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WOMEN IN PRISON IN ARGENTINA: CAUSES, CONDITIONS, AND CONSEQUENCES

Sital Kalantry

THE LAW SCHOOL
THE UNIVERSITY OF CHICAGO

May 2013

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WOMEN IN PRISON IN ARGENTINA:

CAUSES, CONDITIONS, AND CONSEQUENCES

May 2013

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The University of Chicago Law School International
Human Rights Clinic

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The Avon Global Center for Women and Justice at Cornell Law School works with judges, legal professionals, and governmental and non-governmental organizations to improve access to justice in an effort to eliminate violence against women and girls. For more information, please visit: www.womenandjustice.org.

Cornell Law School International Human Rights Clinic

The Cornell Law School International Human Rights Clinic contributes to efforts to advance human rights by providing legal assistance to nongovernmental organizations, judges, intergovernmental bodies, and individuals. Under faculty supervision, students work on a variety of human rights projects, which involve fact-finding and reporting, domestic and international litigation, human rights education, and other methodologies. Through these activities, the Clinic seeks to strengthen the rule of law and the protection of human rights around the world.

Defensoría General de la Nación Argentina

Defensoría General de la Nación (“Defensoría”) is the public defender’s office in Argentina. It also serves as ombudsman for prisons. The Defensoría has is constitutionally recognized as an independent organ of the government, with functional and financial autonomy.

International Human Rights Clinic at the University of Chicago Law School

The International Human Rights Clinic at the University of Chicago Law School works for the promotion of social and economic justice globally, including in the United States. The Clinic uses international human rights laws and norms as well as other substantive law and strategies to draw attention to human rights violations, develop practical solutions to those problems using interdisciplinary methodologies, and promote accountability on the part of state and non-state actors. The Clinic works closely with non-governmental organizations to design, collaborate, and implement projects, which include litigation in domestic, foreign, and international tribunals as well as non-litigation projects, such as documenting violations, legislative reform, drafting reports, and training manuals.

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Foreword

In recent years, the number of women in prison has increased throughout the world, including in Argentina. In Argentina's federal prisons, the population of female prisoners has expanded nearly 200% in the past two decades, a much higher rate than the increase in the number of incarcerated men. It is important to understand why these numbers have increased so significantly and to recognize the gender-specific needs and challenges of women prisoners.

As a member of the Steering Committee of the Avon Global Center for Women and Justice, I was pleased to invite the Center, which has previously conducted research on issues relating to women and prison, to undertake a study of women's imprisonment in Argentina. The Center was joined in this effort by the University of Chicago's International Human Rights Clinic and Argentina's Public Defenders' Office, the Defensoría General de la Nación, which regularly monitors conditions in our federal prisons.

The researchers' report offers a valuable contribution towards our understanding of the causes, conditions, and consequences of women's imprisonment in Argentina. It is based on extensive research, including desk research, interviews of experts and women prisoners and a survey of nearly 30% of the women in federal prisons. It thoughtfully analyzes the issues from the lens of international and domestic laws. It highlights Argentina's good practices in the area of women in prison and identifies improvements that are still needed.

This study reminds us – judges, lawyers, policy makers, and citizens – that we are all accountable for the human rights of women in prison. I am hopeful that its findings and recommendations will inform future efforts of actors within and outside Argentina to decrease the number of women in prison, improve the treatment of women prisoners, and address the effects of women's imprisonment on their families and children.

Justice Elena Highton de Nolasco,
Vice-President of the Supreme Court of Argentina

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EXECUTIVE SUMMARY

In many countries around the world, including Argentina, the number of women who are deprived of their liberty has risen over time and has increased disproportionately in comparison to male prisoners. In Argentina, the number of female prisoners within the federal system increased 193%, while the male population rose 111% from 1990 to 2012.¹ Nonetheless, little research has been done to understand why there has been such a dramatic increase in women's incarceration. At the same time, international and domestic laws governing prisons and prison policies and practices have traditionally been designed for men.² In 2010, however, the United Nations adopted the first international standards relating specifically to women prisoners – the Standard Minimum Rules for the Treatment of Female Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules).³

The Bangkok Rules specifically call for research to be conducted on (among other things) the causes of women's imprisonment, the characteristics of women in prison, and the impact on children.⁴ This Report focuses particularly on the causes and conditions of women's imprisonment, and consequences for children of incarcerated mothers in Argentina. In undertaking research for this Report, the authors developed two surveys, a General Prison Population Survey that was administered to nearly 30% of all women prisoners (246 women) in Argentina's federal prison system (attached as Annex 1) and a Co-Residence Program Survey which received responses from 26 women residing with their children in prison (attached as Annex 2); conducted site visits to two women's prisons in Buenos Aires, Argentina; and interviewed women prisoners, judges, academics and civil society members. Justice Elena Highton de Nolasco, the Vice President of the Supreme Court of Argentina, invited us to conduct this study and provided us with full and open access and cooperation.

This Report focuses solely on the federal prison system in Argentina, known as the Servicio Penitenciario Federal (SPF), while the vast majority of the people deprived of their liberty are held in provincial jails across the country. As of April 2012, the SPF detained 9,693 prisoners⁵ in 34 federal prisons.⁶ Of these, 9% (or approximately 872 SPF prisoners) were women.⁷

CAUSES OF WOMEN'S IMPRISONMENT

The Majority of Women are in Prison for Drug Crimes

Our study found that 55.75% of the women surveyed through our General Prison Population Survey had been accused or convicted of drug crimes.⁸ The global "war on drugs" serves to explain, in part, the significant (and disproportionate) increase in rates of female imprisonment within Argentina's SPF, as well as in other South American countries more generally. As part of the "war on drugs," the United States pressured Latin American countries to increasingly prosecute and target drug crimes.⁹ Argentina also adopted stricter drug laws but, like other countries in South America, Argentina's enforcement of anti-drug-trafficking laws has not successfully addressed the higher levels of organized drug trafficking. Rather, enforcement disproportionately targets lower-level crimes, in which women are usually the main participants.¹⁰

Within the drug hierarchy, women most often play the low-level role of trafficking mules, transporting drugs in their belongings, or on or within their bodies.¹¹ Criminal sentences should not exceed what is proportionate to the crime, a principle grounded in the right to human dignity, the right to liberty, and the right to be free of cruel, inhuman or degrading punishment. The harsh prison sentences imposed on women offenders who commit non-violent, low-level drug crimes are not proportionate to the crime.

Motives for Crimes

Over 85% of women surveyed were convicted of economic crimes, which include drug crimes and theft crimes. The 2001 National Argentina Census reported that women led 81.75% of single-headed households, and the majority of these households were poor.¹² Our study found that of those women who committed economically motivated crimes, more than 75% were the primary income earners for their household. Evidently women who commit economic crimes are more likely to be heads of poor households and may therefore engage in criminal activity in order to provide for their families.

Pre-Trial Detention and Drug Crimes

Argentina's harsh laws governing pre-trial detention for drug offenders have also contributed to the mounting numbers of women in prison. The high number of pre-trial detainees being held for drug-related reasons within the SPF system is evident from our General Prison Population Survey: 41.43% of respondents were pre-trial detainees, and of these, 63.44% had been accused of drug crimes. Female drug offenders are often subjected to lengthy periods of pre-trial detention, which further expand the numbers of women in prison. Of the pre-trial detainees surveyed who had been accused of drug trafficking, 29.41% had been detained for one to two years and 11.76% had been detained for longer than two years. Argentina's frequent use of pre-trial detention against women charged with drug trafficking crimes is inconsistent with international standards that require states to employ pre-trial detention as an exceptional circumstance and only to the extent strictly necessary and to implement, if possible, alternatives to pre-trial detention for women offenders.¹³

History of Abuse

There is a strong link between violence against women and women's incarceration in Argentina and around the world. The Bangkok Rules themselves acknowledge "women prisoners' disproportionate experience of domestic violence."¹⁴ Of the 228 women surveyed who responded to a question about past experiences of gender violence, 39.04% (89 participants) reported experiencing violence from a spouse or family member prior to their imprisonment while 13.6% (31 participants) had been raped at least once prior to their imprisonment.

For some women, the abuse they experienced appeared to have contributed directly to their involvement in criminal activity. Twenty-two of the women responding to our General Prison Population Survey indicated that they had been accused or convicted of a crime against their spouse or intimate partner. Of these women, 31.82% (seven participants) reported that they had been abused by their spouse or partner, including five who were in prison for murder, one who was in prison for assault, and one who was accused of theft.¹⁵

CONDITIONS OF WOMEN'S IMPRISONMENT

Conditions of women's imprisonment within the Argentine federal system are consistent in many ways with international laws and provide examples of best practices. However, in some cases, the implementation of these laws deviates from the policies.

Medical Care

Our interviews with medical staff at the two SPF women's prisons we visited confirmed that they were aware of the particular health-care and reproductive needs of women as well as prevailing medical best practices. However, results of our General Prison Population Survey and on-site private interviews with women deprived of their liberty suggested that these procedures were not always implemented and that there was no standardization in the medical tests given to women in prison. For example, over a third of women prisoners surveyed reported that they never received a PAP test and almost three quarters of women prisoners reported that they never received breast cancer screening.

Hygiene

Bangkok Rule 5 provides that women prisoners must be afforded facilities and materials to meet their gender-specific hygiene needs, including free sanitary towels and a regular supply of water.¹⁶ However, 26.46% of the women surveyed reported not having sufficient access to feminine napkins while in prison.

Nutrition

According to Rule 20 of the Standard Minimum Rules, prison administration must provide inmates with nutritious, well-prepared food sufficient for their health and strength.¹⁷ Although many interviewees agreed that the prison food service distributes a sufficient amount of food, some noted that the quality of the food was often so bad as to be barely edible.

Separation of Convicted Women and Pre-trial Detainees

Although Article 10 of the International Covenant on Civil and Political Rights and Rule 8 of the Standard Minimum Rules require that pre-trial detainees should be housed separately from convicted prisoners and treated in accordance with their status as individuals who have not been convicted of a crime,¹⁸ an on-site visit revealed that pre-trial detainees in federal prisons frequently share living areas with convicted women.

Living Conditions

International standards require Argentina to provide women deprived of their liberty with clean, comfortable, and hygienic accommodations.¹⁹ The SPF accommodations observed during on-site visits appeared to meet international and domestic standards²⁰ when functional. However, the visits also highlighted concerns about maintenance of proper living and bathing quarters, and long wait times for responses to complaints regarding the living conditions, including, for example, the presence of cockroaches despite complaints about cockroach infestations.

Violence and Prison Supervision

Standard Minimum Rule 9 provides that where prisoners are housed in dormitories, they should be regularly supervised at night and only those "carefully selected as being suitable to associate with one another" should reside together.²¹ In addition, Bangkok Rule 31 requires prisons to establish policies and regulations for prison staff that protect women prisoners from gender-based violence or harassment.²²

Yet, the Argentine SPF prison policy of grouping all the “worst” behaved women prisoners together, paired with the relatively unsupervised nature of the pavilions, creates an environment that can foster violence. Interviews with prison administrators and incarcerated women indicated that violence between inmates was also a problem. One inmate claimed, “The first few months in prison was terrible. There was a lot of violence. Girls fight amongst each other.” Our General Prison Population Survey indicated 16.74% of inmates had witnessed physical abuse and reported it to prison authorities. Over half of those who reported the abuse stated that their reports were not taken seriously.

Work

Bangkok Rule 46 provides that prisons have a responsibility to design and implement comprehensive pre- and post-release reintegration programs, taking into account women’s gender-specific needs.²³ These may include work programs that prepare women to successfully transition into free society. Argentine prisons allow women to work while deprived of their liberty.²⁴ In Federal Penitentiary Complex 3, we observed that women could work in a bakery and in making arts and crafts for sale, and may also be able to work in embroidery and carpentry. The women we interviewed responded very positively to the work programs.

Education

Rule 77 of the Standard Minimum Rules calls upon prison systems to provide for the education of prisoners who can benefit from it and stipulates that this education, if practicable, should be integrated with the country’s education system.²⁵ Argentine law addresses this requirement by providing access to public education at all levels and mandating primary and secondary education for those deprived of their liberty.²⁶ Furthermore, the law encourages education by providing for a reduction in the prison terms of inmates who successfully complete and pass all or part of their educational courses.²⁷

Inmate Proximity to Family and Visitation

According to Rule 4 of the Bangkok Rules, women prisoners “should be allocated, to the extent possible, to prisons close to their home or place of social rehabilitation, taking account of their caretaking responsibilities. . . .”²⁸ Rule 26 further provides that states should develop policies and strategies for women in prisons to improve contact with their families and children.²⁹ However, the results of our General Prison Population Survey show that more than half of all prisoners surveyed (53.71%) were detained in excess of 100 km from their home and family, while 86.46% were incarcerated at least 30 km away from their homes. Of those participants housed at least 100 km from their home and family, 81.16% indicated they would resume responsibility of at least one child upon their release.

CONSEQUENCES OF WOMEN'S IMPRISONMENT ON CHILDREN

As the number of women in prison has risen, an increasing number of children have been impacted. Some countries have developed “co-residence programs” to address this issue by allowing children to reside with their incarcerated mothers. Argentina allows children up to the age of four to legally reside with their mothers in prison. In some places like the United States that have such programs, only infants are allowed to reside in prison.³⁰

The Argentinian program in many ways can be a model for governments who are interested in instituting such programs. Chapter 4 examines this program further and discusses the results of our survey administered to women living in Unit 31 in Ezeiza, Buenos Aires with their children. Twenty-six incarcerated women from Unit 31 responded to the survey (attached as Annex 2).

Despite the growing interest in co-residence programs, there are no clear legal or other guidelines on best practices for such programs. Chapter 4 provides an overview of the guidance available in the Standard Minimum Rules, the UN Guidelines for the Alternative Care of Children,³¹ and the Bangkok Rules, as well as additional minimum considerations that should be taken into account when developing co-residence programs.

Notwithstanding the availability of such programs, judges who are sentencing primary caretakers of children should preference non-custodial sentences such as house arrest, placement into community homes, or other alternatives to incarceration. Argentine law allows for house arrest in the case of women prisoners who are pregnant, have children of less than five years of age living with them, or are caring for a disabled child.³² Despite this law, the co-residence program continues to exist, and many children still reside in prison with their mothers. This may be a result of a lack of awareness of this legal provision; in our Co-Residence Program Survey, 23.53% of women deprived of their liberty with children did not ask for house arrest prior to incarceration. Even in cases where the convicted woman did ask for house arrest, such requests were often denied; 76.47% of the women deprived of their liberty indicated that they were denied house arrest. Thus there are still many convicted women with children who are not receiving the benefit of the house arrest policy instituted in 2009.

If judges choose to impose custodial sentences on primary caretakers of children, the “best interests” of the child standard should be used to determine whether or not it is appropriate to place a child in a co-residence program with his or her parent.³³ Several factors should be considered by a neutral decision-maker when arriving at this determination – 1) the age, needs, and opinion (if he or she is old enough to express one) of the specific child; 2) his relationship to the primary caretaker and whether there is a history of past abuse; and 3) potential alternatives outside of prison for the child. We encourage Argentina, as well as other countries, to ensure that these factors are considered when determining whether it is in the “best interests” of children to be placed in co-residence programs in prison.

RECOMMENDATIONS

Below we outline the key recommendations for policy reform in Argentina:

Causes of Women's Imprisonment:

- Reduce the sentence imposed for drug trafficking for women who are at the bottom of the drug trafficking chain and sentence women to alternatives to incarceration where appropriate.
- Reduce the use and length of pre-trial detention for women who have been charged with crimes, including women accused of drug trafficking.
- Bring to justice perpetrators who commit violence against women and make efforts to address the economic needs of people to change people's incentives to commit crimes.

Conditions of Women's Imprisonment:

- Ensure that practices of the prison staff are in line with articulated policies.
- Reduce inmate violence through increased supervision, including placing experienced and senior guards in pavilions with the most violent prisoners.
- Ensure that all efforts are made to house prisoners as geographically close to their homes as possible and introduce measures to facilitate women's contact with their families such as assistance with transportation or extension of the length of visits.
- Ensure that all prisoners, including pre-trial detainees, receive timely access to medical care, medical screening, and gender-specific hygiene products.

