**UNODC submission to the Working Group on the issue of discrimination against women in law and in practice: women deprived of their liberty**

**September 2018**

The present submission is based on UNODC’s ongoing work concerning women deprived of their liberty, under its global and thematic programmes on crime prevention and criminal justice and on terrorism prevention, as well as field-based technical assistance programmes in countries where recent data and information was available (Bolivia, Mexico and Pakistan).

**I. Justice system**

**1. What are the main causes for women coming into conflict with the law and facing the associated deprivation of liberty, including pre-trial detention? Which are the groups of women who are most vulnerable and why? Please list the types of offenses for which women, or any particular group of women, are typically charged with, including administrative offenses.**

***a) Main causes for women facing the deprivation of liberty***

Increasingly punitive criminal justice policies, coupled with the economically disadvantaged status of women, have led to an increase in the number of women held in pretrial detention.[[1]](#footnote-1) In many countries the proportion of women held in pre-trial detention is equivalent to, or larger than that of convicted female prisoners.[[2]](#footnote-2)

A growing number of women are being imprisoned for offences of a minor nature, with a significant impact on the numbers of women in prison and the rate of their increase.[[3]](#footnote-3) Certain offences, such as adultery, prostitution, abortion or witchcraft, are used only or predominantly against women.[[4]](#footnote-4) Other frequent offences leading to the imprisonment of women include property crimes, such as theft and fraud, sometimes referred to as crimes of poverty.[[5]](#footnote-5)

A large number of women worldwide are imprisoned for drug-related offences. According to the 2018 World Drug report, the proportion of women sentenced for drug-related offences is higher than that of men. An estimated 35 per cent of women in prison had been convicted for drug-related offences, while the figure for men was 19 per cent.[[6]](#footnote-6) It should be noted that women involved in drug trafficking are usually minor players, their criminal offences often being an outgrowth of their own drug dependence or due to poverty and other pressures.[[7]](#footnote-7) A significant number of women are used as drug couriers to smuggle drugs across borders for small sums of money, with many of them from disadvantaged backgrounds and unaware of the risks involved and implications of the acts which they agree to perform.[[8]](#footnote-8)

Women are also increasingly coming into conflict with the law in connection with terrorism offences, with a greater number of women being arrested and prosecuted for their involvement in the commission of terrorism-related offences. This can be attributed in part due to the broadening of counter-terrorism laws to cover wider forms of support and preparatory acts, while there is also a greater understanding of the range of roles that women fulfil in terrorist groups.

Women still primarily fulfil non-violent roles in supporting the activities of terrorist groups, including by providing logistical support, financing and recruitment, and as spouses of men in operational roles. Although both men and women can become involved with terrorist groups by means of coercion, women are disproportionately more likely to be coerced into participation. Women are, however, increasingly performing operational roles to directly perpetrate terrorist violence in some groups.

Women also represent a sizeable proportion of persons who travelled to Iraq and Syria to join ISIL, the Al-Nusra Front and other terrorist groups as foreign terrorist fighters (FTFs). A 2016 UN report stated that in a study of 77 Member States most affected by the foreign terrorist fighter phenomenon, women constituted between 20 to 30 per cent of all foreign terrorist fighters.[[9]](#footnote-9) As noted in a recent report by the Egmont Institute on responses to the FTF phenomenon in Belgium, Germany and the Netherlands, female returnees were generally not prosecuted between 2013 and early 2015, but as the perception of the potential threats posed by returning FTFs increased, female returnees also began being systematically prosecuted.[[10]](#footnote-10)

Evidence indicates that women prisoners have been victims of violence at a much higher rate prior to entering prison than is generally acknowledged.[[11]](#footnote-11) Account should also be taken of the fact that a significant proportion of women who commit violent offences commit them against their husbands or partners in response to systematic abuse.[[12]](#footnote-12) In some countries, victims of violence are placed in “protective custody” instead of being provided with shelter and other appropriate services.[[13]](#footnote-13)

***Bolivia***

In Bolivia, 39% of women deprived of liberty are imprisoned for the commission or alleged commission of crimes related to controlled substances.[[14]](#footnote-14)

***Mexico***

According to the National Institute of Statistics and Geography, the increasing numbers of women who are being incarcerated in Mexico can be explained as a consequence of the change in gender dynamics in the country. In this aspect, the Institute considers that the incursion of women into public life has diversified the nature of the crimes committed by women.[[15]](#footnote-15) Previously, women’s criminal trend was reduced to those offenses related to activities of the private sphere. As of 2016, the trends on offenses committed by women in the country focused in crimes that happened in the public sphere.

Additionally, the involvement of women in drug trafficking has expanded in recent years. In Mexico, there are strong economic, cultural and political factors that shape the way women relate to organized crime and drug smuggling. Aspects as the feminization of poverty or the emotional association with drug cartel members trigger women to participate as mules in the drug smuggling chain.[[16]](#footnote-16)

The official figures on women’s criminal trends up to 2014 reported that the offenses with the highest rate on commission were: drug-related offenses 2,276; theft 2,170; kidnapping 1,134; homicide 1,029; offenses related to organized crime 611; fraud 240; assault and battery 227; domestic violence 108 and crimes related to use of firearms reserved for use by the military 388.[[17]](#footnote-17)

The increasing numbers on incarcerated women for drug-related offenses in Mexico has been documented by diverse civil society organizations. The Washington Office on Latin America coordinated a report on this issue, referring that between 2013 and 2014, out of the total female federal prison population, 44.8% were incarcerated for drug-related crimes and in the local prison systems, these types of offenses reached the 14.2 % of the local prison systems for women.[[18]](#footnote-18)

***b) Groups of women who are most vulnerable***

Pregnant women, breastfeeding mothers and mothers with dependent children (in and outside prison), as well as women in pre-trial detention and foreign, minority or indigenous women are among the most vulnerable groups of women deprived of liberty, whose situation is specifically addressed in the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules).[[19]](#footnote-19)

Research indicates that, worldwide, the majority of women prisoners are mothers, and that their imprisonment more frequently leads to family break-up and placement of children in alternative care than in the case of imprisonment of fathers.[[20]](#footnote-20) In prison, pregnant women rarely receive adequate ante- and post-natal care or food meeting their nutritional requirements and often face poor hygiene and staff with inadequate medical expertise during childbirth.[[21]](#footnote-21) In the majority of countries, mothers can keep their babies with them in prison up to a certain age, which means that large numbers of children spend years in prison and are separated from their mothers at some point, with traumatic and long-term effect on both the children and their mothers.[[22]](#footnote-22)

In addition to the particular risk of abuse that women face in pre-trial detention, they are often held in a higher security level than necessary, due to the limited number of women’s prisons, and it has been noted that such conditions have a particularly harmful impact on women, who experience high levels of distress when placed in high security conditions, including restrictions on visits from families.[[23]](#footnote-23) Women detained in relation to “reproductive crimes” may be at heightened health risks during pretrial detention, having recently experienced pregnancy, abortion, miscarriage or delivery in health- and possibly life-threatening circumstances.[[24]](#footnote-24)

Foreign national women prisoners, especially those non-resident in the country of imprisonment, are likely to be more susceptible than other women to the distress of isolation, to have little or no contact with their family and children and to be isolated due to language barriers.[[25]](#footnote-25) Their vulnerability is increased by factors such as limited understanding of the legal system, lack of information about the precise charges against them, and the sentence they face, and problems with accessing appropriate legal counsel, as well as prior experiences of violence and abuse, for example as victims of human trafficking or as migrant domestic workers.[[26]](#footnote-26)

In the context of counter-terrorism, there are some cases of women who are not themselves suspected of committing terrorism-related offences but are detained by criminal justice authorities. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has observed that “women (and children) not suspected of terrorism-related offences are unlawfully detained and ill-treated to either gain information about male family members or to compel male terrorism suspects to provide information or confessions”. [[27]](#footnote-27) In other cases, female relatives who have called for the release of male family members held in custody on terrorism charges have been subject to detention and ill-treatment. As noted by the Working Group on Enforced or Involuntary Disappearances, “women are “most often at the forefront of the struggle to resolve the disappearances of members of their family, making them susceptible to intimidation, persecuting and reprisals”.[[28]](#footnote-28)

***Bolivia***

In Bolivia, the most vulnerable women deprived of liberty are:

a. Indigenous women. Their vulnerability lies in the absence of family support, due to the remoteness of their places of origin. Language is another factor that prevents them from communicating and understanding their judicial process. The lack of economic resources prevents them from hiring a lawyer.

b. Pregnant women and/or with children. Even though laws indicate that justice operators can apply alternative measures to the deprivation of liberty of pregnant women, this rule is not observed. In Bolivia, children are allowed to stay with their mothers deprived of their liberty until they are 6 years old.[[29]](#footnote-29) The precarious situation of prisons also affects children who live with their mothers.

c. Women with HIV/AIDS, or with chronic diseases. The prison administration lacks medication and there are difficulties for health care, especially for women who have chronic diseases.

