopped in 2016 when it started to increase at an accelerated pace. This happened in the context of a highly promoted change in criminal policy that declared an explicit, and outdated, “war on drugs”. In 2018 and 2019, women incarcerated for drug offenses in Buenos Aires reached 40% of the total number of the women imprisoned in the province.

It is also important to underline that this was not the result of major legal reforms, but rather a political decision to radicalize a punitive criminal policy towards drug offenses<sup>8</sup>, which resulted in a deeper criminalization of vulnerable groups from low social classes. There was however an important legal reform in 2017: the elimination of parole for drug-related offenses, which was especially harmful to women who had to serve full sentences in custody. Due to the pandemic, in 2020 the incarceration rate decreased (as for other offenses as well), but, since 2021, it is growing steadily again.

But, who are these women and how are they punished? According to the most recent data, in 2022, there were around 850 women incarcerated for drug offenses in Buenos Aires.<sup>9</sup> These women are not young (39 years old on average) and, as the vast majority of the penal population, belong to low social classes. Data shows that they have very low levels of formal education (only 14% have completed high school) and that they were in very precarious situations before their detentions (62% were unemployed and 16% had part-time, informal jobs)<sup>10</sup>, which shows the class selectivity of the penal system. Furthermore, a very significant

<sup>8</sup> This was explicitly promoted by the new Attorney General of Buenos Aires, who designed a criminal policy in which the criminalization of drug offenses (specially retailing) was one of the three main axes.

<sup>9</sup> Data from the Single Registry of Detainees (RUD, for its acronym in Spanish) of Buenos Aires (2022).

<sup>10</sup> This data is self-elaborated based on the databases published by the National Statistical System on Penalty Execution.

number of women (around 650), with similar socio-demographic characteristics, are currently under house arrest for these offenses.

To understand the engagement of these women in drug-related offenses, it is necessary to consider the situation of social exclusion in which they are immersed, but also the social caregiving roles that women assume in our societies—in fact, many of them are household heads.<sup>11</sup> Most of them are prosecuted or serving sentences for drug retailing, an activity which enables them to subsist and that is compatible with caring activities. However, the roles they have in these drug retailing activities are often subordinate, which makes them easily replaced in the supply chain after detention. For that reason, these high levels of criminalization do not solve the problem that criminal policies and the penal system claim to want to solve. Moreover, in many cases, these women do not even participate directly in these illegal activities but are rather involved by their male partners in different ways—for instance, living in the same house where illegal substances are kept. In spite of this, the charges and penalties imposed by the justice system are certainly disproportionate in comparison to those set for men who do have more relevant roles, as well as compared to the penalties that the judiciary imposes for violent crimes.

Data reveals that, in Buenos Aires, 63% of the women incarcerated for these offenses are under pretrial detention, a percentage that is lower for men (55%). Additionally, among those convicted, there are no significant differences in sentence lengths between men and women. On average, convicted women received 5 years of imprisonment while men received 5.3 years of imprisonment. It's worth noting that, at the Federal level, the average is 5.5 years. This disproportion in the criminalization of minor drug offenses is also evident when comparing it to the punishments for homicide in Buenos Aires. In 2022, 35% of intentional homicides were punished with less than 9 years of imprisonment.

Another crucial question to be mentioned has to do with the generalized and majority use of plea bargaining in drug cases. Plea bargaining implies a negotiation between the defendant and the prosecutor, where the former pleads guilty on a criminal charge in exchange for a concession from the prosecutor, which is often recommending a “non-severe” sentence to the judge. This process, which is extremely asymmetric, necessarily ends up with a conviction (unlike trials) and happens while defendants are under pretrial detentions.<sup>12</sup> The convictions “negotiated” in this context are very harmful to women with secondary roles in these illicit activities because, by pleading guilty, they are convicted in the same manner as those who hold more relevant roles (their male partners in most cases).