Consequences of Women's Imprisonment on Children:

- Expand the application of the policy that allows judges to sentence mothers to house arrest and consider expanding this policy to include fathers if they are the primary caretakers of children.

METHODOLOGY

The authors of this report (A) conducted desk research, (B) developed primary quantitative data from two surveys designed by the authors, one of which was completed by nearly 30% of all women deprived of their liberty in the federal prison system in Argentina, (C) conducted site visits to two women's prisons in Argentina, and (D) conducted in-country interviews of women prisoners, scholars, activists, judges, and other stakeholders.

The study focused solely on Argentina's federal penitentiary service, the Servicio Penitenciario Federal (SPF), where the majority of persons are detained for drug-related crimes. Each province in Argentina maintains its own prison system, and the findings and conclusions of this Report do not apply to those prisons.

A. DESK RESEARCH

Prior to and after the fieldwork, the Chicago and Cornell research teams conducted extensive desk research on the nature and scope of the problems surrounding the imprisonment of women, including research on relevant international and regional human rights law. The teams reviewed general and country-specific materials, including social science and historical books and journals. Researchers also reviewed country reports and non-governmental organization shadow reports submitted to international human rights bodies, Argentinian law, jurisprudence, newspaper reports, journal articles, books, and statistical data relating to women and prisons in Argentina.

B. EMPIRICAL RESEARCH

The authors of this Report developed two detailed survey instruments, attached as Annex 1 ("General Prison Population Survey") and Annex 2 ("Co-Residence Program Survey"). The Defensoría General de la Nación ("Defensoría")³⁴ administered the General Prison Population Survey in each of the four prisons that currently hold women in the SPF system. Of the approximately 872³⁵ women who were deprived of liberty at the time of the survey, 246 completed the survey. This accounts for approximately 28% of the total female prison population within SPF prisons.³⁶ The Defensoría's staff asked each prison to provide a list of women being detained and then randomly selected the women from that list to be surveyed.

The Co-Residence Program Survey was administered in Unit 31 to women who were co-residing with their children in prison. Twenty-six women from Unit 31 responded to that survey. Women who participated in the Co-Residence Program Survey may have also participated in the General Prison Population Survey.

In the case of both the survey instruments, participants were informed about the purpose of the survey and that the results would be anonymous. Surveys were administered in a private room without the presence of SPF prison guards or officials. The names of the women deprived of their liberty were not written on the surveys. Instead, each survey was assigned a number.

Data from the surveys were manually entered into STATA data analysis and statistical software. Researchers then analyzed the data to ascertain significant relationships between the variables. Professor Theodore Eisenberg, Henry Allen Mark Professor of Law and Adjunct Professor of Statistical Sciences, Cornell University Law School, provided guidance and assistance in the data analysis.

In deriving the percentages used in this report, we excluded non-responses. Thus, our survey statistics reflect percentages of participants who responded to each given question.

C. SITE VISTS TO PRISONS

Researchers from the Cornell International Human Rights Clinic, accompanied by Defensoría officials, conducted site visits in October 2012 of two women's prisons in Buenos Aires, Argentina, one of which had a co-residence program, which consisted of children living in the prison with their incarcerated mothers. The visits included meetings with prison wardens and full access to the facilities, with tours of the pavilions where women lived in group settings, individual cells, workshops and work areas, bathrooms, child-care centers, and medical facilities.

D. IN-COUNTRY INTERVIEWS

In October 2012, several authors of this Report met with a variety of actors, including prosecutors, public defenders, judges, civil society members, government actors, prison wardens, guards, and prisoners.

Researchers interviewed four incarcerated women in Federal Penitentiary Complex 3 and eight incarcerated women in SPF Unit 31. Defensoría officials selected participants randomly from a list of current women who were held at each prison and asked the women whether they wanted to participate in the interviews. Some women declined to participate. Researchers informed each woman interviewed about the purpose of the interview, its voluntary nature and how the information collected would be used, and obtained informed oral consent. Interviews took place in a private room without the presence of SPF prison guards or officials and lasted approximately 30 minutes.

The interviews were conducted primarily in English. However, where participants spoke Spanish only, Defensoría staff provided translation from and into English for English-speaking interviewers. In this report, pseudonyms have been assigned to incarcerated interviewees in order to protect their identities.³⁷

Researchers also interviewed the following judges, civil society members, prosecutors, and other stakeholders in Argentina:

- Justice Highton de Nolasco, Vice-President of the Supreme Court of Argentina;
- Dra. Marta Monclus Maso, Ms. Maria Santos and Ms. Veronica Manqual on behalf of the Procuración Penitenciaria de la Nación (SPF Prison Ombudsman);
- Mr. Gustavo Martin Iglesias on behalf of the Public Defender's Office;
- Ms. Anabella Museri on behalf of the Centro de Estudios Legales y Sociales (CELS);
- Ms. Irma Adriana Garcia Netto on behalf of the Fiscal General (Criminal Prosecution);
- Ms. Silvia Edith Martinez, Public Defender, the Defensoría General de la Nación;
- Ms. Ximena Figueroa, the Defensoría General de la Nación; and
- Ms. Mary Bellof, the Procuración General de la Nación.

CHAPTER 1

THE RIGHTS OF WOMEN IN PRISON

International and domestic laws and standards govern the rights of persons deprived of their liberty and states' obligations to them. For many years, these laws and standards were primarily designed for men, who make up the vast majority of prisoners globally.³⁸ The numbers of women in prison are increasing, however, and it is important that laws targeting persons deprived of their liberty address the specific characteristics and needs of women.

In 2011, the United Nations adopted the Standard Minimum Rules for the Treatment of Female Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules), the first international standards relating specifically to women prisoners and offenders. Recognizing that the principle of nondiscrimination requires states to address the unique challenges that women face in the criminal justice system,³⁹ the Bangkok Rules are the first to take into account women's gender-specific needs, such as access to non-custodial measures, gender-sensitive medical screening and treatment, including reproductive healthcare and the care of dependent children.⁴⁰ These rules complement and supplement the previously-adopted UN Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules) and the UN Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules), which continue to afford protection to all prisoners and offenders regardless of gender.

In addition to specific but non-binding standards like those contained in the Bangkok Rules, several binding international and regional treaties address the rights of women in prison and the corresponding obligations of states. Argentina has ratified applicable human rights treaties and expressly incorporated them into its Constitution.⁴¹ Its obligations under these treaties include the duty to uphold women's right to non-discrimination throughout the criminal justice process;⁴² to treat women deprived of liberty humanely and with respect for their rights to life, equality, and human dignity;⁴³ and to ensure that in all actions concerning children, the child's best interests are given primary consideration.⁴⁴

HUMAN RIGHTS RELATING TO PERSONS DEPRIVED OF LIBERTY UNDER INTERNATIONAL TREATIES RATIFIED BY ARGENTINA

Rights	Binding Treaties that Guarantee Those Rights
Right to be free from discrimination	ICCPR; CEDAW; CRC; ICESCR; American Convention on Human Rights; Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women
Right to be treated humanely and with respect for human dignity while deprived of liberty	ICCPR; American Convention on Human Rights
Right to life	ICCPR; American Convention on Human Rights; Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women
Right not to be subject to torture, or to cruel, inhuman, and degrading treatment	ICCPR; CAT; American Convention on Human Rights; Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women
Right to be free from violence, including sexual violence	CEDAW; Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women
Obligation to give the best interests of the child primary consideration in all actions concerning children	CRC

Together with international human rights laws and standards, domestic laws govern Argentina's obligations to women deprived of their liberty. The Constitution requires that prisons be safe and clean and prohibits degrading treatment not necessitated by security imperatives.⁴⁵ Under Argentina's organic laws and the National Law of Criminal Enforcement, Law No. 24.660, the federal penitentiary system must ensure and promote the mental and physical well-being of prisoners, including by affording them access to health care, freedom of religion, employment, and education.⁴⁶ Prison staff may not use force, except in exceptional circumstances.⁴⁷ Pre-trial detention is generally limited to a maximum of two years,⁴⁸ and judges have discretion to sentence certain categories of offenders, including pregnant women and women with children under the age of five or who are caring for a disabled child, to house arrest.⁴⁹

In this report, we discuss how these laws and standards governing states' obligations towards women deprived of their liberty apply to the causes, conditions and consequences of women's imprisonment in Argentina.

CHAPTER 2

CAUSES OF WOMEN'S IMPRISONMENT

Entrance to Federal Prison
Complex No. 4.
Buenos Aires, Argentina, 2012
Photo: Erika P. López

As of 2010, 59,227 people were detained in Argentinian prisons and jails.⁵⁰ Each province has its own provincial penitentiary services, which oversees provincial prisons and individuals convicted by provincial courts. In 2010, the vast majority of prisoners, 49,704 (84% of all prisoners), were housed within provincial prisons.⁵¹ This report focuses solely on the federal prison system, known as the Servicio Penitenciario Federal (SPF).

The SPF houses people accused and convicted of federal offenses by federal courts or common offenses by national courts.⁵² As of April 2012, the SPF detained 9,693 prisoners⁵³ in 34 federal prisons.⁵⁴ This included approximately 872 women prisoners, who accounted for 9% of the total population of SPF prisoners.⁵⁵

We surveyed 246 women or approximately 28% of female SPF prisoners.⁵⁶ Ninety-five women were foreign nationals, accounting for 42.29% of participants after adjusting for nonresponses,⁵⁷ of which 77 women were from other South American countries.

Our study found that 55.75% of survey participants had been accused or convicted of drug trafficking.⁵⁸ 20.8% were in prison for theft, 10.18% were in prison for murder, of whom 22% were accused or convicted of killing a partner or spouse, and 1.33% were in prison for assault, of which approximately 33% were accused or convicted of assaulting a partner or spouse. An additional 11.94% of participants reported that they were in prison for “other” offences, which included transportation or attempted transportation of contraband, forgery, kidnapping, and modern forms of slavery, which can include sexual exploitation, reproductive slavery, or organ removal.

This chapter considers the causes of women’s incarceration, which include individual motivations such as economic need or protection against an abusive partner, and structural causes such as the global war on drugs.

ARGENTINA’S ENFORCEMENT OF DRUG TRAFFICKING LAWS

International human rights treaties prohibit policies and practices that discriminate against women.⁵⁹ This duty of nondiscrimination requires states to take into account and address any disparate impact of criminal justice strategies on women,⁶⁰ even if they have been adopted for legitimate goals such as the reduction of the drug trade. International law also provides that criminal punishments should not exceed what is proportionate to the crime, a principle grounded in the right to human dignity, the right to liberty, and the right to be free of cruel, inhuman or degrading punishment.⁶¹ Argentina’s drug trafficking laws and enforcement of those laws implicate both the international law prohibition against discrimination and the international law requirement of proportionality.

As noted above, more than half of the women who participated in our survey (55.75%) were in prison for drug trafficking.⁶² These findings are consistent with an earlier study conducted in 2006, which found that 63% of women deprived of their liberty were in federal prisons for drug trafficking crimes.⁶³ Our survey indicated that foreign nationals are disproportionately in prison for drug crimes; while 39.53% of the Argentinian nationals were charged with or convicted of drug trafficking, 77.32% of foreign nationals were charged with or convicted of the crime.⁶⁴ The number of female prisoners within the federal system sharply increased after the adoption of Law No. 23.737, from 298 prisoners in the SPF in 1990⁶⁵ to approximately 872 prisoners in the SPF in 2012.⁶⁶

INCREASE IN NUMBER OF WOMEN PRISONERS IN THE SPF (1990-2012)

Information derived from SPF Criminal Population Statistics; CELS Women in Prison.⁶⁷

Women's imprisonment increased at a much higher rate, 193%, than did the imprisonment of men, which increased by 111% over the same period.⁶⁸

INCREASE IN IMPRISONMENT RATES FOR MEN AND WOMEN IN THE SPF (1990-2012)

Information derived from SPF Criminal Population Statistics; CELS Women in Prison.⁶⁹

Other Latin American countries have similarly seen high percentages of women prisoners incarcerated for drug-related crimes. In the nineties, the drug trade was the primary reason why women in Bolivia were admitted into jails, and the same was true in Peru.⁷⁰ In Brazil during the same time period, 40% of incarcerated women were imprisoned for drug trafficking.⁷¹ In Mexico, 75% of women prisoners were in the federal system for offenses related to narcotics.⁷² In Ecuador, 77% of women in prison were incarcerated for drug-related offenses in 2004, compared with 33.5% of men.⁷³

GLOBAL IMPACT OF THE U.S. “WAR ON DRUGS”

The global “war on drugs” serves to explain, in part, the significant (and disproportionate) increase in rates of female imprisonment within Argentina’s SPF, as well as in other South American countries more generally. In 1971, Richard Nixon declared a war on drugs in the United States.⁷⁴ The United States pressured Latin American countries to increasingly prosecute and target drug crimes. The majority of South American countries responded to U.S. pressure by enacting stricter drug legislation, adopting models of drug interdiction and prosecution from other parts of the world in response to bilateral agreements and international pressure.⁷⁵ With the promise of trade benefits and economic assistance, the United States government pressured South American countries to combat the drug problem using U.S. strategies.⁷⁶ These included harsh criminal sanctions and mandatory minimum prison sentences.⁷⁷

One of the more overt examples of U.S. pressure occurred in Ecuador, a country with one of the harshest drug laws in South America, which entered into a bilateral agreement with the United States, whereby the United States provided millions of dollars in funding in exchange for Ecuador’s agreement to increase the percentage of persons detained for drug offenses by 12%.⁷⁸ To achieve a 12% increase, Ecuador increased its enforcement of drug laws, detaining as many people as possible for drug offences.⁷⁹

Argentina followed suit implementing harsh drug legislation under an authoritarian regime.⁸⁰ The Ministry of Social Welfare, sharing President Nixon’s views on the war on drugs, passed Law No. 20.771 in 1974, declaring drug offences to be an attack on “national security” and bringing them under federal jurisdiction.⁸¹ In Argentina, as in other Latin American countries, harsh drug laws were accompanied by sharp increases in the numbers of women in prison.⁸²

The high percentage of women in prison for drug trafficking suggests that women are more likely to engage in the drug trade than they are to commit other crimes. However, it also reflects the ways in which Argentina has chosen to enforce its anti-drug laws. In 1989, Argentina adopted Law No. 23.737 to serve as the basis for prosecuting crimes related to narcotics including micro-trafficking (trafficking within national borders) and small-scale sales.⁸³ The law provides that any person involved in the “trade of drugs or raw materials for their production or manufacturing or marketing purposes, or to distribute, or to give in payment, or storing or transporting” shall be punished with a sentence of 4-15 years, and a fine.⁸⁴ The same sentence range is prescribed for the crime of transporting any amount of narcotics into the country.⁸⁵ In addition, Argentina’s Customs Code, Law No. 22.415, criminalizes the smuggling of drugs in or out of the country and has also contributed to the increased incarceration of women.⁸⁶

Like other countries in South America, Argentina’s enforcement of anti-drug-trafficking laws does not effectively disrupt the drug hierarchy but rather focuses on lower-level crimes, in which women are usually the main participants. Natalia Gambaro, congresswomen for the Province of Buenos Aires, stated, “Even when Argentina law enforcement agencies make successful busts, it is usually at the lower levels of the operation. It is rare that those apprehended even know who they are working for.”⁸⁷ The increased

number of women in federal prisons can be attributed to the greater ease with which these lower-level crimes can be prosecuted.

Women's primary role in the drug trafficking or smuggling scheme is often that of a mule – a person transporting drugs, often by swallowing them or introducing them into their body cavities.⁸⁸ Mules are typically easy targets for drug enforcement authorities, but arresting the mules does little to disrupt the drug trafficking networks. A recent report from the Office of the Human Rights Ombudsman in Buenos Aires, Argentina commented on the disproportionate targeting of low-level, women offenders:

[F]or the most part, women... generally are involved in relatively unimportant roles in the chain of illicit drug trafficking, as they are in charge of delivering the substances to users, or are those who transport drugs hidden in their body or among their belongings – “mulas” – assuming the most exposed roles, as they are the visible links in the chain and therefore at greatest risk of being detected and apprehended.⁸⁹

This presents a problem because criminalization of drug-related crimes then becomes selective and discriminatory.⁹⁰ Moreover, imposing harsh prison sentences on women offenders who commit non-violent, low-level drug crimes violates the principle of proportionality. Women, particularly poor women, are exploited while committing the crime and harshly punished once they are caught; yet, the drug networks are left untouched.

