



**WOMEN, DRUG POLICY AND INCARCERATION  
POLICY BRIEFING SERIES**

## **TRANS WOMEN DEPRIVED OF LIBERTY: INVISIBLE STORIES BEHIND BARS**

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Across the world, trans women have been subjected to discrimination, criminalization, and institutional violence. They often face social exclusion, violations of their human rights, and transphobia. In many cases, these factors lead to them working in highly criminalized informal economies, such as the drug trade, sex work, or sex for survival. As a result, police profile them as being dangerous, making them more vulnerable to police abuse and to being incarcerated. While data is sorely lacking, our research indicates that trans women are overrepresented in prison as compared to other groups, and they are much more likely to suffer abuse and violence behind bars than other populations. In addition to the challenges that incarceration imposes on any person deprived of liberty, trans women face particular challenges with regard to housing, their identification, body searches, access to medical services, privacy, and conjugal visits, among other issues. Despite this situation, trans women who have been deprived of liberty have demonstrated their capacity for agency and created organizations to defend their rights. In countries such as Argentina, Mexico, and Uruguay, groups of trans women are building a social movement based on different types of resistance and the development of political agendas.

Meanwhile, the absence of standards and public policies to protect the rights of trans women deprived of liberty is widespread in Latin American countries. The lack of disaggregated data, efforts to monitor this population's situation of vulnerability, and related studies have deepened ignorance about these realities and hindered public policy design. Given the dearth of information on this issue, this report explores the framework of rights protection for trans women deprived of liberty, the statistical data available, structural inequalities existing prior to detention, living conditions in contexts of confinement, post-release social reintegration, trans women's experiences of agency, along with good practices in the region. Furthermore, the report provides public policy recommendations to guarantee the full exercise of this population's dignity and protection of its human rights.



## Glossary

**Cisgender/Cissexual:** Term used to refer to people whose gender identity and expression, with which they identify and build their lives, is aligned with the sex they were assigned at birth.<sup>1</sup>

**Gender:** Element that determines social relations and the meanings that bodies will have based on the perception of sex-based differences, stemming from the specific doctrines—religious, educational, scientific, legal, and political—of a particular culture, and which frequently establishes binary and fixed categories of “masculine” and “feminine.”<sup>2</sup> The term is also used more broadly to denote a range of identities that do not necessarily correspond to established ideas of male and female.

**Gender expression:** The outward manifestation of traits that, in a given society at a specific time and in a specific place, are considered patterns appropriate to each gender and that allow for presuming a person’s gender identity.<sup>3</sup> Some gender expressions include posture, dress, manner of speech, gestures, ways of interacting with others, and makeup.

**Gender identity:** Each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex they were assigned at birth. This includes a person’s own sense of their body and may, or may not, involve the freely chosen modification of bodily appearance or function by medical means—through surgery, hormones, or other means. It also includes the use of gender expressions, such as dress or speech patterns.<sup>4</sup>

**LGBTI+:** Acronym that refers to the population that is Lesbian, Gay, Bisexual, Trans (including Transgender, Transsexual, and *Travesti*), Intersex, and other people embracing sexual and gender diversity. (In some countries, the terms transsexual and *travesti* have a derogatory connotation and should be avoided. See below for additional information.)

**Sex:** Sex is the social construction, in the field of biology, that classifies a person at birth as male or female based on the body’s characteristics, which are of a genetic, hormonal, anatomic, and physiological nature.<sup>5</sup>

**Sex assigned at birth:** Category of sex assigned socially and legally at birth based on the perception that other people—primarily, medical personnel—have about the infant’s genitals.<sup>6</sup>

**Sexual orientation:** Each person’s capacity to feel an emotional, affectional, and sexual attraction to, and engage in intimate and sexual relations with, individuals of a different gender, the same gender, or more than one gender.<sup>7</sup>

**Stereotype:** Set of generalizations and/or preconceptions about the characteristics or roles of a person that are attributed to them because they appear to belong to a specific social group.<sup>8</sup> In this sense, the term “gender stereotypes” is used when men and women are attributed with characteristics, attitudes, and expectations based on

their apparent sex and/or gender.<sup>9</sup>

**Trans:** An umbrella term frequently used to describe and group together the multiple gender identities of people whose common denominator is the fact that their sex assigned at birth does not align with their self-acknowledged identity.<sup>10</sup> Therefore, it does not include as a criterion the existence of bodily transformations, surgical interventions, or medical treatments, whether surgical and/or hormonal. The term **trans women** typically refers to persons whose sex assigned at birth was male while their gender identity is female.<sup>11</sup>

**Transgender:** People who feel and conceive of themselves as having a gender identity different from the identity that is predominantly associated with their bodies' genitals or physiological characteristics.<sup>12</sup>

**Travesti/transvestite:** Refers to people who express their gender identity—whether on a permanent or temporary basis—by using clothing and attitudes associated with the gender opposite the one assigned socially and culturally to their biological sex. This can include modifications to their bodies, or not.<sup>13</sup> In some countries, these terms have a derogatory connotation and should be avoided. However, in Argentina in the 1990s, activists gave a new meaning to the term *travesti*, giving it a new connotation as a political identity.<sup>14</sup> In South America, the term is used to express a trans identity.