There are other women in situations of vulnerability, such as: women with different sexual orientation, older adults, foreigners, adolescents, etc.

***Mexico***

In the present section, the demographic characteristics of women deprived of their liberty are detailed in order to identify the groups with the highest trends in incarceration. The initial premise is that incarceration has higher rates in younger women and women with the lower levels of education.

*Demographic characteristics of women deprived of their liberty in local prison systems in Mexico[[30]](#footnote-30)*

|  |
| --- |
| **Age** |
| Not identified | 1.7 % |
| 60 or more | 2.4 % |
| 50-59 | 7.6 % |
| 40-49 | 19.7 % |
| 30-39 | 32. 1% |
| **18-29** | **36. 4 %** |

|  |
| --- |
| **Level of education**  |
| Master’s degree  | 0.1 % |
| Not identified  | 2.1 % |
| Technical education | 3.3 % |
| Bachelor’s degree  | 5.7 % |
| None | 11.9% |
| Higher education | 13.3 % |
| Primary education | 26.6 % |
| **Middle** **Education** | **37 %** |

|  |
| --- |
| **Leve of literacy** |
| Not identified | 2.6 % |
| Illiteracy  | 7.1 % |
| Literacy | 90. 3 % |

|  |
| --- |
| **Nationality**  |
| Foreigner  | 1.5 % |
| Mexican  | 98.5 % |

**2. Please indicate if there are cases of women facing detention in relation to civil law suits and identify the particular groups of women mostly affected.**

 ***Bolivia***

The General Directorate of Penitentiary Regime lacks statistical data differentiated by gender regarding deprivation of liberty for civil reasons.

***Mexico***

The Constitution of Mexico establishes that: *“no one may be imprisoned for debts of a purely civil nature”[[31]](#footnote-31).* In this regard, the detentions related to civil law suits are not a relevant issue in the penitentiary system in the country.

**3. What are the main challenges for women’s access to justice, including, for example, the availability and quality of legal representation, the ability to pay for bail, and the existence of gender stereotyping and bias in judicial proceedings?**

Women in conflict with the law experience a range of challenges in accessing justice across the different stages in the criminal justice continuum.[[32]](#footnote-32)

|  |  |
| --- | --- |
| Stage in the criminal justice continuum | Challenges |
| Prevention | • Unique experiences of women, including victimization, are not considered in national crime prevention policies.• Criminal laws may codify as crimes acts that implicate only or mostly women. |
| Initial contact | • Women, especially, may suffer from illiteracy and lack the necessary knowledge (i.e., about their legal rights) and experience to understand and navigate the criminal justice system.• Women may have limited financial or other resources to effectively navigate the system, including meeting bail and financial requirements of sureties.• Women with childcare responsibilities will be most affected by a decision to arrest. • Legal aid or legal advice are not available in most cases at this stage and women may be unable to afford commercially obtained legal services. • Women who have been arrested or detained may be at risk of sexual and other forms of violence from State officials. |
| Investigation | • Most police officers are male and/or are not trained in gender-sensitive interrogation techniques.• Suspects and accused persons are at greatest risk of torture or other forms of ill-treatment, ranging from neglect and demands for bribes to coerced confessions and unlawful detention.• Illiterate women are more susceptible to coercion and under such situations, the risk of signing statements that have serious legal implications |
| Pre-trial | • Similar to those at the point of initial contact, women in pretrial detention are at risk of sexual violence and other forms of abuse. • Women who are held in pretrial detention suffer trauma due to the likelihood of losing their jobs and family contact being interrupted.• At this stage, accused persons may not have access to legal advice or representation before trial, thereby missing out on the opportunity to be well prepared. • Women may require comprehensive legal aid services to address their needs holistically (in criminal, civil and family matters).• Pretrial detention periods can be unnecessarily long, subjecting women to additional socioeconomic consequences, which impact their families as well. |
| Trial | • Lack of legal representation can lead to limited chances of being considered for bail.• Backlogged judicial systems can lead to slow trials and lengthy detention.• Judges do not sufficiently rely on social services reports to identify mitigating circumstances for women offenders.• As a result, judges are often not aware of women’s relevant history and background (e.g., history of abuse or violence) and do not apply alternatives to imprisonment even when appropriate. |
| Post-trial | • Imprisonment creates unique challenges for women (e.g., gender-specific hygiene and health-care needs), with pregnant women and women with children being particularly affected.• Women are stigmatized and may suffer rejection by their families and communities.• Women prisoners are at a heightened risk of sexual violence and other forms of abuse. • Women who have been imprisoned experience difficulties in finding housing and jobs, reuniting with family members and in particular with their children. • There is an overall lack of access to post-release care and follow-up that is suited to address women’s mental health and other complex needs. |

***Bolivia***

In Bolivia, 70% of women deprived of their liberty have not been sentenced. Considering that preventive detention can last up to 3 years, it is necessary to strengthen the judicial system to reduce the slowness of justice, promote viable hearings and increase the number of justice operators, among other measures. The majority of women deprived of their liberty lack economic resources, which means that hiring of a lawyer is almost impossible for them, as for many sectors of the population. It should also be considered that the majority of women in conflict with the law in Bolivia commit non-violent crimes of low social relevance, but play a leading role in their homes or the children at their care. It is thus necessary for justice operators to incorporate a gender-sensitive approach into their work and decisions, taking into account the particularities of women, and to strengthen access to non-custodial measures, especially for pregnant women, women with small children and women with chronic diseases, among others.

***Mexico***

There are great challenges in the due process arena within the Mexican judiciary system. According to the first Mexican National Prison Population Survey (ENPOL), in 2016, only 19.8% of all the inmate population in the country was able to contact a lawyer at their first hearing at the Prosecutor´s office, and only 67.6% of this population was aware of the terms of their formal accusation[[33]](#footnote-33) (the survey doesn´t include these numbers disaggregated by gender).

*The ability to pay for bail in Mexico*

The ongoing criminal justice reform process in Mexico seeks to use pretrial detention as an exception. In the traditional criminal justice system, based largely on written documents, there was an excessive use of pretrial detention and judicial review in a criminal court was not mandatory in all cases. The main alternative to pre-trial detention was monetary bail (libertad bajo caución), affecting women who were not able to pay for bail. In the new criminal justice system, in compliance with the presumption of innocence principle, the criminal judge, in charge of detention control, rules on the application of pretrial detention or in cautionary measures to ensure the accused presence in the proceedings and the remedies for victims of crime.

As an example, article 138 of the National Criminal Proceedings Law established new measures to ensure victim’s rights to remedies and reparations, such as bank account garnishments. Additionally, article 155 contains a catalogue of precautionary measure that may substitute the appliance of pretrial detention; one of these measures is the exhibition of an economic warranty. Currently, the available official data doesn’t include figures by sex or type of measures applied. However, the Federal Prosecutor´s office, in an official press release, referred that: *“since the implementation of the new criminal justice system, in 2008, 2,362 cautionary measures had been granted, avoiding people from going to prison”[[34]](#footnote-34).*

*The existence of gender stereotyping and bias in judicial proceedings in Mexico*

In the “Cotton Field” case the Inter-American Court of Human Rights analyzed a situation of gender-based structural violence. The case stemmed from *“the assassination of three women, in three separate incidents, who were all found dead in the same cotton field in Ciudad Juárez”.*[[35]](#footnote-35) In the judicial proceedings of these gender-related killings, the authorities responded ineffectively and indifferently blaming the victims and using gender stereotypes. After analyzing the situation, the court attributed international responsibility to the State based on the lack of due diligence in the prevention and investigation of this acts. The decision was important to illustrate the structural causes of discrimination against women in Mexico and to unblock the debate on the need to enforce the legal system in crimes against women. In this aspect, the ruling of the court determined that the state had as an obligation to standardize its current protocols to adequately address human rights violations against women.