MOTIVES FOR WOMEN'S CRIME

Our surveys and interviews provided insight into the motivations and circumstances that contributed to women prisoners' involvement in criminal activity. These motivations and circumstances are important because international standards have recognized that the principle of nondiscrimination requires states to take into account “the gender specificities of, and the consequent need to give priority to applying non-custodial measures to, women who have come into contact with the criminal justice system” when making decisions about whether to send them to prison.⁹¹ Bangkok Rule 61 provides that when sentencing a convicted woman, “courts shall have the power to consider mitigating factors such as lack of criminal history and relative non-severity and nature of criminal conduct, in the light of women's caretaking responsibilities and typical backgrounds.”⁹² In addition, international standards provide that states have a duty to address the root causes that contribute to women's incarceration, including through social, economic, and justice policies.⁹³

In a publication by the Centro de Estudios de Justicia de las Américas, women involved in drug trafficking were classified into three groups. The first group is composed of women who commit crimes with their male partners because they are attached to their men.⁹⁴ The second group comprises women under the control of men who force women to become co-perpetrator or accomplices of the crime, or force them to conceal the man's involvement in trafficking.⁹⁵ The third group is associated with women in the low-income class who are heads of their households and the primary caretakers of their children and who become involved in drug trafficking to survive.⁹⁶ We found women from all three groups in the Argentinian federal prisons.

Some of the women interviewed who were convicted for drug trafficking told us that they did not know that they were carrying narcotics across international borders. For example, one woman explained that she had been traveling out of the country and voluntarily

agreed to carry a parcel of goods for a friend. The woman inspected the package and found that it contained marmalade and chocolates. She was detained at the airport where the authorities discovered that the package contained liquid drugs. The woman was arrested and sentenced to four years and eight months. Several women described how their male partners or men they had met on the internet had tricked them into carrying drugs or participating in drug-related offences without their knowledge.

DORIS* (October, 2012)

Doris fell in love with a man she met online. He lived in London, and they had never met in person. After a year of online correspondence, he finally arranged for her to meet him there. He asked Doris to stop in Argentina to pick up some documents he needed and bring them to him in London. Doris was a bit skeptical, but, excited by the chance to meet her boyfriend, she agreed to help him. When Doris met the Argentine "company" in charge of giving her the documents to bring to London, the company's representative gave her an empty suitcase. Doris, confused, called her boyfriend. He told her that the documents were confidential, and the company had placed them in the lining of the suitcase. Doris was concerned, but her boyfriend assured her that everything would be fine, telling her, "You're being paranoid! If you don't believe me, cut open the lining of the suitcase and you will see that there is only a high profile contract in there!" Convinced by her boyfriend, Doris put her clothes in the suitcase and left for London. When she arrived at the airport, authorities stopped her and asked if she knew what was in the lining of her suitcase. "Documents," she replied. Police cut open the bag and found 2.5 kilos of cocaine.

Other women explained that they had agreed to play a minor role in a drug crime because of the economic hardships they faced. One woman had worked at a factory, making shoes. It was only after she and her husband had both lost their jobs that they agreed to help their neighbors sell drugs. Another woman decided to become a drug mule to help her family, which included three children, escape from economic hardship. A third woman prisoner had a 12-year-old child with dyslexia. She agreed to carry drugs from Spain to Argentina because her commission would help her to provide for her son's special needs.

According to our empirical data, 86.93% of women surveyed are in SPF prisons because they committed or were accused of crimes of economic necessity, including drug crimes or theft.⁹⁷ Although this statistic does not reveal the complex reasons why each woman came into contact with the criminal justice system, it suggests that most were motivated by an economic need to sustain themselves and their families. Women who commit economic crimes for these reasons tend to be poor, have little education, and become mothers at a very early age.⁹⁸ They are more likely to be heads of households; the 2001 National Argentina Census reported that women led 81.75% of single-headed households, and the majority of these households were poor.⁹⁹ Women are disproportionately unemployed. In 2011, 9% of women in Argentina were unemployed as compared with 6% of men.¹⁰⁰ According to another study of 100 women in Unit 31, nearly 80% of participants were from low socio-economic classes.¹⁰¹ Our study found that of those women who committed economically motivated crimes, 75.61% (31 participants) were primary income earners for their household.

Moreover, women who commit drug offences or other economic crimes usually are involved in criminal activities on a small scale, often with the objective of providing for their families. All of the women we interviewed who were charged with drug trafficking were transporting small quantities of illegal substances across the border for which they would receive a fee of less than \$20,000, a modest sum when compared with the profits amassed by individuals involved in the drug trade at higher levels.¹⁰² One woman told us that women who act as mules typically carry only one or two kilograms of the illegal substances, for about 5000 Euros (US\$6530) per kilogram. Women who steal also may be doing so on a small scale – stealing clothing or daily goods, mainly to support the family's economic well-being.¹⁰³ A 2010 study revealed that most female federal prisoners are first-time offenders; only 18.9% of women interviewed for the study said that they had been previously detained.¹⁰⁴ Lengthy prison sentences and pre-trial detention are often unnecessary and inappropriate in circumstances where women are first-time offenders and committed economically motivated crimes. In some cases, the background of a woman offender and the conditions that led her to participate in criminal activity may merit a mitigated sentence and, unlike offenders who commit violent crimes, most of these women do not pose a risk to society.¹⁰⁵

OVERUSE OF PRE-TRIAL DETENTION FOR WOMEN ACCUSED OF DRUG OFFENCES

Argentina's frequent use of pre-trial detention against women accused of drug trafficking offenses is another reason for the increasing numbers of women in prison. Under the Tokyo Rules, states should rely on pre-trial detention in criminal cases only as a measure of last resort, in light of the demands of the criminal investigation and need to protect the public and victim.¹⁰⁶ The Rules further provide that "alternatives to pre-trial detention shall be employed at as early a stage as possible" and that "pre-trial detention shall last no longer than necessary to achieve the objectives [of the protection of society, crime prevention, or promotion of respect for the law and victims' rights]."¹⁰⁷ Rule 58 of the Bangkok Rules adds that "alternative ways of managing women who commit offences, such as... pretrial alternatives, shall be implemented wherever appropriate and possible."¹⁰⁸ The Inter-American Commission has also affirmed that pretrial detention should be applied only in exceptional circumstances and in accordance with the "principles of legality, the presumption of innocence, need, and proportionality, to the extent strictly necessary in a democratic society."¹⁰⁹

The Inter-American Commission on Human Rights has noted with concern the high numbers of pre-trial detainees in Argentine prisons as compared to convicted prisoners.¹¹⁰ In 2003, 60% of women detained in federal prisons had not been convicted and sentenced.¹¹¹ As of March 2010, 60% of the women held in SPF facilities were pre-trial detainees.¹¹² The results of our survey confirm the high number of pre-trial detainees in the SPF system: 41.43% of respondents (95 women) were pre-trial detainees.

Argentina's reliance on pre-trial detention in cases involving drug crimes contributes to these high percentages of pre-trial detainees among the population of female federal prisoners. Many women accused of low-level drug crimes have found themselves in detention pending trial. Of the pre-trial detainees who participated in our survey, 63.44% had been accused of drug crimes. One of the women we interviewed was pregnant when she was arrested for being in a taxi cab that contained drugs. She explained that she had been held at the police station for four days without being informed of her charge and later gave birth to her daughter in prison while still awaiting trial. The overuse of pre-trial detention

against women charged with drug trafficking crimes is inconsistent with international standards that require states to employ pre-trial detention only as an exceptional circumstance and to the extent strictly necessary and to implement, if possible, alternatives to pre-trial detention for women offenders.

In addition, many of the women who were in pre-trial detention had been detained for substantial periods of time. Of the pre-trial detainees surveyed, 24.73% had been detained for one to two years, while 10.75% had been detained for more than two years, despite Law No. 24.390's general limit of two years on pre-trial detention.¹¹³ Among pre-trial detainees accused of drug trafficking, 29.41% had been detained for one to two years and 11.76% had been detained for longer than two years. Lengthy pre-trial detention violates the international law principle that individuals shall not be held in detention any longer than is strictly necessary in light of the principles of proportionality and the presumption of innocence.

VIOLENCE AGAINST WOMEN

Women's experiences of gender-based violence can also play a significant role in their involvement in criminal activity and subsequent incarceration. International standards recognize this, providing in the Bangkok Rules that "violence against women has specific implications for women's contact with the criminal justice system"¹¹⁴ and calling upon States to develop gender-specific sentencing alternatives that recognize women's histories of victimization and do not involve prison time.¹¹⁵ Rule 60 provides that such alternatives should include "interventions to address the most common problems leading to women's contact with the criminal justice system" such as, among other services, the provision of counseling for survivors of domestic and sexual abuse.¹¹⁶ The United Nations General Assembly has also called upon States to take positive measures to address structural causes of violence against women.¹¹⁷

There is a strong link between violence against women and women's incarceration, in Argentina and around the world. The Bangkok Rules themselves acknowledge "women prisoners' disproportionate experience of domestic violence."¹¹⁸ Our survey revealed that 39.04% of respondents (89 participants) said that they had experienced violence prior to their imprisonment from an intimate partner or family member while 13.6% (31 participants) had been raped at least once prior to their imprisonment.

For some women, the abuse they experienced appeared to have contributed directly to their involvement in criminal activity. Twenty-two of the women surveyed indicated that they had been accused or convicted of a crime against their spouse or intimate partner. Of these women, 31.82% (7 participants) reported that they had been abused by their spouse or partner, including five who were in prison for murder, one who was in prison for assault, and one who was accused of theft.

All of the remaining 15 participants who indicated that they were in prison for a crime committed against a spouse or partner but had not been abused by the spouse or partner, were in prison for drug trafficking. Since it is not clear what it would mean to commit drug trafficking "against" a partner or spouse, their responses likely meant that they committed the crime because of or together with the partner or spouse. Some of these cases may have involved an element of physical or emotional coercion, even if the women did not report it as abuse.

Women may use force against their abuser after suffering severe and ongoing domestic violence, out of fear for their safety or that of their children. Such fears are not unfounded; Amnesty International reported that in 2008, 120 women were killed in Argentina by their partners or former partners.¹¹⁹ The actions of women who use force against their abusers often respond to subtle threats from the abuser, such as a comment or look, which may not seem significant to an outside observer. However, for a domestic violence survivor, these signs are clearly triggers for violence.¹²⁰ In many cases, a woman's actions to defend herself or her children should not be criminalized and prosecuted. However, where they do result in a woman's criminal conviction, courts should be permitted and encouraged to impose noncustodial sentences that take into account the experiences of gender violence that directly contributed to her crime.

CHAPTER 3

CONDITIONS OF WOMEN'S IMPRISONMENT

Individual Cell in Unit 31
Buenos Aires, Argentina, 2012
Photo: Erika P. López

In its resolution adopting the Bangkok Rules, the United Nations General Assembly recognized that “women prisoners are one of the vulnerable groups that have specific needs and requirements.”¹²¹ The United Nations Office on Drugs and Crimes identifies several reasons that contribute to the particular vulnerability of women in prison, including: (1) disproportionate victimization from sexual or physical abuse prior to imprisonment; (2) sexual abuse and violence against women in prison; (3) high likelihood of having caretaking responsibilities for their children, families and others; and (4) gender-specific healthcare needs that may not adequately be met.¹²² States should take these factors into account in establishing conditions of imprisonment that provide for women prisoners’ gender-specific experiences and needs.

Women deprived of liberty in Argentina’s federal prisons are detained within four prison units: Federal Penitentiary Complex 3, Federal Penitentiary Complex 4, SPF Unit 13, and SPF Unit 31. In 2011, there were approximately 50 children residing in the SPF with their mothers.¹²³ The SPF specifically adapted Unit 31 for mothers and their children by creating designated spaces for indoor and outdoor play and a full-staffed daycare and school. The Prison Commission of the Defensoría General de la Nación regularly monitors the conditions in federal prisons, including these units.

Conditions of women’s imprisonment within the Argentine federal system are consistent in many ways with international laws and provide examples of best practices, but in some cases, the implementation of these laws deviate from the stated policies. Visits to two different prisons in Argentina’s SPF and surveys of women prisoners in all four units reveal both positive and negative practices; interviews with several women in the prisons as well as our visual observations expose the gap between positive prison procedures and the reality of their implementation.

Further, our survey data served to provide quantifiable feedback from women deprived of their liberty within Argentina’s federal prisons. While 78.85% percent of women surveyed

rated their living conditions as “Acceptable” or better, our investigation revealed substantial problems in the administration of medical and nutritional care, the execution of work and education programs, the provision of adequate supervision and building maintenance, and the quality of care received by pre-trial detainees compared to that received by convicted women. This chapter aims to convey what women deprived of their liberty in Argentina experience in their day-to-day lives while incarcerated, with an emphasis on practices that should be improved in order to fulfill Argentina’s human rights obligations to women deprived of their liberty within SPF walls.

MEDICAL CARE

According to the Bangkok Rules, women deprived of their liberty have the right to individualized and gender-sensitive physical and mental health care.¹²⁴ In addition, Rule 6 calls for a thorough screening for every woman admitted to prison to determine her physical and mental health care needs.¹²⁵

Under Article 58 of Argentina’s Law No. 24.660, the State possesses both the authority and the responsibility to provide medical care to women deprived of their liberty.¹²⁶ A 2011 report by the United Nations Office on Drugs and Crime praised the “Gender policy and programme” adopted by the federal prison system as an internationally recognized best practice.¹²⁷ Under this policy, the SPF established programs such as Mental Health and Addictions, Sexual Health and Responsible Procreation, HIV/AIDS and Sexually Transmitted Infections, and Cervix Cancer Prevention.¹²⁸ Under this policy, all women who enter a federal prison must receive a medical examination in which a doctor determines the patient’s medical history and performs a medical and mental examination.¹²⁹ Further, a doctor is to propose an X-Ray, blood and urine tests, and EKG, performing such tests when the need arises.¹³⁰ Once a woman enters the prison population, she is to receive regular medical screening and on-call care.¹³¹ During on-site visits, our conversations with SPF prison authorities indicated that the requirement of medical screening applies to pre-trial detainees as well as convicted prisoners.

Our interviews with medical staff at the two SPF women’s prisons we visited, confirmed their knowledge of these procedures as well as other prevailing medical best practices. However, our survey results and private interviews with women deprived of their liberty suggested that these procedures were not always implemented. For example, some women prisoners did not receive certain standard medical tests at any time in prison:

- 32.31% of prisoners reported never receiving a PAP test; and
- 73.36% of prisoners reported never receiving breast cancer screening.

The medical care received by pre-trial detainees was worse than that received by convicted prisoners:

- 42.11% of pre-trial detainees never received a PAP test compared with 25.37% of convicted women;
- 82.11% of pre-trial detainees never received a breast cancer screening in contrast to 67.16% of convicted women; and
- 75.53% of pre-trial detainees versus 53.78% of convicted women indicated they never received HIV-prevention education.

Consequently, pre-trial detainees have a more negative perception of the medical care they receive than do convicted women. The survey revealed that while 47.36% of convicted women rated the medical care received as “Below Average” or “Unacceptable,” 64.21% of pre-trial detainees rated medical care as “Below Average” or “Unacceptable.”

Prison authorities may fail to give pre-trial detainees annual medical tests because they believe that the detainees’ stay will be short. Many detainees spend long periods of time in prison. Of all pre-trial detainees surveyed, 38.71% had been in prison for one year or more.

Failure to provide adequate medical care is a violation of international and domestic standards. While the procedures presented to us during our visit are comprehensive and would meet these standards, our interviews corroborated our survey data, indicating that women rarely receive the full examination listed under the prison’s procedures.

In interview sessions, women objected to more than just the inadequacy of initial medical screening and tests. One woman described the slow response time to a medical emergency she witnessed. Another woman waited for weeks until she received proper dental care, causing her to be unable to eat. A third woman described the “common” practice of women regularly visiting the psychiatrist and receiving sleeping pills without further inquiry into their specific health issues.