## Introduction

Globally, women's incarceration is growing at an alarming rate: between 2000 and 2017, the female prison population increased by 53.3 percent, while that of men increased by 19.7 percent.<sup>15</sup> Repressive drug policies are the primary cause of women's incarceration in Latin America, causing disproportionately negative consequences for these women, their families, and communities. Within the population of people deprived of liberty, there are groups that face greater vulnerabilities or have special needs, such as women and LGBTI+ persons. Historically, trans women have been subjected to discrimination, criminalization, and institutional violence, in all regions of the world.<sup>16</sup>

The Inter-American Commission on Human Rights (IACHR) has stated that “violence and discrimination against trans children and trans youth begins early, because they are often expelled from their homes, schools, families

and communities, because of their gender identity.”<sup>17</sup> Trans women often face situations of poverty, social exclusion, and violations of their rights to education, employment, health, and housing; stigma, discrimination, and transphobia; violence, and sexual and physical abuse. These factors frequently lead to them working in highly criminalized informal economies, such as the drug trade, sex work, or sex for survival. As a result, they are profiled by the police as being “dangerous,” making them more vulnerable to police abuse and to being incarcerated.<sup>18</sup>

Generally speaking, while available data is insufficient, our research indicates that trans women are overrepresented in prison as compared to other groups. In these enclosed environments, these challenges often get exacerbated and amplified, and multiply. Although all people deprived of liberty are vulnerable during their incarceration and structural factors limit the enjoyment of their basic human rights, some groups face

additional punishment, which leads to greater vulnerability. The incarceration of trans women poses additional challenges related to where they are housed, their identification, invasive body searches, limited access to medical services (including hormone treatments, supervised body transformations, and services for people living with sexually transmitted diseases), privacy, and conjugal visits, among other issues. The evidence shows that trans women often suffer discrimination and abuse when they seek help from the legal system. In parallel, a significant number of trans women in correctional institutions have denounced abuses perpetrated by criminal justice personnel, including discrimination, sexual coercion, harassment, and aggression.

In Latin American countries, there is an alarming absence of standards and public policies to assist and care for LGBTI+ people deprived of liberty—in particular with regard to protection measures against discrimination and abuse. In addition, the dearth of information and gender-disaggregated statistics does not allow for assessing the link between drug policies and the incarceration of trans women. However, the data available, as in the case of Argentina, does allow for making a connection between these two factors. Whether this link is a reality across the entire region remains unclear, in part because of the absence of records that incorporate a gender

perspective. Given that official data does not exist and the LGBTI+ population behind bars is rendered invisible, this report constitutes a first attempt to study the lives of trans women in prison.

To carry out this study, a participatory research approach was undertaken, through a process led by trans women who have been in prison. The report includes in-depth interviews with this group, along with testimonies and documents from workshops, gatherings, and focus groups carried out by organizations dedicated to this issue. To make up for the lack of statistical data, a questionnaire was designed (see [Annex 1](#)) and distributed to non-governmental organizations (NGOs) throughout the region, with information gathered in Argentina, Bolivia, Brazil, Chile, Colombia, Mexico, and Uruguay. In addition, some of the authors of this report belong to national and regional organizations of trans women that seek to increase the visibility of this group's deprivation of liberty.

This report is the result of a collaborative effort on the part of a working group on women, drug policy and incarceration in Latin America and the Caribbean.<sup>19</sup> While the report focuses on trans women in prison, we recognize that LGBTI+ individuals, including trans men, deprived of liberty face complex challenges, and we hope this study sheds light on the need for public policy reforms to

*“Today we know that we take on our identity between the ages of 8 and 13, and many of us end up on the street after that...Yet society is indifferent to the types of violence and the resulting helplessness and extreme vulnerability we face. So, we are forced to migrate, crossing not only (geopolitical) borders, but also migrating from the heterosexual family to an abyss, to absolute vulnerability. With the complicity of an indifferent society... we get to know the police and the state through systematic persecution, forced prostitution, sexual exploitation, incarceration with no legal grounds or due process, bribes, and violence.”*

Conclusions of the Workshop on Transvesticides and Transfemicides at the Plurinational Gathering of Women, Lesbians, Travestis, Trans, Bisexuals, Non-Binaries and Intersexuals, Argentina<sup>20</sup>

benefit this group more broadly. It explores the framework of rights protection for trans women deprived of liberty at the international, regional, and national level; the statistical data available; structural inequalities existing prior to detention; living conditions in contexts of confinement; post-release social reintegration; trans women's experiences of agency; reforms and good practices in the region; as well as public policy recommendations to guarantee the full exercise of this population's dignity and protection of its human rights.

## **Rights Protection Framework for Trans Women Deprived of Liberty**

In the majority of cases, the rights protection framework for trans women deprived of liberty is not made up of laws that are uniform or even explicit regarding this population or its legal situation. To examine this, the report explores the existing regulations and standards that protect their rights at the international, regional, and national level.

### **International Regulatory Framework**

In international human rights law, the first line of protection for the trans population is made up of the Universal Declaration of Human Rights<sup>21</sup> and the International Covenant on Civil and Political Rights (ICCPR),<sup>22</sup> which recognize the equality of all people and their protection against discrimination on any grounds.

With regard to protection for people deprived of liberty, the main standards are the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment<sup>23</sup> and the United Nations Standard Minimum Rules for the Treatment of Prisoners, also known as the Nelson Mandela Rules.<sup>24</sup> Both of these set forth

requirements and guidelines for respecting the dignity and protecting the rights of people deprived of liberty. And both establish the principle of non-discrimination without any distinction. While criticized for focusing only on cis women, the 2010 United Nations (UN) Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (commonly known as the Bangkok Rules) lay out the specific characteristics of, and provide standards for, addressing the needs of women deprived of liberty.<sup>25</sup> Another instrument that forms part of the protection framework for people deprived of liberty is the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,<sup>26</sup> which prohibits torture—physical or mental—during interrogation or in the treatment of any person subjected to any form of arrest, detention, or imprisonment.

