“If Only They Could See Inside My Heart”: Women in Prison for Drug Offenses in Latin America

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The purpose of this talk is to share the experiences of women in prison for drug offenses in Latin America. This is a topic that has been gaining growing international attention due to the staggering increase in the female incarcerated population, on the one hand, and the recurring profile of these women on the other.[1]

Gaby, Janeth, Asia, and Lucy—these are some of the names of the dozens of women I have spoken with in the last fifteen years since I carried out my first research on gender and discrimination in Mexican prisons. When I began my research in 2006, I didn’t know I had found an intersection that would become my main occupation as a researcher and the focus of my involvement with Mexican and international civil society, public institutions, and international bodies. In the open-air visiting area of Santa Martha Acatitla in Mexico City, the largest female prison in Latin America, as well as in other female prisons during the last decade and a half, in interview after interview, woman after woman repeated the same story. Poor single mothers and young women in love explained: “I have been given a ten years sentence for trafficking cocaine” or “I have been here for eight years, and I have seven more to go… I hid a package in my vagina and introduced it into a male prison… there was marijuana in it.”[2] A five-, ten-, or fifteen-year sentence for possessing drugs, for carrying them through borders, for supporting their husbands, for trusting their boyfriends, for putting food on the table and spending time with their kids instead of leaving them unattended. These women have sentences to be completed with no right to parole in prisons that do not comply with the minimum standards of infrastructure, health, access to education and employability, hygiene, or even the provision of essential goods for their care or that of the children living with them.

Gender relationships, particularly the fulfilment of the roles of partners—often in violent relationships—or of caregivers of young children, drug policy, and the discrimination of women in the prison system showed on their faces in the lowering eyes, the tired lips, and the mix of anger and resignation. While acknowledging their participation in the offense, they pointed out the injustice of the criminal justice system, the disproportionate sentences, and their sadness and atonement for the betrayal

of those male partners who got them involved in the first place, only to abandon them in prison. Worried about their children and the life they left outside, they created a world inside prison, finding, for the first time, a breath from violence and everyday struggle, forging new bonds and ways to resist.

The incarceration of women for drug offenses is the main cause for the staggering increase in the number of women behind bars worldwide, representing the first or second cause of female incarceration in most countries of Latin America.[3] The profile of incarcerated women remains basically the same: women are accused of non-violent minor offenses, often related to their drug dependency, or induced into international trafficking by male-dominated criminal organizations. They are balancing on the thin line between being "traffickers," or, more accurately, being trafficked and exploited as human objects, carrying cocaine or heroin in their stomachs.[4]

We see women queuing outside overpopulated male prisons, carrying bags full of food, either simulating or actually visiting a dear one, using their bodies as hiding cavities and reproducing the gender roles by which women take care of men in prison while women in prison are usually abandoned.

Often poor women, mothers, and indigenous women have a life story scarred by repeated episodes of neglect, sexual abuse, and gender-based violence, which pushed them outside their homes when they were children and threw them into the arms of perpetrators of new aggressions and, finally, into a prison cell. Each story is unique and longs to be recounted, but they have a common denominator: an absolute state absence when violence was perpetrated against them or when they had nothing to feed their children with, paired with a disproportional state repression when they returned to, or were forced into, drug trafficking. Easy gains for the US-exported "war on drugs," their bodies carry the weight of racism, gender violence, and social exclusion.

Nothing can convey this reality better than a case study. What follows is the story of Gaby, with whom I spent a week, going in and out every day, in the female prison "Tanivet" in the southern state of Oaxaca, Mexico. Indigenous and the single mother of three, she was sentenced to ten years for transporting marijuana. She was released in 2019, after seven years, thanks to a 2016 legal reform that allows people accused of a drug-related offense to be conditionally released.

Gaby grew up in a rural area in one of the most stunning states of Mexico: Oaxaca.[5] Her village's main source of employment was the illegal cultivation and manufacture of marijuana, under the control of organized crime and the condescending—and corrupt—gaze of the army. She had her first daughter when she was fifteen years old. Her pregnancy was the product of rape by a man from her village. Gaby, a victim of violence against children and of gender-based violence against women and girls, was also, by then, a victim of one of the worst forms of child labor.[6] Since the age of twelve, she had been carrying small packages of marijuana to Mexico City. Her recruiter was also a man from her village.

When Gaby grew up, she fell in love with a drug trafficker and became pregnant again. The trafficker abandoned her. She had no money to pay for private healthcare, and public healthcare in Mexico is insufficient, especially in rural areas. Gaby's child was born with physical and brain paralysis, and Gaby continued to carry marijuana in order to pay for medical examinations.