## **ii. What can we learn from the region? Relevant initiatives in Latin America**

So far, in most countries of the region, the prevailing response to the drug-problem has been

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<sup>11</sup> See CELS (2018) and Ojeda (2017) for a deeper analysis about women incarcerated in Argentina. For a regional study on this question, see the recent report from the Inter-American Commission on Human Rights (2023).

<sup>12</sup> For a discussion on the use of this penal process in Latin America and its implications, see Langer and Sozzo (2023).

strongly punitive. This response has focused on the offering of drugs, rather on the demand, and it was designed to reaffirm the prohibitionist paradigm which was generalized by the United States in the 1970s and that is still hegemonic in Latin America. Even though generally speaking the U.S. still maintains a harsh Federal drug policy<sup>13</sup>, regulations at state-levels show that the “war on drugs” is internally outdated. Currently, in 24 states of the U.S. and in the District of Columbia recreational use of marijuana is legal and in many of them retail sales at licensed dispensaries are also allowed.<sup>14</sup> This generated a decrease in the levels of incarceration—which impacted specially on the most vulnerable groups that are often the most criminalized—and also produced employment and tax revenues for the states.<sup>15</sup> This scenario seems diametrically opposed to the one observed in Argentina where criminal policy decisions hardened drug policies that mostly impact small retailers at the local levels rather than international trafficking networks.

Despite the prevalent repressive drug policies in most Latin American countries, in the last decade there were relevant initiatives that acknowledged that this approach to the ‘drug-problem’ was ineffective and harmful not only to vulnerable groups but also to the entire society. Therefore, they sought to reduce levels of criminalization. Many of these initiatives targeted the female population, incorporating a gender perspective to the debates on drug policies. Costa Rica was a pioneer in this matter. For instance, in 2013, the Public Defender’s office promoted a legal reform, later approved at the Legislature, that ensured more proportionate punishments for women from marginalized sectors with caretaking responsibilities who were caught smuggling drugs into prisons. The reduction of the minimum of the penal scale to 3 years enabled the application of alternatives to incarceration and, as it was retroactive, permitted the release of many women.<sup>16</sup> Later, in 2017, Costa Rica passed Law No. 9.361, producing a criminal record reform. This allowed judges to eliminate criminal records from the court registry if certain conditions were met—for instance, after serving a sentence of less than three years or for misdemeanors committed by people in situations of vulnerability, etc. This legal reform constitutes an important precedent to counter the labor market exclusion and the stigmatization that incarceration produces.

Uruguay also had initiatives in similar directions. The most important one, in 2013, was the legal regulation of adult use of cannabis. By then, the government was concerned about growing incarceration of women, and the gender unit of the Drug National Board worked hard to produce changes in criminal policy, which resulted in a decrease of women prosecuted for drug offenses between 2010 and 2021 (Youngers, 2023).<sup>17</sup> Furthermore, other

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<sup>13</sup> This policy impacts very negatively on Latin American countries. The hardening of the U.S. Federal drug policy, expressed for example in the intensification of the controls at the borders, increases illegal drug prices and therefore generates higher revenues for the groups that control the drug supply chain in the region. See, for instance, Bergman (2016). However, it is worth mentioning that the U.S. Drug Enforcement Administration is about to reclassify marijuana from Schedule I to Schedule III under the Controlled Substances Act in order to loosen restrictions on this drug.

<sup>14</sup> Like The Netherlands, Portugal and Switzerland, the state of Oregon also decriminalized the possession of hard drugs in small amounts some years ago. However, due to the current fentanyl crisis in the U.S., the State legislature has recently restored criminal penalties for possessing this kind of drugs.

<sup>15</sup> There are many studies in the U.S. which analyze these questions. See, for instance, Parrot and Mattingly (2021), and Naples (2022).

<sup>16</sup> For a deeper analysis about this reform, see Pieris (2017).