The framework of protection specifically for trans women under international human rights law includes the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>27</sup> and the Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (the Yogyakarta Principles).<sup>28</sup> CEDAW, established in 1979, recognizes the differential approach that women experience and commits signatory states to implementing strategies to prevent violence and guarantee women a life free from discrimination. This UN agreement is binding in nature, obligating all signatory states to implement the Convention, and there is a Committee dedicated to supervising progress on this. Meanwhile, the Yogyakarta Principles are a set of 29 principles proposed by a group of human rights experts in 2006. Although they are not binding, they serve as a guide for applying the international framework to cases that involve sexual and gender diversity. The principles on the rights of the LGBTI+

population in contact with the criminal justice system include:

- The right to recognition before the law.
- The right to security of the person.
- The right of freedom from arbitrary deprivation of liberty.
- The right to a fair trial.
- The right to treatment with humanity while in detention.
- The right to freedom from torture and cruel, inhuman or degrading treatment or punishment.

### **Regional Regulatory Framework**

The multilateral agreements between Latin American countries do not include special protections for the LGBTI+ population or for people deprived of liberty. However, there are four conventions that provide general protection for human rights without discrimination, including those rights related to sexual orientation and gender identity:

- The American Convention on Human Rights (Pact of San José, Costa Rica).<sup>29</sup>
- The Inter-American Convention against All Forms of Discrimination and Intolerance.<sup>30</sup>
- The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women—the Convention of Belém do Pará—which recognizes the differential approach based on gender.<sup>31</sup>
- The Andean Charter for the Promotion and Protection of Human Rights.<sup>32</sup>

### **National Regulatory Framework**

The regulations that protect the rights of trans women vary among Latin American countries. All countries establish the principle of equality before the law in their constitutions, which serves as a first line of protection even though they do not include the category of gender identity. Out of these countries, 8 have laws against any form of discrimination, 16 have laws against violence toward women, and just 4 countries—Argentina, Bolivia, Chile, and Uruguay—have approved gender identity laws (see Table 1).

In addition, 16 countries allow people to legally change their identity via different means; the 4 countries previously mentioned allow this in accordance with their gender identity laws, while 8 others—Colombia, Costa Rica, Cuba, the Dominican Republic, Ecuador, El Salvador, Guatemala, and Panama—allow it in their legislation on vital records. Brazil, Mexico, Peru, and Venezuela have no specific laws in this area, but in recent years people have managed to make changes in their identity using judicial or administrative channels. Furthermore, 8 countries have some kind of national regulation and/or ruling regarding housing trans women in prison (see [Table D of Annex 2](#)).

### **Available Statistical Information**

Gender identity as a demographic category is not included in most official surveys around the region. Although some state institutions in Argentina, Chile, Ecuador, Guatemala, and Uruguay have carried out thematic surveys focused on the LGBTI+ population, available information is limited because it does not allow disaggregation for trans people's specific experiences. Data on trans women deprived of liberty is also scarce and, in general, does not come from prison systems or official institutions. This is particularly true in the

**Table 1. Recognition of Trans People' Rights in National Laws, Regulations, or Rulings**

Country	The Constitution includes the equality principle	A national anti-discrimination law exists	A national law against gender-based violence exists	A national law on gender identity exists	Trans people can legally change their gender identity	National regulations exist on housing trans women in prison	Rulings exist on housing trans women in prison
Argentina	✓	✓	✓	✓	✓	✓	✓
Bolivia	✓	✓	✓	✓	✓	✗	✗
Brazil	✓	✗	✓	✗	✓	✓	✓
Chile	✓	✓	✗	✓	✓	✗	✓
Colombia	✓	✓	✓	✗	✓	✓	✓
Costa Rica	✓	✗	✓	✗	✓	✗	✗
Cuba	✓	✗	✗	✗	✓	✗	✗
Dominican Republic	✓	✗	✓	✗	✓	✗	✗
Ecuador	✓	✗	✓	✗	✓	✗	✗
El Salvador	✓	✗	✓	✗	✓	✓	✗
Guatemala	✓	✗	✓	✗	✓	✗	✗
Haiti	✓	✗	✗	✗	✗	✗	✗
Honduras	✓	✗	✗	✗	✗	✗	✗
Mexico	✓	✓	✓	✗	✓	✗	✓
Nicaragua	✓	✗	✓	✗	✗	✗	✗
Panama	✓	✓	✓	✗	✓	✗	✗
Paraguay	✓	✗	✓	✗	✗	✓	✗
Peru	✓	✓	✓	✗	✓	✗	✗
Uruguay	✓	✓	✓	✓	✓	✓	✗
Venezuela	✓	✗	✓	✗	✓	✗	✗

Source: Prepared by the authors. See Annex 2 for the list of national laws, regulations and rulings.

countries that do not have national gender identity laws—such as Brazil—where information is produced at the initiative of NGOs and the data refers to the LGBTI+ population overall, without differentiating between groups.

In the case of Argentina, Bolivia, and Uruguay, the data is provided by the prison systems, but is limited by underreporting, differences in systematization, and shortcomings in data collection. In Argentina, for example, the National System of Statistics for the Enforcement of Sentences (*Sistema Nacional de Estadísticas sobre Ejecución de la Pena, SNEEP*) began to record transgender

people and *travestis* under the category of transsexuals, rendering visible only part of the population, which can lead to underreporting of information.