In compliance with the cited ruling of the Inter-American Court of Human Rights, the Mexican Supreme Court created a special protocol on gender mainstreaming for magistrates and judges in the republic.[[36]](#footnote-36) One of the objectives of the instrument is to eradicate gender stereotypes and prejudges in the judicial decision-making process.

***Pakistan***

In Pakistan, women face challenges in relation to access to legal aid and basic living facilities within prison settings, as well as the fact that alternatives to imprisonment are insufficiently used. While the total female prison population and the percentage of women in the total prison population have remained low (below 2.1 per cent) over the past decade, untried women make up 68 per cent of the female prison population, which is slightly higher than the proportion of untried men among the male prison population (66 per cent).[[37]](#footnote-37) Broader and related challenges exist in relation to persisting levels of gender-based violence against women and girls. The main challenges in this regard include the following:

• Child marriage remains a serious concern in Pakistan, with 21 percent of girls marrying before the age of 18;

• Violence against women and girls—including rape, murder through so-called honor killings, acid attacks and domestic violence;

• Pakistani law allows the family of a murdered victim to pardon the perpetrator. This practice is often used in cases of “honor” killings, where the victim and perpetrator frequently belong to the same family despite the 2004 Criminal Law (Amendment) Act made “honor killings” a criminal offense, but the law remains poorly enforced;

• Limited access to political participation remains a challenge for ordinary women;

• Access to basic education, health services is the foremost challenge in country.

However, a number of good practices and reform efforts have been identified, particularly in Punjab Province. The Punjab Protection of Women Against Violence Act, passed in February 2016, aims to eliminate injustice against women by catering to all forms of violence against women including: sexual violence, domestic violence, psychological abuse, economic abuse, stalking and cybercrime. Another key piece of legislation is the Punjab Women Protection Authority Act 2017. Violence Against Women Centers (VAWCs) are being established as the converging point for all essential services to ensure justice delivery to victims of violence including police and prosecution services, medical examination, collection of forensic and other evidence, provision of psychological support and rehabilitative services. The first VAWC constructed at Multan, has been operational since 25 March 2017. A chapter on Violence Against Women is to be included in Pakistan Studies textbooks of classes 9-12 grades. Legislation on the establishment of a dedicated Women Protection Authority to manage the operations of VAWCs across Punjab was passed on 24 May 2017. The “Women-on-Wheels” campaign for the provision of free motorcycle trainings to the women of Punjab was implemented, followed by a rally on a pre-specified road in Lahore, Sargodha, Faisalabad, Multan and Rawalpindi. Subsidized motorbikes scheme for graduates of the Women-on-Wheels programme are expected to be launched on the Women-on-Wheels Mega Rally scheduled to be held next year. A Street Theatre Campaign, in collaboration with UN Women, was held to raise awareness regarding women empowerment and the challenges faced by women in the 16 days of gender activism 2016. A Women Safety Smart Phone Application was launched in collaboration with Punjab Safe Cities Authority and the Punjab Commission on the Status of Women.

The main recent developments in other provinces focused on legislation. In Sindh Province, for the first time in the country’s history, marriage laws for millions of Hindus living in Sindh were codified after the Sindh Assembly approved the Hindu Marriage Bill, 2016. In Balochistan Province, the Balochistan Protection Against Harassment of Women at Work Place Act was passed. In Khyber Pakhtunkhwa Province, a law on enforcement of women ownership rights was enacted in 2012.

**4. What have been the main drivers for the increasing or decreasing of the female prison population in your country in the past decade? To what extent are non- custodial measures used, in accordance with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules)?**

The extent to which non-custodial measures are used worldwide is uneven and insufficiently documented. While available information indicates that many countries make insufficient use of the non-custodial measures envisaged in the Bangkok Rules, there are some examples of promising practices:[[38]](#footnote-38)

* *Alternatives to pre-trial detention for* *pregnant women or mothers with dependent children*. In February 2018, the Brazilian Federal Supreme Court decided to grant women currently in pretrial detention and place them under house arrest instead. This decision applies to all women prisoners in the national territory who are pregnant or mothers of children up to the age of 12 or persons with disabilities.
* *Gender-specific mitigating circumstances*. In Costa Rica, the drug law (no. 8.204 of 2013) allows judges to impose shorter prison sentences or alternatives to imprisonment for the crime of bringing drugs into prisons, where the offender is a woman who is (a) living in a situation of poverty, (b) head of the household in a situation of vulnerability, (c) responsible of minors, elder people or people with any kind of disability or dependence, or (d) an elder person in a situation of vulnerability. In Armenia, gender-specific mitigating circumstances include caring for a child under 14 years of age or being pregnant at the time of sentencing (Criminal Code, article 62).
* *Non-custodial sentences for pregnant women or mothers with dependent children*. The criminal code of the Russian Federation (article 82) and Armenia (article 78) allow for the deferral or cancellation of prison sentences, with the exception of those women sentenced to over 5 years imprisonment for serious crimes. The maximum age of their dependent children varies from under 3 years (Armenia) to under 14 years (Russian Federation). In Argentina, a new law (no. 26.472 of 2009) allows judged to order that mothers with children under five years or with caring responsibilities for persons with disabilities serve their sentences at home under house arrest.
* *Suspended sentences in the best interests of the child*. In the case of “M v. The State”, the Constitutional Court of South Africa suspended the prison sentence of a mother and sole caregiver of three minor children, considering the negative effects of a mother’s imprisonment on child development (loss of home and community, disruption in school routines and transportation, and potential separation from their siblings) and stressing that the best interests of the child must be considered in proceedings that could have an impact on their lives.

A wide scope remains for the use of non-custodial measures in terrorism cases, ranging from pre-trial to post-trial dispositions, including for women who are accused or convicted of terrorism offences, in line with the Tokyo Rules and the Bangkok Rules. However, States have conventionally declined to consider or given little consideration to non-custodial measures in terrorism cases. This may be attributed to a range of factors, including the threat posed by terrorism to society, the long sentences available for terrorism offences upon conviction, and the perception of the threat posed by terrorist offenders.

In some States, there is no scope in domestic law to enable prosecutors and judges to facilitate alternatives to pre-trial detention for any person suspected of committing a terrorist offence. Minimum terms of imprisonment also restrict the ability of judges to impose lesser or non-custodial sentences. This may particularly affect offenders with reduced culpability; certain categories of offenders, such as first-time offenders who were not directly involved in any acts of violence; individuals who became associated with terrorist groups under various forms of coercion; or individuals who would pose a low risk to their communities if released. Alternative measures are also particularly appropriate for women offenders, in certain circumstances, as they are often more likely than men to be first time, low-risk offenders who acted in non-violent support roles.

***Bolivia***

Since 2010, approximately, an increase in the prison population has been registered in Bolivia, mainly due to the enactment of laws that create new types of crime, but also due to the increase in penalties and the restriction on the use of non-custodial measures to the deprivation of liberty.

Existing regulations provide for the application, to the extent possible, of non-custodial measures that substitute the preventive detention of pregnant women. However, justice operators have the power to decide on the deprivation of liberty of a person, and prosecutors often put the burden of proof on the indicted. In the case of women, they do not consider their specific needs and particularities as women in charge of their homes and as mothers. The situation of poverty in which they live prevents them from having a proprietary registry or a rental contract, and therefore they cannot demonstrate arraigo[[39]](#footnote-39) when a risk of escape is presumed.