<sup>17</sup> In 2020, there was an important backlash when “The Law of Urgent Consideration”, key for Lacalle Pou’s government, was passed by the Uruguayan Congress. Among other things, this law eliminated the possibility to have alternative measures

countries such as Ecuador in 2008 and Bolivia between 2012 and 2018, used amnesties, pardons and sentence reductions to alleviate prison overcrowding and reduce the negative impacts of incarceration. Specifically in Bolivia, the gender-focused amnesties, pardons and sentence reductions enacted by the president of the country aimed at releasing individuals charged with minor drug offenses, especially pregnant women and household heads, people who suffered illnesses, among other vulnerable groups. As a result, after 5 years, the number of women in jail for drug-related crimes was reduced by 84% (Youngers, 2023).

More recently, in 2020, Mexico passed a Federal Amnesty Law which aimed at releasing and expunging criminal records from individuals from vulnerable groups (indigenous people, women from marginalized sectors, etc.) charged with certain types of crimes, such as drug offenses. So far, many requests have been presented and women prosecuted for drug-related crimes were released. However, the impact of this law has still been quite narrow at least because of two main factors. On the one hand, because it is a Federal law and most of the crimes it targets are of local jurisdiction. Some Mexican states adopted local amnesty laws, but their implementation at local levels is still limited. On the other hand, because the enforcement of this law also showed important judicial discretion to approve amnesty requests<sup>18</sup>.

Colombia is also making important progress to reduce levels of incarceration of women. In 2023, the Congress passed the *Law of Public Utility* (Ley de Utilidad Pública, Law No. 2.292) which created mechanisms to replace imprisonment in cases of women who are household heads and are serving sentences for minor crimes produced in contexts of vulnerability. If released from prison, these women must serve their sentence doing non-paid community service in public institutions or in organizations of civil society. The enforcement of this law and the possibility to reach a significant number of women is certainly challenging. One of its main challenges is related to the important role that the justice system has in this process and, in some cases, to the opposition of some judges to accept these alternative measures.

### **iii. So, what could be done? Policy recommendations for a gender-based justice regarding drug-related offenses in Argentina**

Unlike other countries of the region, where some policies were implemented to reduce the levels of incarcerated women for drug offenses, in Argentina little was done in this direction<sup>19</sup>. On the contrary, since the defederalization of the Law of Drugs in 2005, a strong punitive turn towards minor drug offenses has been observed, especially at the provincial levels. As mentioned, this has been particularly explicit in Buenos Aires, which has exacerbated class and gender inequalities. It is then strongly necessary to start implementing

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to incarceration for drug-related offenses.

<sup>18</sup> For a deeper analysis about this law and its enforcement, see Fernández Villaseñor (2021).

<sup>19</sup> However, it is worth mentioning the contributions made by civil society organizations, such as the Center for Legal and Social Studies (CELS) and ACIFaD, to make this problem visible and to support family members of incarcerated individuals.

different public policies with an intersectional approach in order to reverse this neglected situation.

The following recommendations seek to contribute to the design of public policies aimed at reducing the levels of criminalization of women of low social classes for drug-related offenses. These recommendations target two different but complementary areas of public policy: the first ones aim at making legislative changes and the second ones are focused on law enforcement. However, it is important to mention that, in order to keep vulnerable women away from penal circuits, it is essential to design public policies and social programmes to approach the structural class and gender inequalities that are at the core of their engagement with this type of illicit activities.

#### *a. Legislative policy*

**i. Legalize recreational marijuana.** In 2022, 91% of the drugs confiscated by the Buenos Aires Prosecution Office was marijuana and 36% of the criminal proceedings initiated were related to possession of drugs for personal use<sup>20</sup>. Although cases of possession for personal use are often dismissed and do not lead to prosecution, these proceedings approach individuals to the penal circuits unnecessarily. They also imply workload for prosecution offices.