With regard to the second limitation, each country has a different way of systematizing the data. Argentina and Uruguay have specific information on trans women; Bolivia allows for information disaggregation for each group belonging to the LGBTI+ population; and Brazil and El Salvador aggregate all information on the LGBTI+ population. In the case of Mexico, the only information available is provided by the penitentiary system in the capital, Mexico City, which reports a high

proportion of incarcerated trans women, presumably because it is a metropolis.<sup>33</sup>

Likewise, this information has limits in terms of the modes of data collection. In the case of Brazil, the number of trans women deprived of their liberty (572)<sup>34</sup> is underrepresented, considering the high incarceration rate in that country (354 persons for every 100,000 inhabitants), which amounts to around 744,216 people deprived of liberty.<sup>35</sup> Meanwhile, trans women run the risk of being overrepresented in statistics on the prevalence of HIV collected by the UN Program on HIV/AIDS,<sup>36</sup> since this group is subject to testing

with greater frequency due to the stigma of being “carriers of venereal disease.”<sup>37</sup>

Taking these caveats into account, all the available data shows that trans women represent a significant proportion of the LGBTI+ population in prison, exceeding 30 percent in Mexico City<sup>38</sup> and in Bolivia<sup>39</sup> (150 trans women out of 450 LGBTI+ persons, and 32 out of 105, respectively). Meanwhile, Argentina reported 128<sup>40</sup> trans women in 2017, while Uruguay reported 15 in 2019.<sup>41</sup>

The lack of census statistics that would indicate the proportion of trans women in relation to



Credit: Photo courtesy of Kenya Cuevas

*“I got to a ‘drug house’ and, at that moment, the Federal Police arrived. They ordered us to lie down on the floor, they observed everyone and picked up the girl who sold the drugs, who negotiated with the police officers and they let her go. They turned to me and asked, ‘How long have you been selling drugs?’ I answered that the only thing I did was use, but they arrested me anyway and put me inside a white truck. They took me to Mexico City’s Northern Prison for Men (Reclusorio Varonil Norte). Days later, I received a sheet of paper that*

*said ‘Formal imprisonment order for the drug-related crimes of harm to health, possession, distribution, and sale.’ Months passed and finally my sentence was handed down: twenty-four years. At that time, it occurred to me that I was never going to leave prison. This was a lot of years and I was living with an illness, HIV/AIDS, without knowing yet what it was. I experienced prison like any other trans woman in a male facility, where I was physically assaulted and sexually abused, not just by the inmates but also by security personnel and guards.*

*The years went by in prison and I started to defend myself. I acted as my own lawyer and I managed to reduce my term, which allowed me to get out with a little less than half of my sentence served. When I was released from prison, I prepared myself to work with my fellow sex workers on caring for/preventing HIV. In 2018, I founded the Casa de las Muñecas Tiresias and very soon after I inaugurated the first shelter for trans women. This fight has not been easy, nor will it ever be. I have seen my partners die over the years because of hate crimes or because HIV took their lives, but my convictions hold firm, and I yell to the world that being happy will be our revenge!”*

(Testimony of Kenya Cuevas, trans activist, director of the Casa de las Muñecas Tiresias AC and of the Paola Buenrostro Shelter, Mexico)



the total population means that, using numbers alone, it is not possible to verify whether they are particularly criminalized (though as noted above, our research in prisons indicates that this is the case). Similarly, the incidence of other, associated vulnerabilities—in terms of economic and educational level, migration status, and the existence of family support—is not known. Furthermore, the absence of data prevents an assessment of important categories for this population, such as the offenses they are charged with, if they have been sentenced, nationalities, age ranges, etc. However, NGO reports have laid bare the criminalization of trans women for drug-related offenses that is not visible due to the lack of official data.<sup>42</sup>

In Argentina, punitive drugs laws are the main cause underlying women's and trans people's deprivation of liberty. In 2017, 43 percent of women (1,561) and 70 percent of all trans people in prison (89) were incarcerated for these offenses.<sup>43</sup> Trans women have been targeted for persecution by security forces, putting them among the sectors most criminalized and incarcerated. Taking this data into account, it is necessary to incorporate the situation of trans women into debates regarding the disproportionate impact of punitive drug policies.<sup>44</sup>

## Inequalities Prior to Detention

Generally speaking, trans women are deprived of the right to their identity and, in consequence, of their basic human rights. The unwillingness of the majority of countries to recognize these identities is related to the criminalization and stigmatization towards them in the public imagination.<sup>45</sup> In addition, the IACHR has reaffirmed the close links between exclusion, discrimination, and the short life expectancy of trans persons.<sup>46</sup> The violence and discrimination against trans

children and youth starts at an early age. Similarly, the exclusion and discrimination that affects trans women's lives hampers their access to basic rights, including to health, education, and employment.