So far, the state had been almost absent from Gaby's life. Neither the sexual violence nor the child-labor exploitation merited its attention or intervention. Poverty and underdevelopment were balanced by the employment provided by illicit crop cultivation, and lack of healthcare was compensated for with local knowledge of herbs and infusions. One day, the state became interested in Gaby. She was arrested when transporting marijuana and given a ten-year prison sentence. She was locked away together with her child and finally became a number (see Figure 1).

Figure 1. Gaby tells her story of managing life and family while in prison for drug trafficking.
Photo Credit: WOLA and EQUIS, *Gaby's Story.*[7]

During her detention, she was transferred from a mixed prison—a prison where men's facilities have a few spaces for women: either dorms, sections, or some sort of separate buildings—to Tanivet, an all-female facility closer to the state capital. Gaby's son was no longer in Tanivet with her since she had had to face the choice of whether to keep him with her or send him to a public institution to receive rehabilitation for his conditions. At first, she asked the judge to grant her the right to accompany her son to rehabilitation and come back with him so they did not have to part. The judge, however, argued that "children are one matter and the crime is a different one," adding that "she should have thought about it before trafficking marijuana."[8]

Such arguments constitute a violation of Article 9 of the United Nations Convention on the Rights of the Child, which protects the children's right to be close to their families as long as it is in their best interest. They also do not take into account the United Nations rules for the treatment of women prisoners and non-custodial measures for women offenders (Bangkok rules) on applying non-custodial measures to women who are sole or primary caregivers of children.[9] Gaby had to choose between her son's right to health and his right to be close to her, while both rights are interdependent and indivisible human rights.[10] Her son was hosted by a public institution where he was provided medical care as well as shelter and general care. He visited his mother once a week, on Saturdays.

In July 2017, when I met Gaby as part of a project aimed at doing documentaries on women in prison for drug offenses, the rest of the team and I stayed a day longer, to meet—and record—Gaby's son.[11] We waited and waited, but he didn't arrive. Her distress grew by the minute. After five days of putting up with our presence in the prison, following her around with cameras, a microphone always hanging on her blouse, she asked us to be left alone, with no cameras and no mic.

The director of the videos asked me: "You are a mother; explain to me what she is feeling." I answered: "Imagine you've had an accident and got suddenly blind. You are lying in a hospital bed waiting for the doctor to tell you if your eyes, which are your life and the source of your work, will ever see again or if your sight is lost forever. That's how she's feeling. While she waits for her son and nobody picks up the phone to tell her why he is not here, her life is hanging, on standby, and she longs to know if she will see him again."

Her son did not arrive: the public institution which took care of him had no driver that day. No one bothered to call her. For hours she was hanging onto the prison's public telephone trying to get an answer. When she finally got one, she was relieved, and we had a last interview.[12] The last scene was recorded on that Saturday. She wears her best blouse, her finest earrings—that she made herself—and her loving gaze, which slowly turned into worry, then absolute fear, and then back to some resignation. This is life in prison, from one end to the other.

We said goodbye, not knowing when we would see each other again. About two years later, she was released. She went back to her local village, only to be utterly rejected for being a single mother and a formerly incarcerated woman. She found a place to rent with her mother and her children in another village and got employment as a house cleaner. However, during the COVID-19 pandemic, she was again unemployed because of social distancing measures. I met her again in December 2019. We went to see pyramids and drink a beer in the local market. We are still in touch, and we give conferences together. Next time, we'll invite Gaby to Juniata as well; we'll just have to translate and let her story plant its seed into us.

Gaby is unique, and so are her story and her three children. But she also is the common face of female incarceration and the impacts of drug policy on women in Latin America. Her tragedy is shared by thousands of women and thousands of children who live in prison with their mothers or are in the care of other family members or public institutions.[13] These children are the invisible, collateral, forgotten face of the criminal justice system, and they face insurmountable obstacles to building up resilience, trust, and opportunities. Often facing stigma at school and in their communities, feeling sadness, rage, distress, anguish, and some hint of hope, their life is turned upside down by their parents' incarceration. Few or no policies are aimed at these children in Latin American countries, and there is a need for meaningful interventions in the justice system and the protection of children.