Since 2012, 6 decrees of pardon and amnesty were implemented, which mainly benefited women and other vulnerable groups. To date, 1,472 women and 4,609 men have benefited from this amnesty.

***Mexico***

*The criminal justice system reform in Mexico and its effect on the female prison population*

The constitutional amendment of 18 June 2008 had as main objective to transform the criminal justice system. Previously, Mexican criminal justice operated on the basis of a procedure based mainly on written documents. This amendment shifted the system to an adversarial, oral-based model in which the prosecutor’s office and the defense attorney present their arguments in an open court. In order to ensure that this new criminal justice system was fully operational in all the local jurisdictions, the reform granted an eight-year term for the 32 states of the country to adequate their local laws, provide training to judicial operators and build the corresponding facilities for the new criminal proceedings.[[40]](#footnote-40)

Under this reform, there is an enforcement of human rights protection along the judicial proceeding by the adoption of diverse strategies like alternative measures to pretrial detention, alternative case resolution methods and the possibility of a more active participation of victim’s defense lawyer.[[41]](#footnote-41) The structure of the courts drastically changed in this transition to the oral-based system. While in the previous system, a criminal court judge was in charge to conduct all of the stages of a criminal proceeding, the new model consolidated three types of judges that intervene in the proceedings. First, one of the judges (juez de control) has as mandate to ensure that human rights are protected along the investigation. Second, a judge or a set of 2 or 3 judges presides the hearing in the judicial proceeding. Finally, the third judge (juez de ejecución) supervises that sentences are enforced.

Concerning the main changes in the use of pretrial detention, it’s important to remark that one of the pillars of the reform is to reduce overcrowding in prisons in the country. The amendment to article 19 of the constitution consolidated pretrial detention as an *ultima ratio* instrument and limited the maximum validity of the measure to a one-year term[[42]](#footnote-42). From a general approach, the implementation of this new criminal justice system had as an effect the decreasing of prison population in the country. In this aspect, in 2016, a study of the National Institute of Statistics and Geography highlighted that the female prison population in Mexico decreased to a total of 9,627, compared to 11,327 in 2015.[[43]](#footnote-43)

However, in order to apply a gender-analysis framework in this incarceration pattern in Mexico, it´s relevant to consider the growth rates in the Mexican prison systems in the past years. It must be remarked that there was a difference among genders in relation to the growth rate in prison population. Between 2010 and 2015 this rate was higher in women, reaching a 56% growth of population, compared to a 17% in male population. A first method to approach this gendered effect is to consider the offenses with higher growth rates committed by women, such as activities related to organized crime. In these crimes, the Mexican legislation establishes several limits to the safeguards and due process provisions established in the new criminal justice system.[[44]](#footnote-44)

*Exceptions to safeguards and due process for criminal activities related to organized crime in Mexico*

Mexico´s drug policy is a justice and public safety strategy that focuses in strengthening the law enforcement in the prosecution of organized crime, traffic and production of illicit drugs. Since 2008, there were important legislative changes in the country that had as objective the deployment of military, federal and security forces in a the fight against organized crime and drug smuggling.[[45]](#footnote-45)

First, the Drug Trafficking Act (Ley de Narcomenudeo) shifted many federal laws into a model in which federal and local jurisdictions were able to prosecute drug-related offenses.[[46]](#footnote-46) Second, the reform to the Criminal Procedure Code (Código de Procedimientos Penales) established a regime of exception to prosecute organized crime activities, granting the authorities a broad margin to limit the rights of the accused.[[47]](#footnote-47) Third, although the aforementioned criminal proceedings constitutional reform is a key element in the consolidation of guarantee-based justice system, it is also true that the amendment contains certain clauses that validate the due process limitations in relation to organized crime offenses. As a result, these measures include:

*“detention (up to 80 days of retention without an accusation), extended detention (up to double the ordinary), carrying out sentences in special centers and in incommunicado, special surveillance measures, preventative detention, full probative value of investigation, the unawareness of the accuser, and the annulment of ownership”.[[48]](#footnote-48)*

As mentioned previously, the rate of female incarceration for drug trafficking-related crimes has increased in the past years. Although the general female prison population has decreased since 2016 in Mexico; the patterns in female imprisonment for these offenses reflect a consistent growth. For instance, the growth rates in these cases were: 15.75 % in 2015 and 8.9 % in 2016 in the federal prison system; in the local prison systems the figures are: 72 % in 2015 and 103.3 % in the past two years.[[49]](#footnote-49)

In the past ten years, the growth rate on female incarceration was higher for drug-related offenses. A specific regime of exception applies to these crimes; within this model, pretrial detention is mandatory in organized crime-related activities. Women are disproportionally affected by this use of pretrial detention; some authors described this issue as a “gendered collateral consequence of the war on drugs”[[50]](#footnote-50). In this context, it is necessary to monitor and evaluate the effects of the current legal framework in order to review the possibility to implement less prejudicial interventions.

*Non-custodial Measures for Women Offenders in Mexico*

The Mexican National Code of Criminal Procedures establishes a good practice in the use of non-custodial measures in pretrial detention. The Mexican government created a special precautionary measure unit designated to evaluate and supervise the aforementioned proceedings. These measures have a high level of compliance. Regarding this practice, the Inter-American Commission on Human Rights stated that this disposition, in general, meets international standards.[[51]](#footnote-51)

*Specific situation of women who live with their children in Mexico*

Article 10 of the National Execution of Judgments Act in Mexico considers a gender mainstreaming approach by establishing a catalogue of the specific rights of women deprived of their liberty. As an example, this Act grants a special protection for pregnant women and children who live with their mothers.

In Mexico, the age of children to live with their mothers has oscillated between 0 to 6 years. The 2016 reform to National Execution of Judgment Act limited the range of age of children until 3 years old, only in cases in which children are born within correctional facilities. The term can be extended in cases of children living with disabilities, according to the fraction I of article 36 of the cited law. The Human Rights National Commission considers this provision as a discriminatory treatment, because it excludes those children born outside of the correctional facilities.[[52]](#footnote-52) The following chart contains the detailed data of children who live with their mothers in local prisons and 1 federal prison until 2016:

|  |
| --- |
|  **Children who live with their mothers in prison** |
| Nº | State | Prison system´s capacity | Female prison population | Women who live with their children | Children who live with their mothers in prison |
| 1  | Aguascalientes | 120 | 108 | 2 | 2 |
| 2 | B.C. Sur | 65 | 80 | 7 | 7 |
| 3 | Chiapas | 322 | 301 | 21 | 23 |
| 4 | Chihuahua | 407 | 394 | 18 | 18 |
| 5 | Coahuila | 168 | 133 | 1 | 1 |
| 6 | Colima | 173  | 146 | 6 | 6 |
| 7 | México City | 1,924 | 1,907 | 98 | 102 |
| 8 | Durango | 171 | 230 | 13 | 13 |
| 9 | Guanajuato | 519 | 230 | 4 | 4 |
| 10  | Guerrero | 291 | 322 | 48 | 53 |
| 11 | Hidalgo | 174 | 293 | 20 | 22 |
| 12 | Jalisco  | 388 | 693 | 13 | 13 |
| 13 | México | 1,660 | 1,660 | 49 | 49 |
| 14 | Michoacán  | 272 | 286 | 12 | 12 |
| 15 | Morelos  | 186 | 238 | 17 | 18 |
| 16 | Nayarit | 182 | 171 | 18 | 18 |
| 17 | Nuevo León  | 412 | 484 | 56  | 74 |
| 18 | Oaxaca  | 253 | 222 | 11 | 12 |
| 19 | Puebla  | 417 | 576 | 12 | 12 |
| 20 | Querétaro | 287 | 144 | 2 | 2 |
| 21 | Quintana Roo | 180 | 199 | 11 | 11 |
| 22 | San Luis Potosí | 140 | 143 | 4 | 4 |
| 23 | Sinaloa | 454 | 266 | 9 | 10 |
| 24 | Sonora | 638 | 478 | 9 | 10 |
| 25 | Tabasco | 240 | 209 | 11 | 11 |
| 26 | Tamaulipas | 356 | 371 | 47 | 48 |
| 27 | Tlaxcala | 100 | 70 | 2 | 2 |
| 28 | Veracruz | 534 | 413 | 44 | 47 |
| 29 | Yucatán | 363 | 61 | 1 | 1 |
| 30 | Zacatecas | 144 | 83 | 2 | 2 |
| 1 | Federal prison of the state of Morelos | 2528  | 1349 | 11 | 11 |
| **Total:** | 15,297 | 13,320 | 579 | 618 |