HYGIENE

Together with medical care, appropriate hygiene for incarcerated women remains an imperative part of Argentina’s duty to provide for the physical and mental well-being of its inmates.¹³² In particular, Bangkok Rule 5 provides that women prisoners must be afforded facilities and materials to meet their gender-specific hygiene needs, including a regular supply of water and sanitary towels.¹³³ These resources should be provided free of charge, and women prisoners should not be subjected to the embarrassment of having to ask for them.

Our visual observations indicated the continuous availability of potable water, including hot water in both faucets and showers. However, 26.46% of the women surveyed reported not having sufficient access to feminine napkins while in prison. One woman interviewed said that each woman receives only one roll of toilet paper per week, saying that “almost everyone” has to buy more from the prison’s general store (Cantina): “It’s a nightmare for girls on their periods. It’s just not enough.”

NUTRITION

According to Rule 20 of the Standard Minimum Rules, prison administration must provide inmates with nutritious, well-prepared food sufficient for their health and strength.¹³⁴ Rule 48 of the Bangkok Rules further requires prisons to address the nutritional needs of women who are pregnant or breastfeeding or who recently gave birth.¹³⁵

With regard to nutrition, many interviewees agreed that the Prison Food Service distributes food that is of a sufficient quantity, but some indicated that it is barely edible. One woman indicated in her interview that this food often arrives freezing cold, and sometimes the elderly prisoners find the food too hard to eat. She further expressed a desire for more fresh produce; she said that each woman receives a small orange or apple per day but that she would enjoy more fresh vegetables with her meal.

SEPARATION OF CONVICTED WOMEN AND PRE-TRIAL DETAINEES

Under Article 10 of the ICCPR and Rule 8 of the Standard Minimum Rules, pre-trial detainees should be housed separately from convicted prisoners and treated in accordance with their status as individuals who have not been convicted of a crime.¹³⁶

One on-site visit revealed that pre-trial detainees in federal prisons frequently share pavilions, or living areas, with convicted women. Further, the on-site visit confirmed that women with children, convicted or not, share the same living spaces in order to accommodate their children. As Silvia Martinez of the Defensoría General de la Nación pointed out, public defenders sometimes encourage pre-trial detainees to opt to live in the pavilions housing the general population in order to earn credit towards the SPF's behavioral point-system (discussed in the following section of prison supervision).¹³⁷ Housing convicted women and pre-trial detainees together is inconsistent with international standards that recognize that pre-trial detainees should be treated in a way that reflects their status as persons who have not been convicted and may be innocent of any crime. It also affects the rights of all women deprived of their liberty, leading to crowded rooms and strained resources.

LIVING CONDITIONS

International standards require Argentina to provide women deprived of their liberty with clean, comfortable, and hygienic accommodations.¹³⁸ Rules 10-14 of the Standard Minimum Rules provide that accommodation must be clean and well-maintained, meet health requirements, and provide adequate, well-maintained bath and sanitary facilities.

¹³⁹ Argentina's Law No. 24.660 similarly requires the SPF to provide incarcerated women with comfortable living quarters.¹⁴⁰

While the SPF identifies each housing unit within the prison as a numbered pavilion, both of the prisons we visited contained two types of living quarters, consisting of individual cells and open spaces with bunks, called "pavilion style." Of the women surveyed, 56.33% stated they lived in an individual cell, while 43.23% indicated they shared an area with other women. This ratio remained constant regardless of whether we distinguished between pre-trial detainees and convicted women. Of the women who indicated they shared a living space, 57.3% shared their sleeping quarters with at least 12 other women.

While the living and bathing quarters observed within the SPF meet domestic and international standards¹⁴¹ when functional, our on-site visit raised concerns about maintenance and the response time for addressing maintenance complaints. Several women interviewed complained about the frequent cockroach infestations, and visual observations confirmed the presence of cockroaches in the women's bedding and kitchenettes. A guard explained that the prison fumigates twice a month, but despite their effort, the infestation persists.¹⁴²

An interviewee, a foreign national who does not speak Spanish, explained the process by which women may request aid, either for non-emergency medical assistance or for maintenance issues: "Whenever you have a problem of any kind, you have to write it on a note, in Spanish, and leave it in the box right outside the pavilion gate." She then explained that the guards come at 7:00 a.m. and pick up the notes, saying it takes at least a week for any maintenance issue to be addressed. At the time of the interview, she said one of the sinks and two of the toilets in her pavilion's bathroom were not functional: "There are eleven girls and one sink and two toilets."

VIOLENCE AND PRISON SUPERVISION

Standard Minimum Rule 9 provides that where prisoners are housed in dormitories, they should be regularly supervised at night and only those “carefully selected as being suitable to associate with one another” should reside together.¹⁴³ Rule 27 adds that prison staff should maintain discipline but with the minimum amount of restriction that is necessary for safety and order.¹⁴⁴ Bangkok Rule 31 requires prisons to establish policies and regulations for prison staff that protect women prisoners from gender-based violence or harassment.¹⁴⁵

Our General Prison Population Survey indicated that 16.74% of inmates had witnessed physical and verbal abuse in prison and reported it to prison authorities. 55.56% of those who reported abuse to prison authorities stated that officials did not take their report seriously.

The SPF uses a point-based system in order to encourage good behavior and positive socialization.¹⁴⁶ Every three months, an inmate is evaluated and assigned points based in a 10-point qualification system involving two categories: conduct and concept.¹⁴⁷ Depending on the evaluation, women are assigned to one of three levels, with progressively less supervision: observation, treatment, or proof period.¹⁴⁸ The third level is the most desirable, because it affords the most trust and freedom for women.¹⁴⁹

During our on-site visit, both prison administrators and incarcerated women brought up the problem of inmate violence. One inmate reported that shortly before our visit, three women prisoners had killed two other women in their five-person pavilion during a fight. Another woman explained, “The first few months in prison was terrible. There was a lot of violence. Girls fight amongst each other.” When asked about violence and drug use among the inmates, an inmate responded, “I am deaf, blind, and mute,” indicating the strong desire to “keep her head down” long enough to finish her sentence and leave.

One of the women we interviewed decried the system through which violence is reported, saying that in some cases women have confidentially reported inmate violence to guards only to later suffer retaliation from inmates in the form of violent attacks. Further, a prison guard explained that the guards earn positions supervising the best-behaved inmates through a seniority system, saying that she has been assigned to the same well-behaved pavilion for several years.¹⁵⁰ Visual observation of the guards indicated that the guards assigned to the worst-behaved pavilions were among the youngest individuals employed by the SPF, with one guard revealing that she had just finished her training.¹⁵¹

The grouping of women according to their behavior (grouping all the “worst” behaved together), combined with the relatively unsupervised nature of the pavilions, results in an environment that can foster violence. In order to prevent or immediately stop any inmate violence, it is important that guards take a more active role in supervising women’s interactions with each other. In addition, the seniority system employed by prison guards when determining pavilion assignments leaves the youngest and most inexperienced guards supervising groups of inmates most prone to violence. A rotation system where all guards must work in the “worst”-behaved pavilions would mean better supervision; pairing younger guards with a more experienced partner would also aid in faster on-the-job training for inexperienced guards and in lowering the risk of violence among inmates.

WORK

Bangkok Rule 46 provides that prisons have a responsibility to design and implement comprehensive pre- and post-release reintegration programs, taking into account women's gender-specific needs.¹⁵² These may include work programs that prepare women to successfully transition into free society. Standard Minimum Rule 71 adds that work provided to prisoners shall, to the extent possible, "maintain or increase the prisoners' ability to earn an honest living after release" and that vocational training shall be provided to prisoners who can benefit from it.¹⁵³

BEST PRACTICE: WAGES

Women who work while incarcerated in the SPF currently earn wages at the rate of 14.5 pesos per hour, an amount which matches Argentinian minimum wage. A portion of these wages are set aside for each woman to be used upon her release, with the remaining portion available for her personal use. The grant of minimum wage allows women to support their families even while incarcerated; it also allows them to buy extra supplies for themselves while incarcerated. Argentina's use of its national minimum wage as a threshold for prison labor exceeds the wages granted to laboring prisoners in many countries, including the United States.

Women work in prison and, at the time of our prison site visits, earned approximately 14.5 pesos (US\$2.82) per hour.¹⁵⁴ In Federal Penitentiary Complex 3, we visited a bakery where items made are sold to inmates and visitors. The prison also has an arts and crafts room where women make small boxes covered in designs. We were told about on-site embroidery and carpentry rooms, but did not observe these during our visit. There is also a room where women put together gift bags in an assembly line.

The women we interviewed responded very positively to the work programs, remarking that they enjoy earning wages and like that they are able to choose from at least two different jobs. However, while these jobs provide income and spending money for the Cantina, the various manual labor jobs lack vocational training that would prove beneficial in the marketplace outside of the prison.

BEST PRACTICE: EDUCATION INCENTIVES

The SPF offers primary (elementary), secondary (high school) and university level courses. Women can receive a reduction in their sentences if they successfully pass all or part of their educational courses. This practice encourages women to further their education and earn various degrees. The incentive also applies to vocational courses that teach practical skills.

EDUCATION

Rule 77 of the Standard Minimum Rules calls upon prison systems to provide for the education of prisoners who can benefit from it, and stipulates that this education, if practicable, should be integrated with the country's education system.¹⁵⁵

Argentina's National Education Law provides for compulsory education, including among persons deprived of liberty, and addresses other aspects of education in liberty deprivation contexts.¹⁵⁶ Adopted in 2011, Argentina's Law No. 26.695 affirms that all persons deprived of their liberty must have access to public education at all levels and mandates education up to the secondary level.¹⁵⁷ Additionally, the new law encourages education as it provides for a reduction in the prison terms of inmates who successfully complete and pass all or part of their educational courses.¹⁵⁸ The women we interviewed described a broad range of classes available to them, including several at the university level.

INMATE PROXIMITY TO FAMILY AND VISITATION

According to Rule 4 of the Bangkok Rules, women prisoners "should be allocated, when possible, to prisons close to their home or place of social rehabilitation, taking account of their caretaking responsibilities...."¹⁵⁹ Rule 26 further provides that states should develop policies and strategies for women in prisons to improve contact with their families and children.¹⁶⁰

In contrast to the mandate of the Bangkok Rules, more than half of all prisoners surveyed in our General Prison Population Survey (53.71%) were detained in excess of 100 km from their home and family. 86.46% remain incarcerated at least 30 km away from their homes. Of those participants housed at least 100 km from their home and family, 81.16% of women indicated they would resume responsibility for at least one child upon their release.

FAUSTA* (October 2012)

Fausta is a foreign national from Europe. Her work used to be international, and she travelled frequently. One day, strangers approached her and offered her \$20,000 U.S. to fly drugs from Argentina to Italy. Security officials detained her at the airport. Fausta admitted to knowingly transporting drugs in exchange for money. Fausta chooses to refrain from telling her family she is in prison. While her father lives in Peru and her sister resides in Spain, she will not contact them: "I did this. This is my burden. They do not need to know."

Our survey further indicates a strong relationship between the distance an inmate is detained from her home and the likelihood of visitation in prison. For example, 96.77% of inmates housed within 30 km of their home and family received visits (30 participants), as opposed to 56.10% of those inmates housed over 100 km away (69 participants). During our on-site visit to Federal Penitentiary Complex 3, we observed that the prison allows the women to make collect phone calls and has installed one phone in each pavilion. However, two interviewees indicated their families remained unaware of where they were or that they had been incarcerated.

CHAPTER 4

CONSEQUENCES OF WOMEN'S IMPRISONMENT ON CHILDREN

Children's Play Area
in Unit 31

Buenos Aires, Argentina, 2012

Photo: Erika López

As the number of women in prison has risen, an increasing number of children have been impacted. In an effort to minimize the negative impact of separation of mother and child, some countries have developed “co-residence programs” to allow children to reside with their incarcerated mothers in prison. Under Argentine law, a mother may decide to have her child live with her in prison until the age of four.¹⁶¹ In some other countries that have such programs, only infants are allowed to reside in prison with their mothers.¹⁶²

In recognition of a growing concern about this issue, the Committee on the Rights of the Child (CRC Committee), which monitors compliance with the Convention on the Rights of the Child (CRC), held a Day of Discussion on “Children of Incarcerated Parents,” including discussion of co-residence programs, in 2011.¹⁶³ Below we discuss international norms relating to co-residence programs and describe certain practices that such programs should incorporate. The Argentine program described below in many ways can be a model for governments who are interested in instituting such programs. However, judges who are sentencing primary caretakers of children should preference non-custodial sentences such as house arrest, placement into community homes, or other alternatives to incarceration. If a custodial sentence is, nevertheless, imposed on primary caretakers, then the “best interests” of the child standard should be used to determine whether or not it is appropriate to place a child in a co-residence program with his or her parent.

BEST PRACTICES FOR CO-RESIDENCE PROGRAMS

Many countries have adopted co-residence programs,¹⁶⁴ and other countries may consider doing so in the future. Social science research has identified several positive effects of co-residence programs. These include secure infant attachment, satisfactory child behavior

development, and reduced recidivism rates for mothers.¹⁶⁵ Infants who begin co-residency immediately upon birth securely attach to their mothers at similar rates to healthy, low-risk community children.¹⁶⁶ Furthermore, studies of U.S. inmate-mothers in Nebraska,¹⁶⁷ New York,¹⁶⁸ and Washington State¹⁶⁹ show that co-residence reduces recidivism for mothers.¹⁷⁰ The direct benefit that mothers receive from co-residence programs indirectly improves the lives of their children who benefit from the long-term presence of a parent with whom they have a secure bond.

On the other hand, when there are not specially designed programs that can accommodate the special developmental, nutrition and other needs of infants, toddlers, and children, there can be grave consequences for them. For example, babies that lived with their mothers in a Sierra Leone prison that did not have a dedicated co-residence program regularly fell sick due to overcrowding, poor sanitation, and malnourishment.¹⁷¹ Contagious diseases posed further dangers to the children,¹⁷² and the prison provided inadequate and arbitrarily distributed supplies to inmate-mothers.¹⁷³

Despite the growing interest in co-residence programs, there are no clear legal or other guidelines on best practices for such programs. The Standard Minimum Rules,¹⁷⁴ the UN Guidelines for the Alternative Care of Children,¹⁷⁵ the Bangkok Rules,¹⁷⁶ and the Inter-American Commission on Human Rights' Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas,¹⁷⁷ do, however, provide some guidance:

Document	Provision	Rule
Standard Minimum Rules	23	<p>"In women's institutions there shall be special accommodation for all necessary pre-natal and post-natal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the institution."</p> <p>"Where nursing infants are allowed to remain in the institution with their mothers, provision shall be made for a nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers."</p>
UN Guidelines for the Alternative Care of Children	47	<p>"States should take into account the best interests of the child when deciding whether to remove children born in prison and children living in prison with a parent."</p> <p>"The removal of such children should be treated in the same way as other instances where separation is considered."</p>
Bangkok Rules	5	<p>"The accommodation of women prisoners shall have facilities and materials required to meet women's specific hygiene needs, including . . . a regular supply of water to be made available for the personal care of children and women, in particular women . . . who are pregnant [or] breastfeeding."</p>
	33	<p>"Where children are allowed to stay with their mothers in prison, awareness-raising on child development and basic training on the health care of children shall also be provided to prison staff, in order for them to respond appropriately in times of need and emergencies."</p>

Document	Provision	Rule
Bangkok Rules	42	<p>"The regime of the prison shall be flexible enough to respond to the needs of pregnant women, nursing mothers and women with children. Childcare facilities or arrangements shall be provided in prisons in order to enable women prisoners to participate in prison activities."</p> <p>"Particular efforts shall be made to provide appropriate programmes for pregnant women, nursing mothers and women with children in prison."</p>
	48	<p>"Adequate and timely food, a healthy environment and regular exercise opportunities shall be provided free of charge for pregnant women, babies, children and breastfeeding mothers."</p> <p>"Women prisoners shall not be discouraged from breastfeeding their children, unless there are specific health reasons to do so."</p>
	49	"Children in prison with their mothers shall never be treated as prisoners."
	50	"Women prisoners whose children are in prison with them shall be provided with the maximum possible opportunities to spend time with their children."
	51	<p>"Children living with their mothers in prison shall be provided with ongoing health-care services and their development shall be monitored by specialists, in collaboration with community health services."</p> <p>"The environment provided for such children's upbringing shall be as close as possible to that of a child outside prison."</p>
Inter-American Commission Principles and Best Practices on the Protection of Persons Deprived of Liberty	X	"Where children of parents deprived of their liberty are allowed to remain in the place of deprivation of liberty, the necessary provisions shall be made for a nursery staffed by qualified persons, and with the appropriate educational, pediatric, and nutritional services, in order to protect the best interest of the child."
	XXII	"It shall be strictly forbidden to impose solitary confinement to pregnant women; mothers who are living with their children in the place of deprivation of liberty; and children deprived of liberty."