## Access to Health

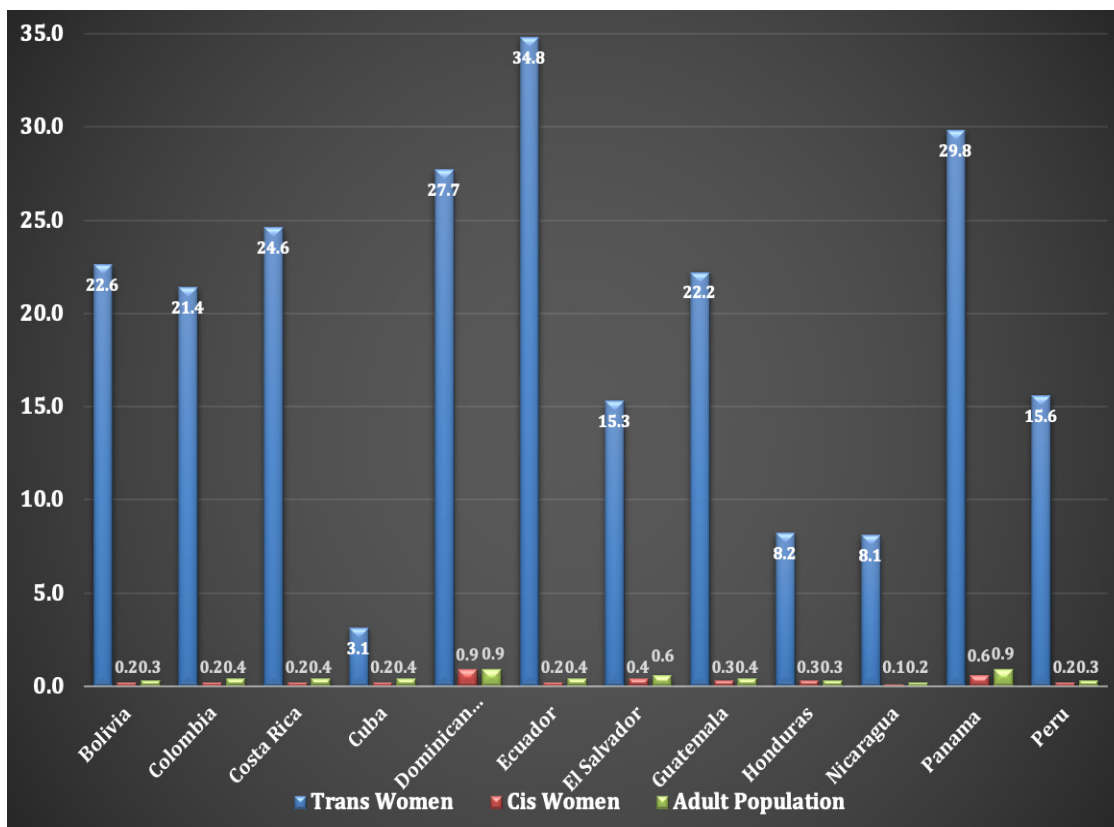
*"Our revenge is reaching old age."<sup>47</sup>*

In Latin America, trans women live 35 years on average.<sup>48</sup> In Argentina, the average life span for the general population is 77 years; however, trans women die, on average, at 32 years of age, due to violence and social, political, economic, structural, and systematic exclusion.<sup>49</sup> In Chile, the life expectancy of trans women is just 37 years,<sup>50</sup> while in Brazil and Mexico their life expectancy is 35 years of age, whereas the average for the general population is 75 years in Brazil and 77 years in Mexico.<sup>51</sup>

A second risk that trans women face is the high prevalence of sexually transmitted infections, such as the Human Immunodeficiency Virus (HIV), syphilis, and hepatitis B. In the case of syphilis, studies in Argentina and Peru indicate that its prevalence among trans women is between 40 and 50 percent, with a similar rate for the hepatitis B virus and herpes.<sup>52</sup> Like other illnesses, HIV infection predominates in contexts where there is greater inequality and poverty, and a lack of access to social and health services. The high prevalence of these pathologies is also due, in part, to the barriers to accessing health services that stem from stigma and discrimination.

With regard to access to health services, healthcare personnel sometimes let their work be guided by stigma and stereotypes about trans people, who can experience different types of violence when seeking access to that service. Some health workers prefer not

**Graph 1: Percentage of HIV Prevalence in Trans Women, Cis Women, and the Adult Population**



Source: Graph prepared by the authors based on UNAIDS, National HIV Prevalence Among Transgender People Data, 2018.<sup>53</sup>

to treat trans people, offering pretexts such as “moral or sanitary reasons.”<sup>54</sup> The human rights violations experienced by trans people include misinformation by medical personnel regarding available care options and the rules for providing hormone treatment.<sup>55</sup> This creates a hostile environment for trans women and men, which discourages them from seeking medical attention. According to data from a survey by Argentina’s National Institute of Statistics and Censuses (*Instituto Nacional de Estadísticas y Censos, INDEC*), 48.7 percent of trans people have stopped going to the doctor due to discrimination related to their gender identity.<sup>56</sup> Similarly, 13 percent of Mexican trans women reported making the same decision, according to the

2018 National Assessment of the LGBTI+ population (*Diagnóstico Nacional de población LGBTI+*).<sup>57</sup>

Another health risk among trans women is the use of hormones and filler substances without professional medical help, due to lack of access to proper health treatment. The self-administration of these substances—taught among groups by word of mouth—can cause complications in the medium and long term, including infections, gangrene, thyroid problems, or kidney impairment. In Brazil, 34 percent of trans women use hormones without a medical prescription, and in Mexico, 24.6 percent have at some point used filler substances, such as silicone, vegetable oils, and polymers, among others.<sup>58</sup>



Credit: Photo courtesy of Alba Rueda

*“Mapping the travesti and trans population’s life experiences entails understanding the logic of structural inequality, where the hegemonic heterocisnormative, racist, and classist model establishes itself using distinct modalities of citizenship in an economic, political, and state system. A critical reflection on criminalization, stigmatization, and pathologization allows for contextualizing exclusion from the rights to gender identity, to education—on the part of trans children and adolescents—to migration, to personal development without discrimination or violence.”*

(Alba Rueda, trans activist. First Undersecretary for Policy Diversity of the Ministry for Women, Gender and Diversity. President of the Argentina Trans Women/Mujeres Trans Argentina social organization and member of the Noti Trans magazine. Researcher of sexual dissidences at the Gender and Communications Department of the Floreal Gorini Cultural Center of Cooperation and for the CLACSO “Bodies, Feminisms and Territories” Working Group, Argentina)

### **Access to Education**

People’s decision to take on gender identities when they are in school involves physical, social, and legal changes. On many occasions, being shunned by the education community leads to the temporary or definitive suspension of their studies.<sup>59</sup> For example, 34.9 percent of trans people in Argentina reported suffering some kind of discrimination in the classroom, while in Mexico the proportion rises to 45 percent.<sup>60</sup>