Source: Human Rights National Commission, *Special report on the situation of children who live with their mother in correctional facilities of the Mexican republic* (2016)

**II. Other institutions**

**1. What other institutions outside the justice system exist in your country wherein women and girls are institutionalized on grounds such as care, correction, protection and prevention against potential harms, etc.? Please list the groups of women and girls who are most concerned in each situation.**

Women are also amongst those deprived of their liberty outside the context of the criminal justice system for security purposes, including in relation to terrorism. In some States, military and other authorities screen large groups of people who have surrendered to them or were apprehended in the course of counter-terrorism operations in order to conduct a risk assessment for release back into the community.[[53]](#footnote-53) This screening may result in deprivation of liberty. In other cases, women and girls who were formerly associated with terrorist groups are amongst those held in de facto administrative detention as the result of being subjected to de-radicalisation programmes. This may amount to a deprivation of liberty where participation in these programmes is compulsory and participants are not free to leave, or where participation was initially voluntarily, but their freedom of movement is restricted. Women and girls, who are more often considered to present a lower risk, and who may not be considered for prosecution, can be particularly affected by the practice of administrative deprivation of liberty for purposes of “de-radicalization”.

***Bolivia***

Bolivia does have centers/shelters for abandoned children, orphans, victims of violence, etc., which are run by local and departmental governments. Other centers run by private entities such as churches, civil organizations, etc., also exist throughout the country. The following is an excerpt taken from the 2017 publication “Bolivian Judicial System: State-of-the-art, good practices and recommendations for the sector with a human rights approach”:[[54]](#footnote-54)

“The fourth periodic report sent by the Plurinational State of Bolivia to the Committee on the Rights of the Child (CRC) contains information from 2006, 2007 and 2008, indicating that within the last two years, 233 reception centers were identified, housing 19,118 children and adolescents.

The institutionalization of children and adolescents, understood as a measure of protection against the violation of rights by the family group or by those responsible for childcare, has become another factor of vulnerability for children deprived of parental care for more than three years and, in some cases, until they reach the majority of age (…)

Regarding compliance with the Guidelines on alternative modalities of child care, the ‘Study on the situation of girls, boys and adolescents deprived of parental care residing in shelters in Bolivia’ (carried out by the Ministry of Justice with support of UNICEF) concludes that the system suffers from the following problems:

Regarding the process of evaluation and periodic review of institutionalization: The right to due process of children and adolescents in shelters in Bolivia is being violated, because the vast majority of these, once sheltered, have no determination of their legal status; although most of them received a foster care order granted by the Court for Children and Adolescents, as the norm establishes, their legal situation is not regularized afterwards.”[[55]](#footnote-55)

***Mexico***

*Gender-based violence interventions in Mexico*

The public shelters for women who suffered gender-based violence in Mexico are not part of the judiciary system. These spaces seek to provide women with a support structure so that the victims don’t have to face the dangers in returning home with their assailants. Also, the shelters offer multidisciplinary services within their facilities, such as legal advice, psychological treatment medical care and accommodation for their children.

In Mexico, the National Shelter Network encompasses 31 shelters that are currently functioning under the state’s administration; there is at least one shelter for women in each state of the republic. These establishments operate under the federal Programme to Prevent, Address, Punish and Eradicate Violence against Women. Under this system the shelter´s operators receive adequate training and courses on strategies for victim’s assistance, such as legal aid, legal counsel, support in compiling evidence, and psychological support [[56]](#footnote-56)..

Despite the advancements on the gender-based violence legal framework, some limitations still prevail in the adequate functioning shelters for victims of gender-based violence. For instance, women can only remain for three months in the facilities and their children can only stay with them if they are 6 years or younger. Also, the National Shelter Network referred that there are difficulties that diminish the quality of services provided, such as threats from drug cartel to victims inside the shelters and government budgetary cuts[[57]](#footnote-57).

*Drug rehabilitation centers for women in Mexico*

It has been documented how drug treatment for women in public health institutions can have inconsistencies with international human rights law standards. Many of the facilities have used their mandate with extensive power to arbitrarily deprive people of their liberty. In spite of the fact that the Mexican legislation establishes that people may only be treated with informed consent, in many of these cases this normative disposition doesn’t have an effective compliance.

The situation is worse in the private treatment facilities; wherein the state´s supervision might be discretionally applied. As an example, an Open Society study reports that, in 2013, the government unit responsible for certifying drug treatment facilities only certified ten per cent of the total amount of centers in the country[[58]](#footnote-58).

**2. Please explain the decision-making process for the institutionalization of women and girls in each situation, including the role of women and girls themselves in the decision on institutionalization. Please highlight any good practices in terms of enabling women to exercise agency within institutional systems, with due respect to their rights?**

***Bolivia***

Girls are institutionalized because they are in a risky situation, such as abandonment and violence. The process of institutionalization is as follows:

a) The local or departmental entity that has knowledge of a case of abandonment or violence, initially houses the girl.

b) The local or departmental entity brings this case to the attention of the Judge for Children and Adolescents, to legalize the institutionalization.

c) A file of the case is opened and addressed according to its particularities. Competent authorities must coordinate the attention to each case.

d) If the girl is abandoned, a legal process is initiated. The girl can be adopted later.

e) Common reception centers exist until kids reach 8 years old. Subsequently, they are separated according to their sex to other centers until they turn 18 years old.

 ***Mexico***

When it comes to the decision making for women who enter shelters for gender-based violence victims, informed consent is granted in the national legislation. Article 59 from the General Law on Women’s Access to a Life Free of Violence establishes that: “in no case may the victims be kept in the shelters against their will”.

In the issue of drug rehabilitation treatment, health services for the use of drugs must operate in Mexico under the "Official Mexican Standard NOM-028-SSA2-1999 for the prevention, treatment and control of addictions." This indicates that admission must be "strictly voluntary" and that the actions of the rehabilitation centers should be focused on reducing the risks due to the use or abuse of drugs, but also on "increasing the physical, mental and social well-being level" the users.

Nevertheless, there are some considerable challenges remaining to adequately comply with the “Official Mexican Standard NOM-028-SSA2-1999”. A local study in Baja California referred that of all the drug rehabilitation facilities in the state, 4 out of 10, accept patients without their consent[[59]](#footnote-59). In addition, some experts in Mexican drug policy had documented that private drug rehabilitation centers have operated committing abuses against their patients such as involuntary and prolonged confinement[[60]](#footnote-60).

**III. Forced confinement in private contexts**

**1. What forms of forced confinement of women and girls exist in a private or social context sanctioned by family, community or group of individuals such as abduction, servitude, guardianship and “honor” practices, trafficking, home detention, “witch camps”, widowhood rites, etc.?**

***Bolivia***

In the Bolivian rural area, traditions like the "Sirwiñakuy" still exist. This Aymara word means free union or trial marriage. This custom refers to the "consensual abduction" performed by a man to a woman, taking her to live with him. There are no records on the number of cases of this tradition.

Another tradition is the “padrinazgo,” which refers to the situation when parents living in the rural area send their children or youth to their godparents, who usually live in cities. The idea is that the latter take charge of education in exchange of labour by the minors. This practice can lead to cases of human trafficking, labour exploitation, sexual exploitation, etc.

These traditional practices are nonetheless decreasing in number as years pass by.