In addition to what the international rules suggest, we have suggested in the following table some minimum considerations that should be taken into account when developing co-residence programs. The complementary lists of factors below associated with each category are intended as general guidance and not as an exclusive catalogue of relevant issues. States should regularly monitor co-residence programs once they are established and should consider whether it is appropriate to develop such programs for fathers who are deprived of their liberty.

MINIMUM REQUIREMENTS FOR A CO-RESIDENCE PROGRAMS

Category	Fact
Basic facilities	Appropriate sleeping arrangements for the child Some level of privacy in living quarters General cleanliness
Children's facilities	Qualified nursery and childcare personnel Age-appropriate playroom or childcare facilities Access to and appropriateness of outdoor play area Environment resembling that of outside the prison
Security	Guards trained or instructed on treatment of children Separation from general prison population
Child development	Monitoring by child development specialists Opportunities for socialization with other children Access to age-appropriate education Availability of programs for children outside the prison
Healthcare	Access to appropriate medical facilities Availability of pre-natal and post-natal care and treatment Number of qualified health practitioners (Ob/gyn, pediatrics) Promptness of medical care Availability of medication and treatment
Basic necessities	Sufficiency of the quantity and quality of food Appropriateness of clothing Access to childcare supplies (diapers, lotions, etc.)

CO-RESIDENCE PROGRAM IN THE ARGENTINE FEDERAL SYSTEM

Argentine law allows a mother deprived of her liberty to decide to have her child reside with her in prison until the age of four.¹⁷⁸ If the child reaches the age limit and the parents of the child are not in a position to care for the child, judicial or administrative authorities may intervene to provide alternative care.¹⁷⁹ We developed a survey instrument that was administered to women who live in Unit 31 in Ezeiza, Buenos Aires with their children (attached as Annex 2). Twenty-six women from Unit 31 responded to the survey (the "Co-Residence Program Survey"). According to the General Prison Population Survey, we found that for those mothers whose children were not living with them in prison, 10% were in foster care, 30% live with their fathers, and 60% reside with other relatives.

EDUCATION:

"In the morning he goes outside of the prison for school and in the afternoon he is inside the prison. That is the way it is – it is according to the room they are assigned to where they go, and it is determined by age." If she had to stay for another year in prison her son would go outside during the afternoon.

- INTERVIEW WITH LORRAINA*

In Unit 31, women who have children sleep and live in pavilions that house over 10 women, but they are separated from pavilions that do not house children. Each pavilion also has an outside play area with children's swings and other play structures. Outside of the pavilions, there is a day-care center that is well equipped with toys, a playground, and a full-time staff to care for the children while their mothers work in the prison. Prison officials told us that diapers, formula, and food were available through the prison, but that mothers needed to provide clothes for their children. Over 84% of the women responding to the Co-Residence Program Survey indicated that their child only received one meal a day and that the child would eat better outside the prison.

During the day, children have access to both indoor and outdoor areas where they can play and socialize. According to the results of the Co-Residence Program Survey, 75% of children were permitted to play outside for more than two hours per day. The prison also has physicians on the premises and the children have access to medical care from these physicians. Children that are old enough may be taken by bus to educational facilities outside the prison where they have the opportunity to interact with a greater variety of people. For the children that do not attend day care or pre-school outside of the prison, the prison provides daycare services for the mothers as noted above.

The majority of participants of the Co-Residence Program Survey (78.26%) indicated that their child received medical care on the same day they had asked for it. A few women we met while touring the facility expressed concern about the lack of proper medical care for their children. These women felt that their children had a disorder that the doctors in the prison could not diagnose and had repeatedly requested specialized medical care, but were not given access to a specialist. Many respondents of the Co-Residence Program Survey (72.73%) indicated that they felt their child received better healthcare outside of prison than within prison. Even though the ideal situation for a child is to be raised outside of prison with his or her parents, the Argentina co-residence program can serve as a model for countries that decide to implement such a program in their prisons.

TAKING INTO ACCOUNT THE INTEREST OF THE CHILDREN IN SENTENCING PARENTS AND PLACEMENTS IN CO-RESIDENCE PROGRAMS

Sentencing Primary Caretakers

When sentencing the primary caretaker of a young child, a judge should consider the viability of alternative sentencing such as deferment of sentence or house arrest. Rule 64 of the Bangkok Rules states "Non-custodial sentences for pregnant women and women with dependent children shall be preferred where possible and appropriate."¹⁸⁰ Judicial precedent set by other countries that have considered this matter also suggests a preference for

non-custodial sentences in such situations. For example, in a decision for the South African Constitutional Court, Justice Albie Sachs noted that imposing a sentence on a primary caretaker of a child “without paying appropriate attention to the need to have special regard for the children’s interests threatens to... [violate the interests of the child].”¹⁸¹ He further found that if there is a range of sentences (custodial and non-custodial), then “the court must use the paramountcy principle concerning the interests of the child as an important guide in deciding which sentence to impose.”¹⁸²

In 2009, partly in consideration of the needs of children, Argentina adopted legislation allowing for house arrest sentences for women prisoners who have children of less than five years of age living with them or who are caring for a disabled child.¹⁸³ A pregnant woman can also be considered for house arrest.¹⁸⁴ Despite this law, children continue to reside in prison with their mothers. Our General Prison Population Survey indicates that this may be, at least in part, due to lack of awareness of this law; 23.53% of women deprived of their liberty with children did not ask for house arrest prior to incarceration. However, those who did request house arrest were often denied; 76.47% of the women deprived of their liberty indicated that they were denied house arrest. Of those participants who were denied house arrest, 6% indicated that the location of their residence was the reason for denial while 33% indicated that the judge decided house arrest was not the best alternative for them, and 60% indicated other reasons for denials.¹⁸⁵ It is particularly difficult for poor women to take advantage of the house arrest laws because they may not have the means to maintain a house and provide for their children without being able to work outside of the home. Thus, the house arrest law has not achieved its potential of providing an alternative to children and their mothers.

Placing Children into Co-Residence Programs

If a judge determines that a primary caretaker of a child should receive a custodial sentence, the “best interests” of the child standard should be used in determining whether or not to place children in co-residence programs. Argentina is party to and bound by the Convention on the Rights of the Child (CRC), which states that all decisions made about children should be with regard to their “best interests.”¹⁸⁶ In its Report on the Day of Discussion on Children of Incarcerated Parents, the CRC Committee confirmed that the “best interests” of the child should govern decisions made to place children in prison with their incarcerated parents.¹⁸⁷ Although the CRC does not define “best interests,” the United Nations High Commissioner on Human Rights has interpreted it to mean the well-being of the child.¹⁸⁸ Determining the best interests of the child involves a balancing of the various individual circumstances specific to the child, as well as the rights provided by international and national legal regimes.¹⁸⁹ The CRC Committee has noted only two factors in evaluating whether placing a child in a prison co-residence program is in the child’s best interests – “the overall conditions of the incarceration context and particular need for parent-child contact during early childhood.”¹⁹⁰ Rule 49 of the Bangkok Rules only states that “[d]ecisions to allow children to stay with their mothers in prison shall be based on the best interests of the children.”¹⁹¹ Several factors should be considered by a neutral decision-maker when deciding whether or not it is in the “best interests” of a child to be placed in a co-residence program: 1) the age, needs, and opinion (if he or she is old enough to express one) of the specific child; 2) the child’s relationship to the primary caretaker and whether there is a history of past abuse; and 3) potential alternatives outside of prison for the child.

CHAPTER 5

CONCLUSION AND RECOMMENDATIONS

In furtherance of the mandate of the Bangkok Rules, we conducted an in-depth empirical study of nearly 30% of all women in federal prison in Argentina. The purpose of this study was to determine the causes of the increase in women's imprisonment in Argentina, to assess whether the conditions of their imprisonment comply with applicable domestic and international laws and norms, and to analyze the policies Argentina has adopted to mitigate the consequences of women's imprisonment on children. We approached this work with the twin goals of suggesting policy improvements that Argentina can consider as well as sharing with the international community certain important and good practices adopted by Argentina. We encourage the United States and other countries to consider adopting and implementing the good practices identified in this report.

We conclude that Argentina's laws aimed at preventing drug crimes contribute significantly to the rise in the women's prison population in the federal prisons. In the 1990s, in response to the U.S. "war on drugs," many Latin American countries, including Argentina, stiffened their drug polices to (among other things) impose harsher sentences on low-level offenders. The harsh sentences imposed on drug mules – individuals, usually women, who are low on the drug cartels hierarchy who transport small amounts of drugs across borders – have also led to an increase in the number of women in prison and length of pre-trial detention. In addition to the recommendations offered below, we urge the United States to continue its move towards reducing or eliminating harsh punishments for drug crimes and to effect similar changes in its foreign policies towards Argentina and other countries in the region. Additionally, women are increasingly heads of households. Poor economic conditions are also a reason women commit certain crimes such as theft, and drug crimes and violent crimes are sometimes (but not always) related to a prior history of abuse.

We found that the laws and policies Argentina had adopted in the prison system generally complied with international standards and were monitored regularly by the prison commission in the Defensoría and other bodies. While Argentina's federal prison system complies with many aspects of the applicable international and regional standards on the imprisonment of women, there are several areas where practice deviates from policy. For example, many prisoners, especially pre-trial detainees, do not receive standard gender-specific health tests like PAP smears, violence among inmates appears to be a significant problem within prisons, and women are placed in prisons located geographically far away from their families.

As more primary caretakers of children are incarcerated, an increasing number of children in society suffer due to separation from their parents. The interests of the innocent child must be taken into consideration when imposing sentences on mothers and alternatives to incarceration should always be preferred. Argentina has adopted a house arrest policy that gives judges discretion in sentencing women to house arrest if they have children who are five years of age or younger. Yet, many women with young children are denied this option in practice. Argentina has also developed a program where children who are up to four years old can reside in prison with their mothers. Our visual evaluation of the program and interviews with prison staff suggested that the program was developed with careful consideration. Although many countries may be interested in creating such co-residence programs, there is little international policy guidance on best practices. The Argentine co-residence programs can be evaluated and reviewed by other countries to help guide the development of their own. Decisions to place children in co-residence programs should be made based on the "best interests" of the child.

RECOMMENDATIONS

Below we outline the key recommendations for policy reform in Argentina:

Causes of Women's Imprisonment:

- Reduce the sentence imposed for drug trafficking for women who are at the bottom of the drug trafficking hierarchy and sentence such women to alternatives to incarceration where appropriate.
- Reduce the use and length of pre-trial detention for women who have been charged with crimes, including women accused of drug trafficking.
- Bring to justice perpetrators who commit violence against women and make efforts to address the economic needs of people to change people's incentives to commit crimes.

Conditions of Women's Imprisonment:

- Ensure that practices of the prison staff comply with articulated policies.
- Reduce inmate violence through increased supervision, including placing experienced and senior guards in pavilions with the most violent prisoners.
- Ensure that all efforts are made to house prisoners as geographically close to their homes as possible and introduce measures to encourage and facilitate women's contact with their families such as assistance with transportation or extension of the length of visits.
- Ensure that all prisoners, including pre-trial detainees, receive timely access to medical care, medical screening, and gender-specific hygiene products.

Consequences of Women's Imprisonment on Children:

- Expand the application of the policy that allows judges to sentence mothers to house arrest and consider expanding this policy to include fathers if they are the primary caretakers of children.

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ENDNOTES

EXECUTIVE SUMMARY

- ¹ CENTRO DE ESTUDIOS LEGALES Y SOCIALES (CELS), MINISTERIO PÚBLICO DE LA DEFENSA DE LA NACIÓN, PROCURACIÓN, & PENITENCIARIA DE LA NACIÓN, *MUJERES EN PRISION: LOS ALCANCES DEL CASTIGO* (Spanish) 27 (2011) [hereinafter CELS *MUJERES EN PRISION*]; *Estadísticas, Población Penal*, Dirección Nacional del Servicio Penitenciario Federal, Republica Argentina, at http://www.spf.gov.ar/index.php?option=com_phocagallery&view=category&id=7&Itemid=78 (last visited April 24, 2013) [hereinafter SPF Criminal Population Statistics].
- ² For example, the 1955 United Nations Standard Minimum Rules for the Treatment of Prisoners has a specific provision with regard to providing men access to shaving materials but no provisions addressing the health and reproductive needs of women, apart from a provision for pre- and post-natal care and treatment. See United Nations Standard Minimum Rules for the Treatment of Prisoners, Rules 16, 23 (August 30, 1955), adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 30 August 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977 [hereinafter Standard Minimum Rules].
- ³ See United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), G.A. Res. 65/229, annex, adopted Dec. 21, 2010, U.N. Doc. A/Res/65/229 (Mar. 16, 2011) [hereinafter Bangkok Rules].
- ⁴ *Id.*, Rules 67-69.
- ⁵ SPF Criminal Population Statistics, *supra* note 1.
- ⁶ *Institucional*, Dirección Nacional del Servicio Penitenciario Federal, Republica Argentina, at http://www.spf.gov.ar/index.php?option=com_content&view=article&id=469&Itemid=57 (last visited April 24, 2013) [hereinafter SPF Institutional Statistics].
- ⁷ SPF Criminal Population Statistics, *supra* note 1. The number of women prisoners is derived from the percentage given on the Dirección Nacional del Servicio Penitenciario Federal website.
- ⁸ See *also* CELS *MUJERES EN PRISION*, *supra* note 1, at 27.
- ⁹ See *DRUGS AND DEMOCRACY IN LATIN AMERICA: THE IMPACT OF U.S. POLICY* (Coletta A. Youngers & Eileen Rosin, eds., 2005).
- ¹⁰ See TRANSNATIONAL INSTITUTE, WASHINGTON OFFICE ON LATIN AMERICA, *SYSTEMS OVERLOAD: DRUG LAWS AND PRISONS IN LATIN AMERICA* 11-12, 19 (2011), available at http://www.wola.org/sites/default/files/downloadable/Drug%20Policy/2011/TNIWOLA-Systems_Overload-def.pdf [hereinafter TRANSNATIONAL INSTITUTE, *DRUG LAWS AND PRISONS IN LATIN AMERICA*].
- ¹¹ CENTRO DE ESTUDIOS DE JUSTICIA DE LAS AMÉRICAS (CEJA), *INTRODUCCIÓN A LOS PROBLEMAS DE GÉNERO EN LA JUSTICIA PENAL EN AMÉRICA LATINA* 91 (Lidia Casas Becerra ed., 2010), available at <http://www.cejamericas.org/index.php/biblioteca/publicaciones-ceja> [hereinafter CEJA, *PROBLEMAS DE GÉNERO EN LA JUSTICIA PENAL EN AMÉRICA*].
- ¹² CELS *MUJERES EN PRISION*, *supra* note 1, at 27.
- ¹³ See ABA RULE OF LAW INITIATIVE, *HANDBOOK OF INTERNATIONAL STANDARDS ON PRETRIAL DETENTION PROCEDURE* (2010), available at <http://www.cejamericas.org/manualsaj/%5BABA%5DHandbookofInternationalStandard-sonPretrialDetentionProcedure2010.pdf>; CENTRE FOR HUMAN RIGHTS (GENEVA) AND CRIME PREVENTION AND CRIMINAL JUSTICE BRANCH (NEW YORK), *HUMAN RIGHTS AND PRE-TRIAL DETENTION: A HANDBOOK OF INTERNATIONAL STANDARDS RELATING TO PRETRIAL DETENTION*, United Nations Professional Training Series No. 3 (1994), available at <http://www1.umn.edu/humanrts/Human%20Rights%20and%20Pre-trial%20Detention.pdf>.
- ¹⁴ Bangkok Rules, *supra* note 3, Rule 44.
- ¹⁵ The remaining participants who were in prison for a crime committed against a spouse or partner were incarcerated for drug crimes. Since it is unclear what it would mean to commit a drug crime “against” a partner or spouse, their responses likely meant that they committed the crime because of or together with the partner or spouse. Some of these cases may have involved an element of physical or emotional coercion even if the women did not report it as abuse.
- ¹⁶ Bangkok Rules, *supra* note 3, Rule 5.
- ¹⁷ Standard Minimum Rules, *supra* note 2, Rule 20(1).
- ¹⁸ International Covenant on Civil and Political Rights, art. 10(2)(a), G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966) [hereinafter ICCPR]; Standard Minimum Rules, *supra* note 2, Rule 8(b).
- ¹⁹ See Standard Minimum Rules, *supra* note 2; Bangkok Rules, *supra* note 3.
- ²⁰ See *infra* Chapter 3.
- ²¹ Standard Minimum Rules, *supra* note 2, Rule 9(2).