In Bogota, Colombia, trans people are the population group with the lowest level of education: around 58 percent have only completed high school and only 7.9 percent attend university.<sup>61</sup> In Mexico, only 3 percent of trans women who live in Mexico City have completed higher education.<sup>62</sup>

In Argentina, a 2012 survey of the trans population shows that this group had low levels of education. Twenty percent of those surveyed finished high school, only 7 percent said they had taken courses at a higher level, and 2 percent said they had finished a tertiary

or university-level education.<sup>63</sup> In Mexico, according to information provided by the *Almas Cautivas* Association, 22.7 percent of trans women surveyed were forced to definitively abandon their studies: 4.1 percent in post-graduate programs, 43.4 percent during college, 35.9 percent in college preparatory courses, 15.9 percent in high school, and 0.7 percent in elementary school.<sup>64</sup> In Guatemala, the Health Ministry reported in 2014 that 37 percent of trans women had only studied through high school.<sup>65</sup>

Meanwhile, in Chile, 52.9 percent of trans adolescents stated that they had been physically assaulted due to their gender expression, and 88.2 percent said they had been insulted for that same reason during their years of schooling.<sup>66</sup>

### **Access to Employment**

The majority of trans women are not hired due to employers’ prejudices. Given the lack of access to formal work, numerous organizations in the region report that trans

women resort to informal labor.<sup>67</sup> A frequent option is to get involved in the drug trade and sex work, motivated on occasion by social and cultural circumstances, as well as by inequality and discrimination.<sup>68</sup> Despite the lack of official data from governments in the region, international organizations and civil society groups have made efforts to compile estimates regarding the percentage of trans women who regularly engage in sex work. According to surveys carried out in different years, in countries around the region that percentage is 85 in Argentina, 51 in Bolivia, 90 in Brazil, 61 in Costa Rica, 80 in El Salvador, 35 in Guatemala, 42 in Honduras, 25 in Mexico, and 95 in Paraguay.<sup>69</sup>

Another example of this inequality is documented in the Argentine study, *The Revolution of the Butterflies* (*La revolución de las mariposas*), regarding the trans movement in the city of Buenos Aires. The report indicates that only 9 percent of trans women have formal jobs. At the same time, 15 percent reported engaging in informal tasks of a precarious nature, for example as street vendors, and 3.6 percent said they live on welfare benefits provided via various public policies. For more than 70 percent of trans women, sex work continues to be their main source of income,

and only 5.9 percent have secured stable housing.<sup>70</sup>

## Living Conditions in Contexts of Confinement

The incorporation of gender identity laws into the regulatory frameworks of some countries in the region marked significant progress in recognizing trans women's rights. However, there are still regulations, practices, and procedures that do not conform to international standards for human rights protection and that do not involve inclusive public policies or ensure adequate treatment by judicial, police, or security officials. On the contrary, when it comes to trans people, state agents' practices remain violent, stigmatizing, and discriminatory.

Trans women deprived of liberty face challenges and vulnerabilities associated with their gender identity that include human rights violations; the rupture of ties to family, friends, and the community; and inadequate educational and health services, among others.<sup>71</sup> In general, trans women deprived of liberty face a double stigma: for being or having been in prison and for belonging to the LGBTI+ population. As a punishment, trans

*“My experience of being deprived of liberty in the Picota prison, in Bogotá, Colombia, is not very different from what many trans people live through in this situation in Latin America. There is a constant abuse of human rights and lack of recognition of our identities. I was in various situations that involved psychological, verbal, physical, and sexual violence, perpetrated by inmates and guards. Among all this abuse, I remember how the guards on the night shift used to use me for their entertainment, forcing me to dance for them and to agree to be their sexual toy or they would retaliate by putting me in more violent situations. Although I tried to denounce this more than once, the only thing I achieved was complicity among the guards to keep from tarnishing the reputation of the National Penitentiary and Prison Institute (Instituto Nacional Penitenciario y Carcelario, INPEC) and more harassment for not keeping my mouth shut. The only defense we had, and still have, is empowerment and unity among ourselves.”*

(Testimony of Katalina Ángel, trans activist, Colombia)

women are frequently transferred from one prison to another for demanding that their rights be respected, and they may be kept in areas with worse conditions. In this way, they have more limited access to education, training, and other services.

### **Housing Inside Prisons**

Housing management of LGBTI+ people within prisons is a matter of debate. Generally speaking, the housing of trans persons should follow criteria related to the trans population's identity, security, risks, and preferences.<sup>72</sup> Contrary to the Yogyakarta Principles, the region's countries do not involve trans women in decisions regarding their place of detention (see [Table D of Annex 2](#)). Trans women are often put in men's prisons, which violates their identity rights and increases the risk of sexual violence.

In some cases, trans people are segregated. In general terms, segregation and/or protective custody should be avoided at all cost, unless grave security problems limit housing options. Even though people deprived of liberty can be vulnerable to abuse by other incarcerated people, segregation and solitary confinement is not the right way to address this vulnerability. People deprived of liberty who are isolated or placed under protective custody have difficulty in accessing education, training, recreation, employment, and other support services available to the overall prison population. In addition, segregation can cause severe episodes of depression, and solitary confinement can become a mortal scenario without the proper psychological support. For example, suicide attempts by trans women in prison have been documented in countries like Mexico.<sup>73</sup>

In Argentina, housing conditions in prison differ in the distinct regions of the country. In some provinces there are exclusive spaces

for housing trans women, while in other regions they must live with people charged with or convicted of sexual assault crimes. In addition, the federal system allows trans women to be placed in prisons that house cis women. Although this measure would seem to be in keeping with current regulations, there are still difficulties for achieving effective compliance with the gender identity law. These criminal justice institutions do not respect the right to consultation regarding people's housing, or their self-perceived gender, which leads to discretionary arrangements and classifications.<sup>74</sup>

In Brazil, these housing policies also vary. The Porto Alegre prison, in the south of the country, has a cellblock earmarked for trans women and men, and it is the fourth prison institution in the country to create a specific space for this population. However, the "protectionist" argument that favors a ban on contact with other populations can be harmful to those trans women who would prefer to be housed with cis women.<sup>75</sup>

In Honduras, trans women are housed in men's prisons,<sup>76</sup> as is the case in Bolivia. For example, there are trans women being housed in the San Pedro men's prison establishment in La Paz.