 ***Mexico***

Human trafficking is a growing problem in Mexico and Central America. The delicate situation on the Mexican northern border and the hand-in-hand operation of human traffickers with organized crime have led to exponential increases in the numbers of these types of offenses. Women and children are exposed exploitation in forced labor activities such as domestic servitude, child care, mining, agriculture and forced begging. In this context, traffickers associate romantically with women or use fraudulent labor offers to recruit victims into sex trafficking. It is also important to highlight that: *“in 2015, Mexico was the primary country of origin for foreign trafficking victims certified as eligible to receive U.S. assistance”.*[[61]](#footnote-61)

The official data indicates that, between January 2010 and July 2013, 1,629 persons have been identified as human trafficking victims[[62]](#footnote-62) (the study doesn’t include these number disaggregated by gender). The following states registered the highest rate in victims of these offenses:

|  |  |
| --- | --- |
| State | Number of victims of human trafficking  |
| Chiapas  | 332 |
| Jalisco  | 283 |
| Puebla  | 257 |
| Mexico City | 212 |
| Baja California  | 136 |
|  Oaxaca  | 86 |

Source: Rivas Rodríguez, Francisco Javier, “Estadísticas sobre la procuración e impartición de justicia en el combate a la trata de personas en México” (México, INEGI: 2015)

**2. Please identify the groups of women and girls who are most affected by these situations.**

***Bolivia***

The most affected victims are young girls and adolescents who are used as nannies, domestic workers, etc.

 ***Mexico***

The groups who are most affected by these situations are women experiencing high levels of poverty, indigenous population and immigrants from the northern triangle. In general, women suffer a higher level of victimization in these types of crimes. The U.S. Office to Monitor and Combat Trafficking in Persons, in its 2017 report, identified that women were disproportionally affected by these offenses. The report describes that the number of victims of human trafficking decreased in 2016, in contrast with 2015. However, the U.S. office considered that this situation can explained by a decrease in protection services provided by the government. In this aspect, the office determined that victim identification is a serious problem in the country and highlighted that there is a protocol for this issue but that it has not been implemented.[[63]](#footnote-63)

**Types of human trafficking in México**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Year | Sex trafficking  | Forced labor | Forced criminality  | Slave-like conditions | Slavery | Forced begging | Total |
| 2016 | 706 | 15 | 14 | 2 | 1 | 1 | 740 |

Source: Trafficking in Persons Report (Department of State, 2017).

**Statistics disaggregated by sex and age**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Sphere of govt. | Year | Children  | Adults | Total  |
| State  | 2016 | 173 | 518 | 691 |
| Federal | 2016 | 58 | 136 | 194 |

Source: Trafficking in Persons Report (Department of State, 2017).

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Sphere of govt. | Year | Male victims | Female victims | Total |
| State | 2016 | 93 | 598 | 691 |
| Federal | 2016 | 37 | 157 | 194 |

Source: Trafficking in Persons Report (Department of State, 2017).

**3. What is the role of law and policy (including customary law and authorities) in your country concerning these types of confinement?**

***Bolivia***

The Political Constitution of the Plurinational State of Bolivia protects in particular the right not to suffer physical, sexual or psychological violence. The State is mandated to adopt the necessary measures to prevent, eliminate and punish gender violence, as well as any action or omission that degrades the human condition. The Constitution also prohibits servitude, slavery, human trafficking and migrant smuggling.

Law 263 (Law against Trafficking in Persons) seeks to guarantee the fundamental rights of victims through the consolidation of measures and mechanisms for the prevention, protection, care, prosecution and criminal punishment of these crimes.

***Mexico***

Mexico has started to recognize the increasing numbers in human trafficking victims and the strong need to combat this issue. As an example, the country adopted a Federal Anti-Trafficking Law that establishes that each state of the republic must designate a dedicated human trafficking prosecutor. In the prevention sector, the National Human Rights Commission promoted a national awareness campaign in airports and bus terminals, and conducted anti-trafficking training and awareness sessions.[[64]](#footnote-64)

Despite the cited advancements, the country is still facing great challenges to adequately address these human rights violations. Some of these challenges include generalized high levels of impunity, lack of economic growth and the increasing drug cartels that diversify their activities and are starting to obtain profits from sex trafficking . These factors diminish the state’s capacity to guarantee an effective access to justice for human trafficking victims. As an example of this, the National Institute of Statistics and Geography reported that, in 2015, only 68 men and 29 women where judicially processed for human trafficking. As for the register of the victims, the government only recognized 52 women and 34 men as victims of human trafficking in judiciary processes.[[65]](#footnote-65) Other detected issues, in the adequate treatment of these offenses, are shelters that do not comply with the minimum requirements, limited specialized services and complicity of authorities with human traffickers.[[66]](#footnote-66)

**IV. Migration and crisis situations**

**1. What are the specific risks of detention and confinement encountered by women on the move in the context of asylum seeking, internal displacement and migratory processes?**

Women and children in camps for internally displaced persons have faced severe restrictions on their freedom of movement by camp authorities on the basis of their family members’ alleged involvement in the activities of terrorist groups, while themselves not being accused of terrorism offences. In some cases, camp authorities have reportedly prevented women and children from leaving the camp, have confiscated identity cards which are required to pass checkpoints beyond the camp, or required special approval in order to travel outside of the camp to nearby hospitals. In other situations, they have been subjected to a form of “screening” in order to secure their release from the camp, involving a series of checks conducted by state security forces and local authorities.

***Bolivia***

In Bolivia, the illegal stay is not considered a crime but an administrative fault that can be regularized with the fulfillment of requirements and procedures.

If the regularization does not proceed, the Migration Directorate provides the mandatory exit and will arrange the transfer of the foreign migrant to the country of origin, or to a third country that admits him/her. In no case will the migrant be forced to go to a country where there is danger to his life and integrity.

***Mexico***

Mexico is an immigrant sending, transit and receiving country. It has one of the highest migration flows in the world, particularly, economic migration coming from Central America. The Mexican Migration Law does not criminalize this type of irregular migration. As a result, the government doesn’t apply criminal prisons for the purposes of immigration-related detention. Instead, the migration policy focuses in special detention facilities for immigrants, designated “estaciones migratorias”.[[67]](#footnote-67)

Although the legal framework does not criminalize irregular migration, the conditions on the use of detention and confinement for immigrants are not considered to meet international human rights standards. According to the Inter-American Commission on Human Rights the Mexican detentions centers look more like prisons. The facilities have problems of overcrowding, lack of hygiene and deficient medical attention. The way this detention centers are operating might constitute violations to immigrant´s rights to humane treatment, due process and the right to receive asylum or judicial protection.[[68]](#footnote-68)

In this context, the number of women migrating to find work is increasing. This variation has been defined as the “feminization of migration”. The concept seeks to explain how women migrate to support their families, either when they are alone or their partners are unemployed. A lot of times, these women are exposed to: *“gendered and informal occupations such as domestic work, hospitality or entertainment”.*[[69]](#footnote-69) Additionally, in their transit through the country these women face high risks of detentions and confinement. In this aspect, Mexican immigration authorities routinely detain women immigrants and their children in their transit through the country to the border with the U.S. As an example, the Migration Policy Institute analyzed this issue stating that:

*“The majority of migrant women detained each year in Mexico are transiting through the country to reach the United States and to a lesser extent Canada. A small percentage are asylum seekers or have been trafficked or have had their human rights violated in a smuggling situation gone wrong”.*[[70]](#footnote-70)

It is also important to explain how these processes of irregular migration expose immigrants to become an easy prey for organized crime actors. Central America immigrants are often exposed to being kidnapped, imprisoned or executed by these actors. As an example, in 2010, 72 migrants were massacred in Tamaulipas by a drug trafficking cartel.[[71]](#footnote-71)

**2. What is the policy relating to the administrative detention of women migrants including pregnant women and women with children?**

***Bolivia***

Law 370 of Migration, Art. 37, indicates that in the event that migrants are expelled, and this affects the rights of children and adolescents, the case will be reported to the Office of the Ombudsman for Children and Adolescents and to the consular representation of the country of origin.

The Political Constitution of the Plurinational State of Bolivia, in its paragraphs V and VI, of art. 15. establishes: Foreigners in the Bolivian territory have the rights and must fulfill the duties established in the Constitution, except for the restrictions contained therein.