²² Bangkok Rules, *supra* note 3, Rule 31.

²³ *Id.*, Rule 46.

²⁴ Interviews with Prison Authorities, Prison Unit 31, Buenos Aires, Argentina (October, 2012). At the time of the interviews, women prisoners earned approximately 14.5 pesos (US\$2.82) per hour for their work while in prison. *Id.*

²⁵ Standard Minimum Rules, *supra* note 2, Rule 77(1)-(2).

²⁶ Law No. 26.695, art. 1 (see new art. 133) (2011) (replacing Law No. 24.660, art. 133-142 (1996)). See also Law No. 26.206 ("Ley Nacional de Educación"), arts. 18, 26, 29, 55-59 (2006) (providing for compulsory education generally and for persons deprived of liberty in particular and addressing other aspects of education in the deprivation of liberty context).

²⁷ Law No. 26.695, art. 1 (see new art. 140) (2011) (replacing Law No. 24.660, art. 133-142 (1996)). (a reduction of one month is granted if the inmate completes an academic school year; two month reduction for completion of a vocational course; two month reduction for completion of primary education; three month reduction for completion of secondary education; three month reduction for tertiary studies; and, two month reduction for postgraduate courses).

²⁸ Bangkok Rules, *supra* note 3, Rule 4.

²⁹ *Id.*, Rule 26.

³⁰ See QUAKER UNITED NATIONS OFFICE, BABIES AND CHILDREN LIVING IN PRISON: AGE LIMITS AND POLICIES AROUND THE WORLD, Submission to the 2011 CRC Day of General Discussion on Children of Incarcerated Parents (2011), available at <http://crin.org/resources/infoDetail.asp?ID=25858&flag=legal> [hereinafter QUNO, BABIES AND CHILDREN LIVING IN PRISON].

³¹ Guidelines for the Alternative Care of Children, G.A. Res. 64/142 (Feb. 24, 2010) [hereinafter U.N. Guidelines for the Alternative Care of Children].

³² Law No. 26.472, art. 1 (2009) (amending Argentina Penal Code, Law No. 11.179, art. 10 and Law No. 24.660, art. 32 (1996), to allow house arrest in the case of a pregnant woman, or a mother caring for a child under five years of age or a disabled child).

³³ See Convention on the Rights of the Child, art. 3, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force Sept. 2, 1990 [hereinafter CRC].

METHODOLOGY

³⁴ As noted above, the Defensoría is the public defender's office in Argentina.

³⁵ As previously noted, as of April 2012, the SPF detained 9,693 prisoners, of whom 9%, or approximately 872, were female prisoners. SPF Criminal Population Statistics *supra* note 1; SPF Institutional Statistics, *supra* note 6.

³⁶ See SPF Criminal Population Statistics, *supra* note 1 (reporting that, as of April 2012, there were approximately 872 female prisoners within the SPF).

³⁷ An asterisk (*) indicates the assignment of a pseudonym.

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³⁸ For example, as noted above, the 1955 UN Standard Minimum Rules include a specific provision detailing the provision of shaving accessories to men, but do not include any provisions addressing the health and reproductive needs of women, apart from a provision for pre- and post-natal care and treatment. See Standard Minimum Rules, *supra* note 2, Rules 16 and 23.

³⁹ Bangkok Rules, *supra* note 3, Rule 1.

⁴⁰ See *id.*, Rules 6-18, 23, 26, 28, 33, 42, 48-52, 53, 57-62, 64.

⁴¹ The Argentine Constitution grants constitutional status to nine human rights treaties and two declarations, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child, and the American Convention on Human Rights. It also provides that all ratified treaties take precedence over domestic statutes. See CONST. ARG., art. 75, ¶ 22, available at <http://www.senado.gov.ar/web/interes/constitucion/english.php>.

⁴² See, e.g., ICCPR, *supra* note 18, arts. 2, 14; Convention on the Elimination of All Forms of Discrimination Against Women, arts. 1-2, 15, adopted Dec. 18, 1979, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46 at 193, U.N. Doc. A/34/46 (1979) [hereinafter CEDAW]; American Convention on Human Rights, art. 1, 24, opened for signature Nov. 22, 1969, O.A.S.T.S. No. 36, at 1, 114 U.N.T.S. 123 (entered into force July 18, 1978) [hereinafter American Convention on Human Rights].

- ⁴³ See ICCPR, *supra* note 18, art. 10; American Convention on Human Rights, *supra* note 42, art. 5; Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (“Convention of Belem do Para”), art. 4, *adopted* 9 June 1994 24th Sess., O.A.S. Doc. OEA/Ser.L/V/II.92 doc. 31 rev. 3 (1994) (*entered into force* 5 Mar. 1995), reprinted in 33 I.L.M. 1534 (1994). See also American Declaration of the Rights and Duties of Man, arts. I, XXV, XXVI, O.A.S. Res. XXX, adopted 2 May 1948, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, O.A.S. Doc. OEA/Ser.L.V/II.82, doc.6 rev.1, at 17 (1992); INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, REPORT ON THE HUMAN RIGHTS OF PERSONS DEPRIVED OF LIBERTY IN THE AMERICAS (2011), *available at* <http://www.oas.org/en/iachr/pdl/docs/pdf/PPL2011eng.pdf>.
- ⁴⁴ See CRC, *supra* note 33, art. 3. See also Inter-American Commission on Human Rights, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, 13 March 2008, No. 1/08, Principle X (2008) [hereinafter Inter-American Commission Principles and Best Practices on the Protection of Persons Deprived of Liberty].
- ⁴⁵ CONST. ARG., art. 18.
- ⁴⁶ Law No. 20.416 (1973); Law No. 24.660, *supra* note 26, arts. 58, 143, 153, 178, 1996 (organic law enacted in 1996 to complement 20.416; it provides a framework for prison management).
- ⁴⁷ Law No. 24.660, *supra* note 26, art. 77.
- ⁴⁸ Law No. 24.390, art. 1 (1994), as amended by Law No. 25.430, art. 1 (2001). This time may be extended to three years if the number of charges or complexity of the case justifiably prevents the case from being completed in two. *Id.*
- ⁴⁹ Law No. 26.472, *supra* note 32, art. 1.

CHAPTER 2: CAUSES OF WOMEN’S IMPRISONMENT

- ⁵⁰ DIRECCIÓN NACIONAL DE POLÍTICA CRIMINAL EN MATERIA DE JUSTICIA Y LEGISLACIÓN PENAL SUBSECRETARÍA DE POLÍTICA CRIMINAL MINISTERIO DE JUSTICIA Y DERECHOS HUMANOS, SISTEMA NACIONAL DE ESTADÍSTICAS SOBRE EJECUCION DE LA PENA (SNEEP), INFORME ANUAL, 3 (2010), *available at* http://www.infojus.gov.ar/_pdf/sneep/InformeSNEEPARGENTINA2010.pdf.
- ⁵¹ *Id.* In 2010, 9,523 of a total 59,227 prisoners in Argentina were housed within the SPF. *Id.*
- ⁵² TRANSNATIONAL INSTITUTE, DRUG LAWS AND PRISONS IN LATIN AMERICA, *supra* note 10, at 12.
- ⁵³ SPF Criminal Population Statistics, *supra* note 1.
- ⁵⁴ SPF Institutional Statistics, *supra* note 6.
- ⁵⁵ SPF Criminal Population Statistics, *supra* note 1. The number of women prisoners is derived from the percentage (9% of all SPF prisoners are women) provided on the Dirección Nacional del Servicio Penitenciario Federal website.
- ⁵⁶ This estimate assumes that the female prison population remained relatively stable between April 2012, the month for which numbers are available, and the fall of 2012, when the surveys were administered.
- ⁵⁷ As previously noted, in deriving the percentages of survey respondents used in this report, nonresponses were excluded.
- ⁵⁸ See also CELS MUJERES EN PRISION, *supra* note 1, at 23 (noting that 49% of female prisoners in Argentina were in prison for drug trafficking offences in 2003-2004).
- ⁵⁹ See e.g. ICCPR, *supra* note 18, arts. 2-3; CEDAW, *supra* note 42, arts. 1-2. See also MEGAN BASTICK AND LAUREL TOWNHEAD, QUAKER UNITED NATIONS OFFICE, WOMEN IN PRISON: A COMMENTARY ON THE UN MINIMUM RULES FOR THE TREATMENT OF PRISONERS 7 (2008), *available at* <http://www.quno.org/geneva/pdf/humanrights/women-in-prison/WiP-CommentarySMRs200806-English.pdf>.
- ⁶⁰ See Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century, G.A. Res. 55/59 ¶¶ 11-12 (Jan. 17, 2001) (committing to “taking into account and addressing . . . within national crime prevention and criminal justice strategies any disparate impact of policies and programs on women and men” and to developing “action-oriented policy recommendations based on the special needs of women as criminal justice . . . prisoners and offenders”); see also Bangkok Rules, *supra* note 3, Preliminary observations, ¶¶ 7, 9; Intensification of efforts to eliminate all forms of violence against women, G.A. Res. 61/143, ¶ 8(c) (Dec. 19, 2006) [hereinafter G.A. Res. 61/143].
- ⁶¹ See ICCPR, *supra* note 18; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, A/RES/39/46 (Dec. 10, 1984). See generally HUMAN RIGHTS WATCH, PRESENTATION TO THE UNITED STATES SENATE SENTENCING COMMISSION ON PROPORTIONALITY AND FEDERAL CRACK SENTENCES (Mar. 14, 2002), *available at* <http://www.hrw.org/news/2002/03/13/human-rights-watch-presentation-unit-ed-states-sentencing-commission-proportionality->

- ⁶² In addition, several women indicated that they were in prison for “other” crimes that consisted of transporting or attempting to transport contraband, which may have involved the crime of drug smuggling under Law No. 22.415. See also CELS MUJERES EN PRISION, *supra* note 1, at 23.
- ⁶³ CEJA, PROBLEMAS DE GÉNERO EN LA JUSTICIA PENAL EN AMÉRICA, *supra* note 11, at 92. Since transporting illegal substances across borders is a federal crime, the SPF holds many more people accused of violating drug laws than the provincial system; “[w]hile the SPF houses approximately 20% of Argentina’s prison population, it holds approximately 60% of all Argentinian prisoners convicted or accused of committing drug crimes.” TRANSNATIONAL INSTITUTE, DRUG LAWS AND PRISONS IN LATIN AMERICA, *supra* note 10, at 12.
- ⁶⁴ See also CELS MUJERES EN PRISION, *supra* note 1, at 31.
- ⁶⁵ *Id.* at 22.
- ⁶⁶ SPF Criminal Population Statistics, *supra* note 1.
- ⁶⁷ *Id.*
- ⁶⁸ *Id.*; CELS MUJERES EN PRISION, *supra* note 1, at 23.
- ⁶⁹ *Id.*
- ⁷⁰ CEJA, PROBLEMAS DE GÉNERO EN LA JUSTICIA PENAL EN AMÉRICA, *supra* note 11, at 92, citing Anthony Carmen, *Reflexiones sobre los procesos de criminalidad y criminalización de las mujeres de América Latina implicadas en delitos relacionadas con droga*, Género y Derecho, Alda Facio y Lorena Fries edit., American University Washington College of Law, La Morada y LOM, Santiago, 737-744 (1999).
- ⁷¹ *Id.* at 75.
- ⁷² *Id.* at 76.
- ⁷³ J. Fleetwood & A. Torres, *Mothers and Children of the Drug War: A View From A Women’s Prison in Quito, Ecuador*, in CHILDREN OF THE DRUG WAR: PERSPECTIVES ON THE IMPACT OF DRUG POLICIES ON YOUNG PEOPLE 129 (Damon Barrett, ed., 2011), available at http://www.ihra.net/files/2011/08/08/Children_of_the_Drug_War%5B1%5D.pdf. Before Ecuador adopted stiff laws against drug trafficking, women were in prison for other reasons, most commonly homicides committed in the private sphere against husbands or male relatives. *Id.*
- ⁷⁴ Owen Brown, *From the Civil Rights Movement to the Rise of the Incarceration Nation: The Politics of Race and Crime in Contemporary America*, 6 THE NEW YORK SOCIOLOGIST 72, 78 (2012), available at <http://newyorksociologist.org/12/p72.pdf>. See also PBS, *Thirty Years of America’s Drug War: A Chronology*, <http://www.pbs.org/wgbh/pages/frontline/shows/drugs/cron/> (last visited Nov. 20, 2012).
- ⁷⁵ TRANSNATIONAL INSTITUTE, DRUG LAWS AND PRISONS IN LATIN AMERICA, *supra* note 10, at 89.
- ⁷⁶ *Id.*
- ⁷⁷ *Id.* at 9, 89.
- ⁷⁸ J. Fleetwood & A. Torres, *supra* note 73, at 128.
- ⁷⁹ *Id.*
- ⁸⁰ TRANSNATIONAL INSTITUTE, DRUG LAWS AND PRISONS IN LATIN AMERICA, *supra* note 10, at 89.
- ⁸¹ *Id.* at 11.
- ⁸² *Id.* at 96-97.
- ⁸³ COMITÉ DE AMÉRICA LATINA Y EL CARIBE PARA LA DEFENSA DE LOS DERECHOS DE LA MUJER (CLADEM), MINISTERIO DE TRABAJO Y ASUNTOS SOCIALES, *VIOLENCIA CONTRA MUJERES PRIVADAS DE LA LIBERTAD: SISTEMATIZACIÓN REGIONAL ARGENTINA, BRASIL, CHILE, COLOMBIA, PARAGUAY Y URUGUAY* 42 (2008), available at http://www.americalatinagenera.org/es/index.php?option=com_content&task=view&id=905&pub_id=1552&ml=1&mlt=system&tmpl=component [hereinafter CLADEM, *VIOLENCIA CONTRA MUJERES PRIVADAS DE LA LIBERTAD*].
- ⁸⁴ Law No. 23.737, art. 5(d) (1989).
- ⁸⁵ *Id.* art. 6. If it is beyond reasonable doubt that the narcotics were not intended for internal or external trafficking, the sentence is three to twelve years. *Id.*
- ⁸⁶ Law No. 22.415, art. 866 (1981). Email from Silvia Martinez, Defensoría General de la Nación Buenos Aires, Argentina, (May 1, 2013).
- ⁸⁷ Haley Cohen, FOREIGN POLICY, *The New Narco State: Mexico’s Drug War is Turning Argentina into the New Wild West of the Global Narcotics Trade* (April 19, 2012), http://www.foreignpolicy.com/articles/2012/04/19/argentina_drug_war?page=0,1.
- ⁸⁸ CEJA, PROBLEMAS DE GÉNERO EN LA JUSTICIA PENAL EN AMÉRICA, *supra* note 11, at 91.
- ⁸⁹ Patricio Varela, DEFENSORÍA GENERAL DE LA NACIÓN, UNICEF OFICINA DE ARGENTINA, *MADRES, NIÑOS Y CARCEL, MUJERES PRIVADAS DE LIBERTAD: LIMITACIONES AL ENCARCELAMIENTO DE MUJERES EMBARAZADAS O CON HIJOS/AS MENORES DE EDAD*, 88-89 (2009) available at <http://www.unicef.org/argentina/spanish/mujeres-presas.pdf>.
- ⁹⁰ CEJA, PROBLEMAS DE GÉNERO EN LA JUSTICIA PENAL EN AMÉRICA, *supra* note 11, at 91.
- ⁹¹ General Assembly Resolution No. 65/229 adopting the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), PrmbL., ¶ 4, Dec. 21, 2010, G.A. Res. 65/229 (March 16, 2011) [hereinafter G.A. Res. 65/229 adopting the Bangkok Rules].