In Mexico, the majority of trans women are housed in penitentiary centers based on their genitalia.<sup>77</sup> However, in Mexico City, authorities consult with trans women regarding their preferences in terms of places of detention. In any case, only those trans women who have official identification as female are confined in penitentiary centers based on their self-perceived gender.<sup>78</sup>

### **Access to Health Services Inside Prison**

Trans women also face greater health risks.

Many of them have no other option for their transition process but to inject themselves with cooking or vegetable oil, and they face an absolute dearth of proper medical care. In the majority of prison establishments in the region, health care does not include a gender perspective or contemplate this group's particularities. Furthermore, medical practices tend to be replete with homophobic and transphobic discourses.

In Argentina, trans women deprived of liberty have denounced ill-treatment and dissatisfaction with the health services received, and they face discrimination and the interruption of the hormone treatments they were undergoing before entering prison.<sup>79</sup> In 2017, three trans women deprived of liberty died “due to complications related to their state of health, terrible detention conditions, and the judiciary’s inaction with regard to the complaints filed.”<sup>80</sup>

In Colombia, the majority of incarcerated trans women does not have access to hormonal medication or to supervised body transformations. Nevertheless, as a result of this population’s demands, some institutions are now allowing hormones to be brought in, but these are paid for by those who take them. However, these authorizations do not provide access to laboratory tests or the periodic checkups needed for safe treatment.<sup>81</sup>

In Mexico City, trans women have access to specialized medical care, including hormone treatment. However, these practices lack an institutional framework, with trans women having to make administrative requests to obtain access to this care, and permission

is subject to the approval of the prison’s interdisciplinary council. Uruguay has a similar system in place; access to hormone treatment is possible, but depends on the discretion of the authorities.

### **Violence in Prison**

The diverse forms of violence against LGBTI+ people deprived of liberty include discriminatory and humiliating practices and physical and psychological ill-treatment, which lead to irreparable harm for this population. The lack of recognition of their gender identity, along with discrimination and ill-treatment based on gender identity or sexual orientation, are frequent in prison. Physical violence is a systematic and everyday practice in penitentiary establishments, while the excessive use of force and abuse—far from being an isolated event—takes place continually in places of confinement.<sup>82</sup>

In addition, the IACHR has reported that LGBTI+ persons deprived of liberty “are at a heightened risk for sexual violence—including a higher risk for multiple sexual assaults—and other acts of violence and discrimination at the hands of custodial staff or other persons deprived of liberty.”<sup>83</sup> In the case of trans women, they run a greater risk of experiencing sexual violence since they are routinely incarcerated in prisons for men, without their individual particularities or specific cases being taken into account.<sup>84</sup>

In Argentina, the institutional violence perpetrated by security forces is systematic in nature. The results of the first survey on the trans population, carried out in 2012,

*“The constant harassment is reinforced in a logic of double stigmatization: in addition to being prisoners, they are gay or trans.”*

*(Corpora en Libertad)*<sup>85</sup>



Credit: Photo courtesy of Alejandra Collette Spinetti Núñez

*“Trans bodies in the prison system are abused bodies. Trans people who end up there come from family expulsions at an early age, with a lack of affectional ties, having experienced life on the streets, prostitution in many cases, the rupture of links to educational centers, health centers, and social centers. Trans bodies in the prison system turn into bodies that must survive the system, the other people deprived of liberty, and the authorities. For that reason, trans women find innumerable ways of conserving their gender identity and also expressing it, which produces bodies of resistance.*

*This whole process has a heavy quota of violence; however, they conserve their gender identity. There is a preconceived power that crushes bodies, but not people’s will, and people must adapt, survive, and resist that power.*

*In 2014, the Trans Union of Uruguay (Unión Trans del Uruguay) began entering penitentiary centers. We put together workshops for the women and considered issues related to gender identity, different types of violence, ties to the outside, preparation for release, sexual health, and building intimate partner relationships. These trans women deprived of liberty are currently working and have integrated into the educational community. Through a voting process, they chose a representative who acts as the spokeswoman before the authorities, who is responsible for communicating grievances and proposals.”*

*(Testimony of Alejandra Collette Spinetti Núñez, Professor of Literature at the Secondary Education Council (Consejo de Educación Secundaria), National Director of the Trans Collective of Uruguay (Colectivo Trans del Uruguay, Secretary-General of Corpora en Libertad), Member of the Steering Committee of the International Trans Fund, Advisor for Uruguay to the Ibero-American Network of LGBTI Education (Red Iberoamericana de Educación LGBTI), Uruguay)*

indicate that 83 percent of trans people surveyed have been victims of grave acts of violence and discrimination by police.<sup>86</sup> In Colombia, the abusive use of force against LGBTI+ people deprived of liberty includes: the selective, arbitrary, and indefinite use of solitary confinement; threats or disciplinary actions against any expression of affection between LGBTI+ people; and insults and discriminatory practices that lay bare the existence of prejudice.<sup>87</sup>