***Mexico***

The Mexican migration policy focuses in the detention, apprehension and expedited deportation of women immigrants in transit. Approximately as of 2011, there were at least 35 long-term immigration detention facilities in Mexico; reaching a total capacity to accommodate about to 3,550 immigrants.[[72]](#footnote-72) As for undocumented children, the Mexican law stipulates that these minors should be housed in special facilities. However, it has been documented how the immigration authorities continue to detain thousands of children a year in regular immigration detention centers.[[73]](#footnote-73) Another related concern is the practice of separating children from their parents, when these minors are in official custody of the immigration authorities.[[74]](#footnote-74) To sum up, the following chart contains the figures of immigration-related detentions, persons expelled and asylum applications in Mexico (source: Global Detention Project, “Mexico Immigration Detention”):

|  |  |
| --- | --- |
| Immigration detainees (2016): | 186,216 |
| Detained minors (2016): | 40,114 |
| Persons expelled (2016): | 159,872 |
| International migrants (2016): | 1,193,200 |
| New asylum applications (2016): | 8,732 |

1. UNODC, *Handbook on Women and Imprisonment* (2014), p. 103. [↑](#footnote-ref-1)
2. Ibid., p. 4. [↑](#footnote-ref-2)
3. Ibid., p. 113. [↑](#footnote-ref-3)
4. Ibid., p. 123. [↑](#footnote-ref-4)
5. Ibid., p. 103. [↑](#footnote-ref-5)
6. World Drug Report 2018, Module 5, p. 32. [↑](#footnote-ref-6)
7. UNODC, *Handbook on Women and Imprisonment* (2014), p. 114. [↑](#footnote-ref-7)
8. Id. [↑](#footnote-ref-8)
9. United Nations Security Council Counter-Terrorism Committee Executive Directorate, Implementation of Security Council resolution 2178 (2014) by States affected by foreign terrorist fighters – Compilation of S/2015/338; S/2015/683; S/2015/975, p. 5. [↑](#footnote-ref-9)
10. Thomas Renard and Rik Coolsaet, *Returnees: Who are they, why are they (not) coming back and how should we deal with them? Assessing policies on returning foreign terrorist fighters in Belgium, Germany and the Netherlands,* Egmont Paper 101 (February 2018) pp. 4-5. [↑](#footnote-ref-10)
11. Report of the Special Rapporteur on violence against women, its causes and consequences on “pathways to, conditions and consequences of incarceration for women” (A/68/340). [↑](#footnote-ref-11)
12. UNODC, *Handbook on Women and Imprisonment* (2014), p. 114. [↑](#footnote-ref-12)
13. Ibid., p. 81. [↑](#footnote-ref-13)
14. General Directorate of Penitentiary Regime, Bolivia (2017). [↑](#footnote-ref-14)
15. National Institute of Statistics and Geography, *Statistics of the Mexican prison system* (México: INEGI, 2017), 31 <https://bit.ly/2p3zyrI> (accessed September 10, 2018). [↑](#footnote-ref-15)
16. Reynolds, Marylee. "The war on drugs, prison building, and globalization: Catalysts for the global incarceration of women." *NWSA Journal* 20.2 (2008): 72-95. [↑](#footnote-ref-16)
17. Human Rights National Comission, *Special Report of the Human Rights National Comission on the situation of women deprived of their liberty within the Mexican correctional facilities* (México: CNDH, 2014), 9 <https://bit.ly/1Q9TBII> (accessed September 10, 2018). [↑](#footnote-ref-17)
18. Washington Office on Latin America (WOLA) *Women, Drug Policies,and Incarceration.* (U.S.: WOLA, 2015), 9 <https://bit.ly/2MgrCwZ> (accessed September 7, 2018) [↑](#footnote-ref-18)
19. See Rules 48-56, 64 and 66. [↑](#footnote-ref-19)
20. UNODC, *Handbook on Women and Imprisonment*, 2014, p. 17-18. [↑](#footnote-ref-20)
21. Ibid., p. 19. [↑](#footnote-ref-21)
22. Ibid., p. 20. [↑](#footnote-ref-22)
23. Ibid., p. 90. [↑](#footnote-ref-23)
24. Ibid., p. 91. [↑](#footnote-ref-24)
25. Ibid., p. 93. [↑](#footnote-ref-25)
26. Ibid., p. 94. [↑](#footnote-ref-26)
27. A/64/211, para. 31. [↑](#footnote-ref-27)
28. Report of the Working Group on Enforced or Involuntary Disappearances, A/HRC/10/9 [255]. [↑](#footnote-ref-28)
29. Law 548, Code for Children and Adolescents, Art. 106. [↑](#footnote-ref-29)
30. National Institute of Statistics and Geography, *Statistics of the Mexican prison system* (México: INEGI, 2017), 31 <https://bit.ly/2p3zyrI> (accessed September 10, 2018). [↑](#footnote-ref-30)
31. Constitution of Mexico, article 17. [↑](#footnote-ref-31)
32. See UN, *Practitioner’s Toolkit on Women’s Access to Justic*e, p. 271, table 4.1, reproduced here. [↑](#footnote-ref-32)
33. National Institute of Statistics and Geography, *Press release number 332/17*: *Results of the first National Survey of prison population* (México: INEGI, 2017) <https://bit.ly/2vbcfBC> (accessed September 10, 2018). [↑](#footnote-ref-33)
34. General Prosecutor Office of the Republic, *Press release* *847/16* (Mexico, PGR, 2016)  *<https://bit.ly/2QtA2Er>* (accessed September 13, 2018). [↑](#footnote-ref-34)
35. I/A Court H.R., Case of González et al. (“Cotton Field”) v. Mexico. Preliminary Objection,Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 2. [↑](#footnote-ref-35)
36. Mexican Supreme Court, *Gender Perspective Protocol* (México: SCJN, 2014) <https://bit.ly/2t3TnRE> (accessed September 7, 2018). [↑](#footnote-ref-36)
37. National Counter Terrorism Agency, *Addressing Overcrowding in Prisons by Reducing Pre-Conviction Detention in Pakistan* (2018), p. 34, available from <http://codepak.org/wp-content/uploads/2018/05/Addressing-overcrowding-in-prisons-by-reducing-pre-conviction-detention-in-Pakistan.pdf>. [↑](#footnote-ref-37)
38. UNODC, Info*rmation note for criminal justice practitioners on non-custodial measures for women offenders*, p.11, available from <http://www.unodc.org/documents/justice-and-prison-reform/Information_note_BKK_Rules.pdf>. [↑](#footnote-ref-38)
39. From the Spanish verb, “arraigar.” The Spanish-English Cambridge Dictionary translates “arraigar” to “root” or “take root.” [↑](#footnote-ref-39)
40. Maureen Meyer and Ximena Suárez Enríquez, *Washington Office on Latin America, Mexico’s New Criminal Justice System Is Still a Work in Progress* (Washington, WOLA: July 2016) accessed September 10, 2018: <https://bit.ly/2N8QXyf>. [↑](#footnote-ref-40)
41. It’s important to mention that the alternative case resolution methods, for instance criminal mediation processes, are not applied to domestic violence cases. See: article 8.IVof the General Law on Women’s Access to a Life Free of Violence <https://bit.ly/2fzdlR1>. [↑](#footnote-ref-41)
42. Gómez González, Arely. *Reforma Penal 2008-2016.El sistema Penal Acusatorio en México.* (Ciudad de México, Instituto Nacional de Ciencias Penales, 2016) <https://bit.ly/2l6qcfV> (accessed September 12, 2018). [↑](#footnote-ref-42)
43. National Institute of Statistics and Geography, *Statistics of the Mexican prison system* (México: INEGI, 2017), 30 <https://bit.ly/2p3zyrI> (accessed September 10, 2018). [↑](#footnote-ref-43)
44. Maureen Meyer and Ximena Suárez Enríquez, *Washington Office on Latin America, Mexico’s New Criminal Justice System Is Still a Work in Progress* (Washington, WOLA: July 2016) 36, accessed online on 10 September 2018: <https://bit.ly/2N8QXyf>. [↑](#footnote-ref-44)
45. Atuesta, Laura. *Drug Policy in Mexico, 2006-2012, Analysis and Results of a Prohibitionist Policy.* (Aguascalientes, México; Programa de Política de Drogas, CIDE: 2016) <https://bit.ly/2p3rHe7> (accesed September 11, 2018). [↑](#footnote-ref-45)
46. See: Official Journal of the Federation, August 20, 2009. (DOF, 2009). Ley de Narcomenudeo. [↑](#footnote-ref-46)
47. See: Official Journal of the Federation, January 23, 2008 (DOF, 2008) Código Federal de Procedimientos Penales. [↑](#footnote-ref-47)
48. Atuesta, Laura. *Drug Policy in Mexico, 2006-2012, Analysis and Results of a Prohibitionist Policy.* (Aguascalientes, México; Programa de Política de Drogas, CIDE: 2016) 35, <https://bit.ly/2p3rHe7> (accesed September 11, 2018). [↑](#footnote-ref-48)
49. Giacomello, Corina, Isabel Blas and Isabel Erreguerena, *Drug policy, gender and incarceration in Mexico: a guide to inclusive public policies* (México, Equis Justicia para Mujeres A.C.) 02-03, <https://bit.ly/2COX7yN> (accesed September 11, 2018). [↑](#footnote-ref-49)
50. Marne L. Lenox, “Neutralizing the Gendered Collateral Consequences of the War on Drugs”*, 86 N.Y.U. L Rev.* (United States, 2011). [↑](#footnote-ref-50)
51. Inter-American Commission on Human Rights (ICHR), *Practical Guide to Reduce Pretrial Detention*, OEA/Ser.L/V/II.163, Doc. 107 (ICHR, 2017) <https://bit.ly/2wZ3SIX> (accessed September 7, 2018). [↑](#footnote-ref-51)
52. Human Rights National Commission, *Special report on the situation of children who live with their mother in correctional facilities of the Mexican republic,* (México, CNDH: 2016)7, <https://bit.ly/2NbAglz> (accessed September 13, 2018). [↑](#footnote-ref-52)
53. SCR 2396 (2017), OP 29, “Calls upon Member States to assess and investigate suspected individuals whom they have reasonable grounds to believe are terrorists, including suspected foreign terrorist fighters and their accompanying family members, including spouses and children, entering those Member States’ territories. …” [↑](#footnote-ref-53)
54. Sistema Judicial Boliviano: Estado de situación, buenas prácticas y recomendaciones para el trabajo en el sector, desde el enfoque de derechos humanos. 2017. Center on Social Investigations (CIS) and UNHCHR. [↑](#footnote-ref-54)
55. Informal translation. [↑](#footnote-ref-55)
56. Government of Mexico: *Consideration of reports submitted by States parties under article 16 and 17 of the International Covenant on Economic, Social and Cultural Rights; Combined fifth and sixth periodic reports of States parties due in 2012*; (Mexico, 8 June 2016) [E/C.12/MEX/5-6], 21 July 2016 (published by CESCR, available at ecoi.net) <https://bit.ly/2O3tMSv>. [↑](#footnote-ref-56)
57. National Shelter Network, Report, *Shadow Report to CEDAW Committee* (Mexico, 2018) <https://bit.ly/2CV2T1J> (accessed September 10, 2018). [↑](#footnote-ref-57)
58. Open Society, *No health, no help: abuses committed in drug rehabilitation centers in Latin America* (U.S.: Open Society, 2016) <https://osf.to/2O3roLq> (accessed September 7, 2018). [↑](#footnote-ref-58)
59. National Women´s Institute, *Diagnosis about the Human Rights of Women in State Rehabilitation Centers* (México, INMUJERES: 2005) <https://bit.ly/2xbbGY6> (accessed September 12, 2018). [↑](#footnote-ref-59)
60. Ramírez Hernández, Tania Tlacaelelt, “La expansión de los tribunales de drogas en México” in *Cuadernos de Trabajo del Monitor del Programa de Política de Drogas* n. 21 (México, CIDE, PPD: 2016) 34, <https://bit.ly/2pF5uUA> (accessed September 14, 2018). [↑](#footnote-ref-60)
61. Seelke, Clare Ribando. "Trafficking in persons in Latin America and the Caribbean." (United States, Congressional Research Service, 2013) 2, <https://bit.ly/2NhlIBi> (accessed September 13, 2018). [↑](#footnote-ref-61)
62. Rivas Rodríguez, Francisco Javier, *et al*., “Estadísticas sobre la procuración e impartición de justicia en el combate a la trata de personas en México” in Revista Internacional de Estadística y Geografía v.6, n. 2 (México, National Institute of Statistics and Geography, INEGI: 2015) 61, <https://bit.ly/2NdJBcS> (accessed September 13, 2018). [↑](#footnote-ref-62)
63. United States, Department of State, Under Secretary for Civilian Security, Democracy, and Human Rights Office to Monitor and Combat Trafficking in Person, *Trafficking in Persons Report.* (U.S.: Department of State, 2017) <https://bit.ly/2wWxmXJ> (accessed September 7, 2018). [↑](#footnote-ref-63)
64. United States, Department of State, Under Secretary for Civilian Security, Democracy, and Human Rights Office to Monitor and Combat Trafficking in Person, *Trafficking in Persons Report.* (U.S.: Department of State, 2017) <https://bit.ly/2wWxmXJ> (accessed September 7, 2018). [↑](#footnote-ref-64)
65. National Institute of Statistics and Geography, *Víctimas, inculpados y sentenciados registrados,* 2015 (México: INEGI, 2017) <https://bit.ly/2O0g2Yr> (accessed September 7, 2018). [↑](#footnote-ref-65)
66. United States, Department of State, Under Secretary for Civilian Security, Democracy, and Human Rights Office to Monitor and Combat Trafficking in Person, *Trafficking in Persons Report.* (U.S.: Department of State, 2017) <https://bit.ly/2wWxmXJ> (accessed September 7, 2018). [↑](#footnote-ref-66)
67. Global Detention Project, “Mexico Immigration Detention”, Global Detention Project <https://bit.ly/2NusZwQ> (accessed September 7, 2018). [↑](#footnote-ref-67)
68. Inter-American Commission on Human Rights (ICHR), *Human Rights of Migrants and Other*