- ⁹² *Id.*, Rule 61.
- ⁹³ Vienna Declaration on Crime and Justice, *supra* note 60, ¶ 25 (urging the development of crime prevention strategies that address “root causes and risk factors related to crime and victimization through social, economic, health, educational, and justice policies”); see also G.A. Res. 65/229 adopting the Bangkok Rules, *supra* note 91, Preamble, ¶ 7 (taking into consideration the gender-sensitive provisions of the Vienna Declaration).
- ⁹⁴ CEJA, PROBLEMAS DE GÉNERO EN LA JUSTICIA PENAL EN AMÉRICA, *supra* note 11, at 91.
- ⁹⁵ *Id.*
- ⁹⁶ *Id.*; see also TRANSNATIONAL INSTITUTE, DRUG LAWS AND PRISONS IN LATIN AMERICA, *supra* note 10, at 18 (noting that research by the Consejo Nacional de la Mujer (National Women’s Counsel) suggests that “drug trafficking activities appear to constitute an economic alternative motivated by the family situation, which places [women] in a special situation of vulnerability”).
- ⁹⁷ This figure excludes nonresponses and the responses of women who said that they had committed “other” crimes that could not be identified as economically or non-economically motivated.
- ⁹⁸ CEJA, PROBLEMAS DE GÉNERO EN LA JUSTICIA PENAL EN AMÉRICA, *supra* note 11, at 90.
- ⁹⁹ CELS MUJERES EN PRISION, *supra* note 1, at 27.
- ¹⁰⁰ World Bank, World DataBank, World Development Indicators: Argentina (2011), available at <http://databank.worldbank.org> (last visited April 21, 2013).
- ¹⁰¹ Tierraviva Civil Association, excerpts from *Por dentro*, about the workshops *Arte y Sensibilización para mujeres con niños en prisión* in U31 Ezeiza (2005-2008) and in U22 Jujuy (2008-2009) Argentina, Written submission for the 2011 Committee on the Rights of the Child Day of General Discussion: Children of Incarcerated Parents, available at http://www2.ohchr.org/english/bodies/crc/discussion2011_submissions.htm.
- ¹⁰² See also TRANSNATIONAL INSTITUTE, DRUG LAWS AND PRISONS IN LATIN AMERICA, *supra* note 10, at 97 (studies suggest “a growing number of women, often the sole providers for their families, enter the drug trade simply to put food on the table for the children.”).
- ¹⁰³ CEJA, PROBLEMAS DE GÉNERO EN LA JUSTICIA PENAL EN AMÉRICA, *supra* note 11, at 96.
- ¹⁰⁴ See also CELS MUJERES EN PRISION, *supra* note 1, at 32.
- ¹⁰⁵ See G.A. Res. 65/229 adopting the Bangkok Rules, *supra* note 91, Preamble, ¶ 13 (recognizing that “a number of female offenders do not pose a risk to society”); Bangkok Rules, *supra* note 3, Rule 41(a) (noting the “generally lower risk posed by women prisoners to others”), Rule 61 (providing that “courts shall have the power to consider mitigating factors such as lack of criminal history and relative nonseverity and nature of criminal conduct in light of women’s caretaking responsibilities and typical backgrounds”).
- ¹⁰⁶ United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), Rule 6.1, G.A. Res. 45/110, annex, 45 U.N. GAOR Supp. (No. 49A) at 197, U.N. Doc. A/45/49 (1990) [hereinafter Tokyo Rules].
- ¹⁰⁷ *Id.*, Rule 6.2. See also Rule 6.3 (where pre-trial detention is used, the detainee should have the right to appeal to a judge or other independent authority).
- ¹⁰⁸ Bangkok Rules, *supra* note 3, Rule 58.
- ¹⁰⁹ Inter-American Commission Principles and Best Practices on the Protection of Persons Deprived of Liberty, *supra* note 44; Principle III (2).
- ¹¹⁰ Inter-American Commission on Human Rights, Reports on the Merits, Report No. 2/97, ¶¶ 8, 59-60 (March 11, 1997), available at <http://www.cidh.oas.org/annualrep/97eng/Argentina11205.htm>.
- ¹¹¹ CLADEM, VIOLENCIA CONTRA MUJERES PRIVADAS DE LA LIBERTAD, *supra* note 83, at 39.
- ¹¹² TRANSNATIONAL INSTITUTE, DRUG LAWS AND PRISONS IN LATIN AMERICA, *supra* note 10, at 15.
- ¹¹³ See Law No. 24.390, *supra* note 48, art. 1.
- ¹¹⁴ Bangkok Rules, *supra* note 3, Preliminary observations, ¶19.
- ¹¹⁵ *Id.*, Rule 57.
- ¹¹⁶ *Id.*, Rule 60.
- ¹¹⁷ G.A. Res. 61/143, *supra* note 60, ¶ 8(f). See also G.A. Res. 65/229 adopting the Bangkok Rules, Preamble, *supra* note 91 (taking note of the applicable provisions of G.A. Res. 61/143).
- ¹¹⁸ Bangkok Rules, *supra* note 3, Rule 44.
- ¹¹⁹ See AMNISTÍA INTERNACIONAL, AL MENOS 120 MUJERES ASESINADAS POR VIOLENCIA DOMÉSTICA EN 2008 EN ARGENTINA, SEGÚN UN RELEVAMIENTO DE AMNISTÍA INTERNACIONAL (2008), available at <http://www.amnistia.org.ar/noticias-y-documentos/ai-en-accion/al-menos-120-mujeres-asesinadas%20>.
- ¹²⁰ Violence against women is also present at the workplace; during our interviews we met Gladys*, a domestic worker in Argentina whose employer tried to rape her. During his attempt, she threw whatever she had in her hand and it hit his head. He later died in the hospital. She fled for 6

months and was caught. She explained that her employer's family is very wealthy and made sure she received a full 8-year sentence.

CHAPTER 3: CONDITIONS OF WOMEN'S IMPRISONMENT

¹²¹ G.A. Res. 65/229 adopting the Bangkok Rules, *supra* note 91, Preamble, ¶11.

¹²² UNITED NATIONS OFFICE ON DRUGS AND CRIME, HANDBOOK FOR PRISON MANAGERS AND POLICYMAKERS ON WOMEN AND IMPROVEMENT, CRIMINAL JUSTICE HANDBOOK SERIES, 7 (2008), available at <http://www.unodc.org/documents/justice-and-prison-reform/women-and-imprisonment.pdf>.

¹²³ DR. FABIENNE HARIGA, UNITED NATIONS OFFICE ON DRUGS AND CRIME, REPORT OF THE UNODC MISSION 25-29 JULY 2011, EVALUATION AND RECOMMENDATION FOR THE IMPROVEMENT OF THE HEALTH PROGRAMMES, INCLUDING FOR THE PREVENTION AND TREATMENT OF DRUG DEPENDENCE AND OF HIV AND AIDS, IMPLEMENTED IN THE ESTABLISHMENTS UNDER THE RESPONSIBILITY OF THE FEDERAL PENITENTIARY SERVICE IN ARGENTINA 9 (2011), available at http://www.unodc.org/documents/southerncone/Prision_Settings/UNODC_report_Argentina_Health_SPF_assessment_July_2011.pdf.

¹²⁴ See Bangkok Rules, *supra* note 3, Rules 10 ("Gender-specific health care services at least equivalent to those available in the community shall be provided to women prisoners."), 12 ("Individualized, gender-sensitive, trauma-informed and comprehensive mental health care and rehabilitation programmes shall be made available for women prisoners with mental health care needs in prison or in non-custodial settings."). See also *id.*, Rules 6–9, 11, 13–18. See also Standard Minimum Rules, *supra* note 2, Rule 22–23.

¹²⁵ Bangkok Rules, *supra* note 3, Rule 6 ("The health screening of women prisoners shall include comprehensive screening to determine primary health care needs and shall also determine: (a) The presence of sexually transmitted diseases...; (b) Mental health care needs, including post-traumatic stress disorder and risk of suicide and self-harm; (c) The reproductive history of the woman prisoner, including current or recent pregnancies, childbirth, and any related reproductive health issues; (d) The existence of drug dependency; (e) Sexual abuse and other forms of violence that may have been suffered prior to admission.").

¹²⁶ See Law No. 24.660, *supra* note 26, art. 58, Ch. IX, especially art. 143.

¹²⁷ HARIGA, *supra* note 123, at 13.

¹²⁸ *Id.* at 18.

¹²⁹ *Id.* at 20.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² See Law No. 24.660, *supra* note 26, arts. 58–78; Standard Minimum Rules *supra* note 2, Rules 15–16; Bangkok Rules, *supra* note 3, Rule 5.

¹³³ Bangkok Rules, *supra* note 3, Rule 5 ("The accommodation of women prisoners shall have facilities and materials required to meet women's specific hygiene needs, including sanitary towels provided free of charge and a regular supply of water to be made available for the personal care of children and women, in particular women involved in cooking and those who are pregnant, breastfeeding or menstruating.").

¹³⁴ Standard Minimum Rules, *supra* note 2, Rule 20(1) ("Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.").

¹³⁵ Bangkok Rules, *supra* note 3, Rule 48(1) ("Adequate and timely food . . . shall be provided free of charge for pregnant women . . . and breastfeeding mothers.") & (3) ("The medical and nutritional needs of women prisoners who have just given birth, but whose babies are not with them in prison, shall be included in treatment programmes.").

¹³⁶ ICCPR, *supra* note 18, art. 10(2)(a) ("Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons."); Standard Minimum Rules, *supra* note 2, Rule 8(b) ("Untried prisoners shall be kept separate from convicted prisoners.").

¹³⁷ Interview with Silvia Martinez, Defensoría General de la Nación, Buenos Aires, Argentina, (Oct. 9, 2012). 22.34% of pre-trial detainees who responded to our survey rated prison conditions as "Below Average" or "Unacceptable," compared to 20.29% of convicted women.

¹³⁸ See e.g. Standard Minimum Rules, *supra* note 2, Rules 9–14, 19; Bangkok Rules, *supra* note 3, Rule 5.

¹³⁹ Standard Minimum Rules, *supra* note 2, Rules 10 ("All accommodation provided for the use of

prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.”), 11 (addressing the provision of ventilation and natural and artificial light), 12 (“The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.”), 13 (requiring provision of adequate bathing and shower installations), 14 (“All parts of an institution regularly used by prisoners shall be properly maintained and kept scrupulously clean at all times.”).

¹⁴⁰ See Law No. 24.660, *supra* note 26, arts. 58-62, 190-196.

¹⁴¹ See *supra* text accompanying notes 133-134.

¹⁴² Interview with Lora*, SPF guard, Federal Penitentiary Complex 3, Buenos Aires, Argentina (October, 2012).

¹⁴³ Standard Minimum Rules, *supra* note 2, Rule 9(2) (“Where dormitories are used, they shall be occupied by prisoners carefully selected as being suitable to associate with one another in those conditions. There shall be regular supervision by night, in keeping with the nature of the institution.”).

¹⁴⁴ *Id.*, Rule 27 (“Discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life.”).

¹⁴⁵ Bangkok Rules, *supra* note 3, Rule 31 (“Clear policies and regulations on the conduct of prison staff aimed at providing maximum protection for women prisoners from any gender-based physical or verbal violence, abuse and sexual harassment shall be developed and implemented.”).

¹⁴⁶ Interview with Prison Administration, Federal Penitentiary Complex 3, Buenos Aires, Argentina (October, 2012).

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ Interview with Lea*, SPF guard, Federal Penitentiary Complex 3, Buenos Aires, Argentina (October, 2012).

¹⁵¹ Interview with Marta*, SPF guard, Federal Penitentiary Complex 3, Buenos Aires, Argentina (October, 2012).

¹⁵² Bangkok Rules, *supra* note 3, Rule 46 (“Prison authorities, in cooperation with probation and/or social welfare services, local community groups and non-governmental organizations, shall design and implement comprehensive pre- and post-release reintegration programmes which take into account the gender-specific needs of women.”).

¹⁵³ Standard Minimum Rules, *supra* note 2, Rule 71(4) (“So far as possible the work provided shall be such as will maintain or increase the prisoner’s ability to earn an honest living after release.”), (5) (“Vocational training in useful trades shall be provided for prisoners able to profit thereby and especially for young prisoners.”).

¹⁵⁴ Interview with Prison Authorities, Prison Unit 31, Buenos Aires, Argentina (October, 2012).

¹⁵⁵ Standard Minimum Rules, *supra* note 2, Rule 77(1) (“Provision shall be made for the further education of all prisoners capable of profiting thereby.”), (2) (“So far as practicable, the education of prisoners shall be integrated with the educational system of the country so that after their release they may continue their education without difficulty.”).

¹⁵⁶ Law No. 26.206, *supra* note 46, arts. 18, 26, 29, 55-59.

¹⁵⁷ Law No. 26.695, *supra* note 26, art. 1.

¹⁵⁸ *Id.*, art. 140 (reduction of one month is granted if the inmate completes an academic school year; two month reduction for completion of a vocational course; two-month reduction for completion of primary education; three month reduction for completion of secondary education; three-month reduction for tertiary studies; and two-month reduction for postgraduate courses).

¹⁵⁹ Bangkok Rules, *supra* note 3, Rule 4 (“Women prisoners shall be allocated, to the extent possible, to prisons close to their home or place of social rehabilitation, taking account of their caretaking responsibilities, as well as the individual woman’s preference and the availability of appropriate programmes and services.”).

¹⁶⁰ *Id.*, Rule 26 (“Women prisoners’ contact with their families, including their children, their children’s guardians and legal representatives shall be encouraged and facilitated by all reasonable means. Where possible, measures shall be taken to counterbalance disadvantages faced by women detained in institutions located far from their homes.”).

CHAPTER 4: CONSEQUENCES OF WOMEN'S IMPRISONMENT ON CHILDREN

¹⁶¹ Law No. 24.660, *supra* note 26, art. 195.

¹⁶² OLIVER ROBERTSON, QUAKER UNITED NATIONS OFFICE, COLLATERAL CONVICTS: CHILDREN OF INCARCERATED PARENTS, RECOMMENDATIONS AND GOOD PRACTICE FROM THE UN COMMITTEE ON THE RIGHTS OF THE CHILD DAY OF GENERAL DISCUSSION 2011, 74-76 (March 2012), *available at* <http://www.quno.org/geneva/pdf/humanrights/women-in-prison/201203Analytical-DGD-Report-internet.pdf> [hereinafter QUNO COLLATERAL CONVICTS: CHILDREN OF INCARCERATED PARENTS]. See also QUNO, BABIES AND CHILDREN LIVING IN PRISON, *supra* note 30.

¹⁶³ See Committee on the Rights of the Child, Report and Recommendations of the Day of General Discussion on "Children of Incarcerated Parents" (Sept. 30, 2011), *available at* <http://www2.ohchr.org/english/bodies/crc/docs/discussion/2011CRCDGDDReport.pdf> [hereinafter CRC Report and Recommendations, "Children of Incarcerated Parents"].

¹⁶⁴ See QUNO COLLATERAL CONVICTS: CHILDREN OF INCARCERATED PARENTS, *supra* note 162.

¹⁶⁵ Lorie S. Goshin & Mary W. Byrne, *Converging Streams of Opportunity for Prison Nursery Programs in the United States*, 48 J. OFFENDER REHAB. 271, 276 (2009). See also Mary W. Byrne, Lorie S. Goshin, & Sarah S. Joestl, *Intergenerational Transmission of Attachment for Infants Raised in a Prison Nursery*, 12 ATTACH. HUM. DEV. 375 (2010).