As criminalization practices are non-class and non-gender neutral, legalizing home-growing, adult-use and retail sales of recreational marijuana—as it occurs in many U.S. states, Uruguay and many Western European countries— would decrease the levels of incarceration of vulnerable groups, such as women from marginalized sectors. Consequently, this would also alleviate the workload of prosecution offices and courts which would be able to direct efforts and public resources to investigate and solve serious crimes. Legal retail sales of marijuana would also be beneficial for consumers, since the products sold would be controlled by state agencies, such as it happens with other legal drugs. Furthermore, this could produce tax revenues for the state, which could be invested in public education and health services.

**ii. Pass a law to foster decarceration of individuals from vulnerable groups with no criminal records serving sentences for minor drug offenses, through alternative measures to imprisonment.** The recent Colombian *Law of Public Utility* could be a model for Argentina to start discussing alternative measures to incarceration for vulnerable groups convicted of minor drug-offenses. Women incarcerated with caregiving roles could be directly benefited with this kind of measures which may be also useful for strengthening bonds with their communities. In addition, these measures could entail the obligation to make treatments in the case of people with drug addiction. In Buenos Aires, the implementation of this type of alternative measures could be articulated with organizations from civil society and with public institutions such as the *Patronato de Liberados*, currently in charge of assisting and accompanying individuals during the reentry process.

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<sup>20</sup> Data from the last report published by the Buenos Aires Prosecution Office (2022).



Furthermore, eliminating by law criminal records in these cases could be very beneficial for women from vulnerable groups who, otherwise, have no actual possibilities of finding a job to get out of the situation of exclusion in which they are immersed.

Additionally, it is important to mention that this initiative of decarceration should be accompanied by other policies seeking to reverse the highly criminalizing trend observed in the case of minor offenses.

**iii. Modify penal scales for drug possession and retailing to seek proportionality in penalties and to allow suspended sentences.** Current penalties for drug-related offenses such as possession or drug retailing are disproportionate if compared with other crimes, such as homicide. For instance, for intentional homicides the minimum is 8 years of incarceration and for homicides occurring in the middle of fights (“homicidio en riña”) the penal scale ranges from 2 to 6 years of imprisonment, while illicit drug retailing can be punished with between 4 to 15 years of incarceration. This 4-year minimum does not allow the imposition of suspended sentences.

These penalties are also disproportionate compared to those established for international drug smuggling. According to the Argentinean Customs Code, organizing or funding these kinds of illegal activities can receive between 8 and 20 years of imprisonment. In other countries, such as Chile, there is a clear distinction between drug trafficking and drug retailing which is expressed in the penal scale: for instance, for micro-trafficking, punishments range from 541 days to 5 years of imprisonment.

It is therefore crucial to modify the penal scale for drug “*simple possession*”<sup>21</sup> and retailing (articles 14 and 5 of the Law of Drugs) to make these penalties more proportionate. In particular, it is important to eliminate mandatory minimums or at least to reduce them to less than 3 years of imprisonment in order to allow the imposition of suspended sentences. As the experience from Costa Rica has shown, this would be very beneficial for women, often engaged in minor drug offenses, who would be able to serve non-custodial sentences.

**iv. Enable parole for people convicted of drug-related offenses.** In 2017, the National Congress passed a law that modified both the Penal Code and the Penal Execution Law in order to, among other things, prohibit conditional release for those people convicted of violating articles 5, 6 and 7 of the Law of Drugs. This includes plant and seed breeding in amounts that are not for personal use, drug retailing, and international drug trafficking. In contrast, and paradoxically, conditional release is possible for certain violent crimes, such as non-aggravated homicides. This means that while someone who kills another individual and serves an 8-year sentence can be conditionally released after 5.5 years, someone who serves a 5.5-year sentence for drug retailing (the average in Buenos Aires) must complete the whole period in prison.