The most basic realms for intervention are the drug policies themselves: heavily relying on the use of incarceration, the numbers of the war on drugs are, in fact, summed [increased?] by putting behind bars poor and socially excluded people who are jammed together in overpopulated prisons in appalling living conditions. The effective decriminalization of drug use and drug possession is the necessary first step to reduce the prison population. In the case of women accused of drug trafficking, other compelling measures are the reduction in the use of pre-trial detention, as well as in-prison sentences, the inclusion of mitigating factors, and the elimination of the legal or de facto impediments to be given a non-custodial sanction. Pregnancy or primary caregiving responsibilities should be taken into account as a mitigating factor, particularly for women accused of or sentenced for a minor, non-violent offense. The best interest of the child should be a primary consideration to be included by police, prosecutors, and courts when imposing custodial preventive measures or a conviction.

Even if there is an international acknowledgment that women in prison for drug offenses represent the intersection of punitive drug policies, gender-based violence, and the exploitation of women by criminal groups, women like Gaby are still entering prisons, often in countries which are different from their own, displaced along the routes of international drug trafficking.

NOTES

1. WOLA Washington Office on Latin America, IDPC (The International Drug Policy Consortium), CIM (The Inter-American Commission of Women of the Organization of American States), and Dejusticia, "Women, Drug Policies, and Incarceration: A Guide for Policy Reform in Latin America and the Caribbean," *Washington Office on Latin America*, 2016, https://www.wola.org/wp-content/uploads/2016/02/Women-Drug-Policies-and-Incarceration-Guide_Final.pdf.

2. Corina Giacomello, *Género, Drogas, y Prisión: Experiencias de Mujeres Privadas de su Libertad en México* (Mexico City: Tirant Lo Blanch, 2013).

3. Inter-American Commission on Human Rights, *Medidas para Reducir la Prisión Preventiva*, (Washington, DC: Organization of American States, July 3, 2017), http://www.oas.org/es/cidh/informes/pdfs/PrisionPreventiva.pdf.

4. Corina Giacomello, "Women and Drug Policies in Latin America: A Critical Review of the United Nations Resolution 'Mainstreaming a Gender Perspective in Drug-Related Policies and Programmes,'" *The Howard Journal*, 56 (2017): 288-308.

5. The part regarding Gaby's story is taken from Corina Giacomello, "The Gendered Impacts of Drug Policy on Women: Case Studies from Mexico," in *Drug Policies and Development: Conflict and Coexistence,* vol. 12 (2020), https://doi.org/10.4000/poldev.3966.

6. Gertrud Lenzer, "Violence against Children: An Analysis of Mandatory Reporting of Violence," in Wouter Vandenhole, Ellen Desmet, Didier Reynaert, and Sara Lembrechts, eds., *Routledge International Handbook of Children's Rights Studies* (New York: Routledge, 2015): pp. 276-294; Council of Europe, *Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence*, Council of Europe Treaty Series 210 (Istanbul, 2011), 11.V.2011; International Labour Office, *Worst Forms of Child Labour Convention*, no. 182 (Geneva, 1999).

7. You can watch Gaby on video: WOLA Washington Office on Latin America and EQUIS Justicia para las Mujeres, *Gaby's Story: Women Incarcerated for Drug Offenses in Mexico.* Feb. 3, 2018, https://www.wola.org/analysis/gabys-story-women-incarcerated-drug-offenses/.

8. Ibid.

9. Corina Giacomello, *Niñas y Niños que Viven en Prisión con sus Madres: Una Perspectiva Jurídica Comparada* (Mexico City: Suprema Corte de Justicia de la Nación, 2018), https://www.scjn.gob.mx/derechos-humanos/publicaciones/libros/fb/05-ninas-ninos-viven-prision-madres/II/ (accessed October 28, 2020; page discontinued).

10. Eugeen Verhellen, "The Convention on the Rights of the Child: Reflections from a Historical, Social Policy, and Educational Perspective," in Wouter Vandenhole, Ellen Desmet, Didier Reynaert, and Sara Lembrechts, eds., *Routledge International Handbook of Children's Rights Studies* (New York: Routledge, 2015): pp. 43-59.

11. WOLA and EQUIS Justicia para las Mujeres, *Gaby's Story*.

12. Ibid.

13. Corina Giacomello, *Niñez que Cuenta: El Impacto de las Políticas de Drogas sobre Niñas, Niños y Adolescentes con Madres y Padres Encarcelados en América Latina y el Caribe* (Buenos Aires: Church World Service Regional Office, 2019), http://www.cwslac.org/nnapes-pdd/docs/Estudio-Regional-Ninez-que-cuenta-web.pdf.