¹⁶⁶ See *id.*

¹⁶⁷ Joseph R. Carlson, *Prison Nursery 2000: A Five-Year Review of the Prison Nursery at the Nebraska Correctional Center for Women*, 33 J. OFFENDER REHAB. 75 (2001).

¹⁶⁸ STATE OF NEW YORK DEPT. OF CORRECTIONAL SERVICES, DIVISION OF PROGRAM PLANNING, RESEARCH AND EVALUATION, PROFILE AND THREE YEAR FOLLOW-UP OF BEDFORD HILLS AND TACONIC NURSERY PARTICIPANTS: 1997 AND 1998 (2002) [hereinafter NY DEPT. CORRECTIONAL SERVICES BEDFORD HILLS AND TACONIC NURSERY PROFILE AND FOLLOW-UP]. See also Melissa Rowland & Alice Watts, *Washington State's Effort to the Generational Impact on Crime*, CORRECTIONS TODAY (2007), *available at* http://www.aca.org/publications/pdf/Rowland_Watts_Aug07.pdf.

¹⁶⁹ See NY DEPT. CORRECTIONAL SERVICES BEDFORD HILLS AND TACONIC NURSERY PROFILE AND FOLLOW-UP, *supra* note 168.

¹⁷⁰ Mary W. Byrne, *Interventions Within Prison Nurseries*, in CHILDREN OF INCARCERATED PARENTS: A HANDBOOK FOR RESEARCHERS AND PRACTITIONERS (M. Eddy and J. Poehlmann Eds.) Washington, D.C.: The Urban Institute Press (2010).

¹⁷¹ Sabrina Mahtani & Alison Thompson, ADVOCAD, CHILDREN LIVING IN PRISON: INSIGHTS FROM SIERRA LEONE, 10 (2008), *available at* <http://www.advocaidsl.com/wp-content/uploads/2011/03/Children-Living-in-Prison-Insights-from-Sierra-Leone-2008.pdf>.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ Standard Minimum Rules, *supra* note 2.

¹⁷⁵ U.N. Guidelines for the Alternative Care of Children, *supra* note 31.

¹⁷⁶ Bangkok Rules, *supra* note 3.

¹⁷⁷ Inter-American Commission Principles and Best Practices on the Protection of Persons Deprived of Liberty, *supra* note 44. See also African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), art. 30 (children of imprisoned mothers); Council of Europe, Parliamentary Assembly Recommendation 1469 (2000) (on mothers and babies in prison).

¹⁷⁸ Law No. 24.660, *supra* note 26, art. 195.

¹⁷⁹ *Id.*, art. 196.

¹⁸⁰ Bangkok Rules, *supra* note 3, Rule 64.

¹⁸¹ M v. The State, [2007] ZACC 18, ¶ 35 (CC) (S. Afr.), *available at* <http://www.saflii.org/za/cases/ZACC/2007/18.pdf>.

¹⁸² *Id.* ¶ 36 (e).

¹⁸³ Law No. 26.472, art. 1, *supra* note 32.

¹⁸⁴ *Id.*

¹⁸⁵ In passing conversations during prison visits, a few women also expressed a preference for prison over house arrest because in prison they would be able to earn money through the work program.

¹⁸⁶ CRC, *supra* note 33, art. 3.

¹⁸⁷ CRC Report and Recommendations, "Children of Incarcerated Parents," *supra* note 163, ¶ 37 ("The Committee recommends that State parties give due consideration at to circumstances in which the best interests of the child may be better fulfilled by having him/her live with the incarcerated parent. In doing so, due consideration to the overall conditions of the incarceration context and particular need for parent-child contact during early childhood should be taken into full account.").

¹⁸⁸United Nations High Commissioner for Human Rights, UNHCR Guidelines on Determining the Best Interests of the Child, 15 (2008), *available at* <http://www.unhcr.org/4566b16b2.pdf>.

¹⁸⁹*See id. at* 14.

¹⁹⁰CRC Report and Recommendations, “Children of Incarcerated Parents,” *supra* note 163, ¶ 37 (“The Committee recommends that State parties give due consideration to circumstances in which the best interests of the child may be better fulfilled by having him/her live with the incarcerated parent. In doing so, due consideration to the overall conditions of the incarceration context and particular need for parent-child contact during early childhood should be taken into full account.”).

¹⁹¹Bangkok Rules, *supra* note 3, Rule 49.

ANNEX 1

SURVEY DISTRIBUTED AND COLLECTED FROM WOMEN IN ARGENTINA'S FEDERAL PRISONS

Name of Prison: _____

Survey of Women Prisoners in the Argentina Federal Prisons

This survey is being sent to women prisoners currently incarcerated in federal prisons in Argentina. The results of this survey will provide valuable information about causes for incarceration and living conditions for women within Argentinean prisons. This survey is being conducted by the Avon Global Center for Women Justice, the International Human Rights Clinic at Cornell Law School, and the Public Defense Ministry of Argentina (Ministerio Público de la Defensa).

This survey is anonymous. Please be assured that the information you share with us will not be used in any way to identify you.

The survey takes less than 15 minutes to complete.

A. Detention

1. How far is your current location from your home and/or family?
 - a. 0-5 km
 - b. 6-15 km
 - c. 16-30 km
 - d. 31-50 km
 - e. 51-100 km
 - f. 100 km or more
2. Have you been previously incarcerated?
 - a. Yes, as an adult
 - b. Yes, as a juvenile
 - c. No
3. Please indicate which category best describes your current status:
 - a. Pre-trial detainee (awaiting trial)
 - b. Convicted (short trial)
 - c. Convicted (received a trial)
4. If you have not yet received a trial, how long have you been incarcerated?
 - a. 0-6 months
 - b. 7-12 months
 - c. 1-2 years
 - d. More than 2 years

5. If you have been convicted, how long is your sentence?
- a. Less than 1 year
 - b. 1 to 5 years
 - c. 5 to 15 years
 - d. 15 to 50 years
 - e. 50 to Life
 - f. Not convicted
6. How long have you been in prison?
- a. 0 to 1 year
 - b. 1 to 3 years
 - c. 3 to 5 years
 - d. 5 to 10 years
 - e. 10 years or more
7. Will you receive the opportunity for parole?
- a. Yes
 - b. No
 - c. Not convicted (awaiting trial)
8. Please indicate the crimes of which you were convicted (if awaiting trial, please indicate the crimes charged):
- a. Drug Trafficking
 - b. Theft/ Burglary/ Robbery
 - c. Assault/ Battery
 - d. Murder
 - e. Other _____
9. Do you have legal assistance?
- a. Yes, private counsel
 - b. Yes, public defender
 - c. Other: _____

B. Demographic Characteristics

10. How old are you?
- a. Under 18
 - b. 18-25
 - c. 26-35
 - d. 36-45
 - e. 46-60
 - f. 61 or above
11. At what age were you incarcerated for your current sentence?
- a. Under 18
 - b. 18-25
 - c. 26-35
 - d. 36-45
 - e. 46-60
 - f. 61 or above

12. Are you a citizen of Argentina?

- a. Yes
- b. No

If no, please indicate which continent/country:

1. South America

2. North America

3. Asia

4. Europe

5. Africa

6. Australia

13. What is your level of education before your incarceration?

- a. Illiterate
- b. Primary education not completed
- c. Primary education completed
- d. Secondary education not completed
- e. Secondary education completed
- f. Tertiary education level not completed
- g. Tertiary education level completed
- h. University level not completed
- i. University level completed

14. Prior to your incarceration, were you the main earner of your household?

- a. Yes
- b. No

C. Marital Status and Children

15. What is your marital status?

- a. Single
- b. Divorced
- c. Married
- d. Separated
- e. Widowed

16. How old were you when you had your first child?

- a. 13 or under
- b. 14 to 16
- c. 16 to 20
- d. 21 and over
- e. No children

17. How many children will you be assuming responsibility for upon your release?

- a. None
- b. 1 to 2
- c. 2 to 3
- d. 3 or more

18. If you have one or more child, where is she or he now?

- a. In a foster home
- b. With his/her father
- c. With another relative
- d. Other: _____

D. Abuse Prior to Entering Prison

19. Prior to entering prison, have you ever been the victim of physical abuse (any act resulting in physical harm or injury)?

- a. Yes, once
- b. Yes, more than once
- c. Yes, on a regular basis
- d. No

20. Prior to entering prison, have you ever been the victim of sexual abuse (nonconsensual sexual contact)?

- a. Yes, once
- b. Yes, more than once
- c. Yes, on a regular basis
- d. No

21. Prior to entering prison, have you ever been raped?

- a. Yes, once
- b. Yes, more than once
- c. Yes, on a regular basis
- d. No

22. Prior to entering prison, have you ever experienced violence at the hands of a family member, spouse or intimate partner?

- a. Yes
- If yes, what individual(s)?

Please explain:

- b. No

23. Prior to entering prison, as a child (under 18), were you ever the victim of abuse: (indicate all that apply):

- a. Yes, physical abuse
- b. Yes, sexual abuse
- c. Yes, rape
- d. No

24. Please indicate what, if any, abuse occurred in your last intimate relationship:

- a. No abuse
 - b. Physical abuse
 - c. Sexual abuse
 - d. Rape
 - e. Other (emotional abuse, economic abuse, etc.)
-

25. Are you currently incarcerated for a crime committed against a spouse or intimate partner?

- a. Yes

If yes, would you describe your partner as physically, sexually or emotionally abusive?

- 1. Yes
- 2. No

If yes, would you describe your actions against this individual as self-defense?

- 1. Yes
- 2. No

- c. No

26. Do you fear for your safety after your release from prison?

- a. Yes, from a spouse/ intimate partner
 - b. Yes, from a family member
 - c. Yes, from other individual(s)
-

- d. No

27. Did you feel like someone pressured you to commit the crime for which you are incarcerated?

- a. Yes

Were you pressured by a spouse or intimate partner?

- 1. Yes
- 2. No

Did you fear for your safety if you refused?

- 1. Yes
- 2. No

- c. No

E. Prison Conditions

28. Are you currently placed in an individual cell?

- a. Yes
- b. No

If no, how many women are in your cell or shared pavilion?

29. Are you aware of a cultural center in your prison?

- a. Yes

If yes, what kind of activities, if any, have you participated in?

- b. No

30. Have you received job training while in prison?

- a. Yes

If yes, for what jobs?

- b. No

31. Do you speak Spanish?

- a. Yes
- b. No

If not, which language?

32. Do you receive education in your language in prison?

- a. Yes
- b. No

33. While incarcerated, have you been visited by your spouse, family member, or other person?

- a. Yes

If yes, by whom?

- b. No

34. Have you ever been the victim of physical abuse during your current incarceration?

- a. Yes, by a guard or other prison authority
- b. Yes, by another prisoner
- c. Yes, other

Please specify: _____

- d. No

35. Have you ever been the victim of sexual abuse during your current incarceration?
- Yes, by a guard or other prison authority
 - Yes, by another prisoner
 - Yes, other
Please specify: _____
 - No
36. Have you ever been received physical or corporal punishment for as punishment in prison?
- Yes
 - If yes, please describe:

 - No
37. Have you ever reported an instance of physical or verbal abuse to prison authorities?
- Yes
If yes, do you feel like your complaint was taken seriously?
 - Yes
 - No
 - No
38. Do you feel that you are allowed sufficient privacy during activities such as bathing, using the toilet, or changing?
- Yes
 - No
If no, please explain:

39. How would you describe your current living conditions?
- Excellent
 - Above Average
 - Acceptable
 - Below Average
 - Unacceptable
40. Please state what, if anything, you would change to improve your living conditions:
- _____

41. Please indicate all of the following medical treatments and healthcare education you have received:

- a. Basic Medical Examination
- b. HIV Screening
- c. PAP smear/Cervical Cancer Screening
- d. Breast Cancer Screening
- e. Dental Care
- f. HIV/AIDS Prevention Program
- g. Drug Dependence Treatment
- h. Mental Health Screening or Treatment

42. Do you receive a sufficient amount of sanitary napkins on a regular basis?

- a. Yes
- b. No

43. How would you describe the level of medical/health care you currently receive?

- a. Excellent
- b. Above Average
- c. Acceptable
- d. Below Average
- e. Unacceptable

44. Please state what, if anything, you would change to improve the level of medical/health care you receive:

45. Please provide any additional information you wish to share that is related to the questions contained in this survey. Additionally, if you wish you can further explain any of the answers you have given:

ANNEX 2

SURVEY ADMINISTERED TO WOMEN IN PRISON WHO ARE MOTHERS

Name of Prison: _____

Survey of Women Prisoners in the Argentina Federal Prisons

This survey is being sent to women prisoners currently incarcerated in federal prisons in Argentina. The results of this survey will provide valuable information about causes for incarceration and living conditions for women within Argentinean prisons. This survey is being conducted by the Avon Global Center for Women Justice, the International Human Rights Clinic at Cornell Law School, and the Public Defense Ministry of Argentina (Ministerio Público de la Defensa).

This survey is anonymous. Please be assured that the information you share with us will not be used in any way to identify you.

The survey takes less than 5 minutes to complete.

1. How many children do you have?

- a. I am currently pregnant
- b. 1
- c. 2
- d. 3
- e. 4
- f. 5
- g. 6 or more

2. How old are your children?

3. Was your child born while you were incarcerated?

- a. Yes
- b. No

4. How long has your child (or children) been in prison with you?

- a. Less than 1 year
- b. 1-2 years
- c. 2-3 years
- d. 3-4 years

5. Who made the decision to place your child (or children) with you while you are incarcerated?

- a. Me
- b. Spouse or intimate partner
- c. Other family member
- d. Federal government
- e. Other: _____

6. If you were incarcerated while your child (or children) was an infant, were you allowed to breastfeed your child?
- Yes
 - No
 - Not applicable
7. Is your child (or children) allowed time outdoors?
- Yes, less than half an hour
 - Yes, less than an hour
 - Yes, 1-2 hours
 - Yes, more than 2 hours
 - No
8. Please indicate in which activities your child (or children) are allowed to participate:
- Outdoor play center
 - Indoor play center
 - Use of Equipment – outdoor play equipment
 - Sports
 - Other activities?
9. Are you separated from your child (or children) at any time during the day?
- Yes, for less than an hour
 - Yes, for 1-2 hours
 - Yes, for more than 2 hours
 - No
10. What services does the prison provide for your child (or children)?
- Childcare for when you are working or attending classes
 - Preschool
 - Kindergarten (Argentinean equivalent)
 - None
 - Other _____
11. Where does your child sleep?
- In my bed
 - In his or her own bed
 - In a bed with other children
How many other children? _____
 - Other _____
12. Please indicate which healthcare services your child (or children) have received while in prison:
- Vaccinations
 - Regular Physicals
 - Regular Dental Cleanings
 - Regular Optical Visits

13. Once a doctor's visit is requested, how long do you or your child have to wait to see a doctor?
- Same day
 - 1-2 days
 - 3-4 days
 - 1 week
 - More than a week
- Please indicate how long before your child saw a doctor:
-
14. Please indicate which best describes the meals the prison provides to your child (or children):
- Three meals a day plus snacks
 - Three meals a day
 - Two meals a day
 - One meal a day
 - Other: _____
-
15. Do you believe your child (or children) receives better healthcare than he or she would receive outside of the prison?
- Yes
 - No
16. Do you believe your child (or children) receives better meals than he or she would receive outside of the prison?
- Yes
 - No
17. Please indicate what, if any, harm your child has experience while with you in prison:
- Physical abuse
 - Sexual abuse
 - No abuse
18. If abuse has occurred, please indicate by whom:
- Guard or other prison employee
 - Other prisoner
 - Family member
 - Other: _____
19. Why are you not under house arrest?
- House arrest not requested
 - If not requested, why not? _____
 - House arrest request denied
 - If denied, what was the reason given?
 - Not possible at my address/location
 - Other: _____

20. Please state what, if anything, you would change to improve your child's living conditions or other problems you have experienced in prison:

Readers with comments may address them to:

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