Reducing incarceration periods through measures such as paroles seems particularly important to mitigate the negative effects that incarceration has for vulnerable groups, such as women from low social classes with caregiving roles. This would in turn contribute to

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<sup>21</sup> This legal figure is used when the amount of drug with which the person was found is neither too little to prosecute him/her for drug possession for personal use, nor enough to charge him/her for retailing.

reduce prison overcrowding—in February 2024 in Buenos Aires, overcrowding surpassed 100% in numerous provincial prisons.<sup>22</sup>

**v. Introduce vulnerability conditions and the differential impact of incarceration for women as factors to reduce penal scales.** According to article 41 of the Argentinian penal code, penal scales can be reduced if convicts provide relevant information to contribute to the penal investigation. Given that women who are criminalized often occupy subordinate places, and, for that reason, do not have much information about the illicit drug supply chain in which they are engaged, this mitigating factor is rarely used to their benefit. Legislation should therefore enable mitigating factors such as the ones mentioned above in order to reduce the duration of custodial sentences in the case of women who commit minor drug offenses in conditions of vulnerability, which may include poverty and marginalization, gender violence and drug addiction. Legislation should also explicitly consider as mitigating factors the crucial role women have in caregiving activities and the negative impact that incarceration has on their children.

#### *b. Law enforcement*

**i. Avoid the excessive use of pretrial detentions for minor drug-offenses.** In Buenos Aires, this would reduce substantially (by around 60%) the number of women incarcerated for these offenses. Pretrial detentions are more frequent among women than among men, although incarceration impacts more negatively on the first ones because of gender inequalities. Due to the caregiving roles socially assigned to women, these detentions are very harmful to children and to the community ties that are mostly supported by women in marginalized neighborhoods. Therefore, the disproportionate and unnecessary use of pretrial detentions for these minor offenses only aggravates the already serious and harmful situation generated by the overcriminalization of women.

**ii. Decriminalize drug possession.** It is essential not to initiate penal investigations for “*simple possession*”, a legal figure used when the quantity of drug found is not enough to prosecute the person for retailing. Unlike cases of possession for personal use, which are often dismissed, cases of “*simple possession*” do lead to prosecution and receive higher penalties (2 to 6 years of imprisonment). In 2022, these cases represented almost 20% of the sentences for violating the law of drugs in Buenos Aires<sup>23</sup>. Even though in many of these cases judges impose suspended sentences, they introduce individuals committing these minor offenses in penal circuits and create criminal records. For poor women, this has extremely negative material and symbolic consequences that perpetuate the situation of marginalization in which they are immersed.

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<sup>22</sup> Data from The Provincial Commission for Memory:  
<https://www.comisionporlamemoria.org/datosabiertos/carceles/mapa-de-carceles/>

<sup>23</sup> Self-elaborated data based on databases produced by the National Registry of Recidivism.

**iii. Carry out penal investigations with a gender and intersectional perspective.** This is crucial for prosecutors and judges to understand the contexts of social exclusion in which women commit these offenses and to be able to identify the secondary roles they often have in these illegal activities. It is also important in order to grasp the differential impact that incarceration has among women and the negative effects on children and communities. Therefore, charges and penalties should express these differences between roles and levels of responsibility, and also consider as a relevant mitigating factor the structural inequalities that lead these women to become involved in illicit activities. It is worth mentioning that, for intentional homicides, youth and vulnerability contexts are factors currently used by judges in Buenos Aires to reduce the duration of sentences (see Lassalle, 2024, 2020). An important input for this are the guidelines elaborated by the Ministry of Justice and Human Rights of Buenos Aires in March 2022, which should be more disseminated among judges and prosecutors. It is crucial to train judicial agents to understand the importance of reducing levels of criminalization of women for minor drug offenses due to the extremely negative effects that the production of criminal careers has on these women. As recent experiences from Mexico and Colombia have shown, this is one of the most challenging aspects.