*Persons in the Context of Human Mobility in Mexico*, OEA/Ser.L/V/II.Doc. 48/13 (ICHR, 2013) <https://bit.ly/2p7fQMc> (accessed September 13, 2018). [↑](#footnote-ref-68)
69. UN Women, “Women migrant worker´s journey through the margins: labour, migration and trafficking” (U.S.: United Nations, 2016) 15, <https://bit.ly/2MgyBpx> (accessed September 7, 2018). [↑](#footnote-ref-69)
70. Diaz, Gabriela and Gretchen Kuhner, “Women Migrants in Detention in Mexico: Conditions and Due Process”*,* (U.S.: Migration Policy Institute: 2008) <https://bit.ly/2wVqUAe> (accessed September 6, 2018). [↑](#footnote-ref-70)
71. See: Miglierini, Julian, “Tamaulipas: 'Failed state' in Mexico's war on drugs”, (BBC News, 13 April 2015) <https://bbc.in/2wZa4R9> (accessed September 6, 2018). [↑](#footnote-ref-71)
72. Fernández, Luis, “Mapas de Estaciones Provisionales y Estaciones Migratorias” (México, SEGOB, 2011) <https://bit.ly/2O2SLoN> (accessed September 6, 2018). [↑](#footnote-ref-72)
73. Centro de Derechos Humanos de la Universidad Nacional de Lanús (CDHUNL) and Centre de Derechos Humanos Fray Matías de Córdova (CDHFMC), “Los Derechos Humanos de Ninos, Niñas, y Adolescentes Migrantes en la Frontera México-Guatemala” (Argentina, Universidad de Lanús 2012) <https://bit.ly/2wYhnaY> (accessed November 29, 2012). [↑](#footnote-ref-73)
74. Global Detention Project, “Mexico Immigration Detention”, Global Detention Project <https://bit.ly/2NusZwQ> (accessed September 7, 2018). [↑](#footnote-ref-74)