## References

- Becker, H. (1963). *Outsiders. Studies in the sociology of deviance*. Toronto: Free Press.
- Buenos Aires Prosecution Office (2022). *Informe en materia de estupefacientes - Ley N.º 23.737*. Buenos Aires.
- Bergman, M. (2016). *Drogas, narcotráfico y poder en América Latina*. Buenos Aires: Fondo de Cultura Económica.
- Centro de Estudios Legales y Sociales (CELS) (2018). *Mujeres privadas de la libertad en Argentina. Presentation to the Working Group on the question of discrimination against women in conflict with criminal law*. Available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/DeprivedLiberty/C SO/Centro de Estudios Legales y Sociales.pdf>
- Corbelle, F. (2019). “La construcción social del 'problema de la droga' en Argentina, 1919-2018”, in *Revista Ingesta*, 1(1), 14-40.
- Cordeiro, A. (2016). “Imprisonment for drug-related offenses in Argentina”, in Youngers, C. and Metaal, P. (Eds.), *Systems Overload - Drug laws and prisons in Latin America*. Amsterdam and Washington: Transnational Institute and Washington Office on Latin America.
- Goffman, E. (1986). *Stigma. Notes on the Management of Spoiled Identity*. New York: Touchstone.
- Fernández Villaseñor, V (2021). “Ley de Amnistía: un año de simulación. Primer informe anual”. México: Observatorio de Amnistías.
- Inter-American Commission on Human Rights. I (2023). *Mujeres privadas de libertad en las Américas*.

- Langer, M. and Sozzo, M. (2023). Justicia penal y mecanismos de condena sin juicio. Buenos Aires: Marcial Pons.
- Lassalle, M. (2024) Matar no es siempre el mismo crimen. Un estudio sociológico sobre sobre el castigo diferencial del asesinato en Argentina [*Killing is not always the same crime. A sociological study on the differential penalization of murder in Argentina*]. Buenos Aires/México: Fondo de Cultura Económica. *En prensa*
- (2020). “Differential penalization of murder. A sociological examination of the Argentinean case”, in Espacio Abierto 3(29), 184-200.
- Naples, M. I. (2022). Estimating the savings from decriminalizing drug consumption: the case of New Jersey, in Rutgers Journal of Law and Public Policy, 19(2), 353-423.
- Ojeda, N. (2017). “Las implicancias del castigo. Un estudio etnográfico en una cárcel de mujeres en Argentina”, en Vox Juris, 33(1), 69-78.
- Parrot, J. and Mattingly, M. (2021). “Economic and Revenue Impact of Marijuana Legalization in NYS A Fresh Look”. Available at: [https://static1.squarespace.com/static/5953059b1b10e384f55aad08/t/60234e4bcbfbfb557933238c/1612926549754/Parrott+Mattingly+NYS+Marijuana+Economic\\_and\\_Revenue\\_Impact\\_Report+Feb+2021final.pdf](https://static1.squarespace.com/static/5953059b1b10e384f55aad08/t/60234e4bcbfbfb557933238c/1612926549754/Parrott+Mattingly+NYS+Marijuana+Economic_and_Revenue_Impact_Report+Feb+2021final.pdf)
- Pavarini, M., Pérez Carillo, A. y Tagle, F. (2006). Seguridad pública. México: Ediciones Coyoacán.
- Pieris, N. (2017) “Reducing female incarceration through drug law reform in Costa Rica”. Washington: WOLA, the International Drug Policy Consortium (IDPC), Dejusticia, and the OAS Inter-American Commission of Women.
- Single Registry of Detainees (RUD, for its acronym in Spanish) of Buenos Aires (2022). “Annual report”. Buenos Aires: Buenos Aires Prosecution Office. Available at: [https://www.mpba.gov.ar/files/informes/Informe\\_RUD\\_2022.pdf](https://www.mpba.gov.ar/files/informes/Informe_RUD_2022.pdf)
- Youngers, C. (2023). “Justice Is Setting Them Free: Women, Drug Policies, and Incarceration in Latin America”. Washington: WOLA.