In Honduras, LGBTI+ people in prison face verbal, psychological, and physical violence, in particular sexual violence perpetrated by prison staff or other detainees. Likewise,

trans women tend to be victims of severe punishment—including prolonged solitary confinement upon being placed in a unit called “The Island.”<sup>88</sup> In El Salvador’s prisons, LGBTI+ people are subject to grave human rights violations during body searches, including torture, ill-treatment, physical aggression, and rape fostered by the security system.<sup>89</sup>

## Reentry upon Leaving Prison

Although many of the problems that trans women face upon leaving prison are similar to those of other people deprived of liberty, the

intensity and multiplicity of their post-release needs can be very different. Some of the economic, social, and legal challenges they face include loneliness and neglect; discrimination and stigma; an absence of psychological support; a lack of skills and education needed to find employment; problems in obtaining housing and identity documents, and in exercising their civil rights, such as voting. Many trans women try to work on their own or start small businesses; however, they often lack the experience, resources, and financing to achieve this. Furthermore, many of them face health problems due to the lack of adequate medical care in prison. Finally, the vast majority of prisons throughout the Americas do not have effective programs to help women to socially reintegrate after their release.

In general, governments have not developed effective public policies for post-prison reintegration, nor are there specific programs geared toward the trans community. In light of the state's absence in this area, social organizations tend to be the ones to support the process of regaining freedom and to identify education, employment, and recreational opportunities. In Argentina, recent changes to the migration policy<sup>90</sup> have meant that, after regaining their freedom, many trans women who are migrants end up in contact with the judicial system again to face a judicial process that often ends in their expulsion from the country.<sup>91</sup>

In Uruguay, the Gender and Sexual Diversity Office of the National Institute of Rehabilitation (*Dirección de Género y Diversidad Sexual del Instituto Nacional de Rehabilitación*), along with the National Office to Support People

*"[We activists] express our concern regarding the situation that LGBT+ persons deprived of liberty experience and face in penitentiary centers in Latin America, above all the absence of support, empathy, and adherence to this agenda by LGBT+ groups. This information has led us to reflect on the fact that, in our daily lives, we trans women are exposed to nearly obligatory cycles of violence. Thinking about ourselves in work-related, educational, or political spaces seems so distant, while prison is so close."*

(Testimony of Ari Vera, trans activist, head of *Corpora en Libertad* Network, Mexico)



Credit: Photo courtesy of Ari Vera.



Released from Prison (*Dirección Nacional de Apoyo al Liberado*), promote admission into a halfway house for formerly incarcerated people known as the *Posada del Liberado*.<sup>92</sup> Thus, they provide housing solutions to trans women who leave the prison system. The rest of the region's countries do not report having specific programs that address the needs of trans women who have been in prison.

## Resistance and Agency Strategies

Discrimination, violence, and lack of respect of their rights crisscross the life stories of trans women. Despite these challenges, trans women who have been behind bars have created organizations to defend their rights, as well as the rights of those who are still in prison. Trans women's organizations in Latin America have forged a social movement that has emerged out of different forms of resistance and the development of political agendas.

In 2017, the Corporación Libertad Internacional Network Working with LGBTI+ Persons Deprived of Liberty (*Red Internacional de Trabajo con Personas LGBTI+ Privadas de Libertad*) was consolidated in the region. This network gathers organizations from Argentina, Brazil, Colombia, Cuba, the Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, and Uruguay, with the aim of carrying out collective work for the promotion, defense, and protection of the human rights of the LGBTI+ population in contexts of deprivation of liberty.

## Reforms and Good Practices

Despite the challenges the region faces in the treatment of trans women deprived of liberty, there are reforms or good practices that are worth examining. These include alternative measures to incarceration, follow-up

mechanisms to prevent torture, and rules on body searches of trans women in prison, as well as on intimate visits.

In some countries such as **Argentina** and **Chile**, the courts have granted trans women alternative measures to the deprivation of liberty, such as house arrest, taking into account their life stories and trajectories, the exceptional nature of the situation of vulnerability that they experience in prison, health reasons, exposure to violence, and the lack of a gender and sexual diversity perspective in the judicial system.<sup>93</sup> In the case of **Argentina**, one verdict broadens the concept of access to comprehensive health care, recognizing the complexity of tackling some illnesses in prison, in addition to taking into account the specificities of the trans population.<sup>94</sup>

Some countries are raising awareness of the situation of vulnerability of trans women in prison through visits and thematic reports by the Mechanisms to Prevent and Combat Torture. For example, in **Brazil**, the Local Prevention Mechanism (*Mecanismo Local de Prevención, MLP*) in Rio de Janeiro issued a thematic report entitled "Women and girls deprived of liberty in Rio de Janeiro," which includes a specific chapter on trans persons in prison. The Local Prevention Mechanism highlighted in its report that the consent of detained trans persons must be requested before any decision to transfer them is made.<sup>95</sup>

With regard to policies on body searches for trans people, countries like **Argentina** and **Colombia** have created rules or procedural guidelines stipulating that detained trans people must be consulted, on a case-by-case basis, as to whether they prefer to be searched by a man or a woman.<sup>96</sup> In the case of **Colombia**, this regulation includes specific provisions for those visiting trans persons, whereby personal searches must be

conducted on the basis of the gender declared by that visitor, regardless of what their identity document says.<sup>97</sup>

Similarly, **Colombia's** General Regulation on Prison Establishments (*Reglamento General de los Establecimientos de Reclusión*) indicates that no sanction, prescribed in the law or in disciplinary rules, can be interpreted in a discriminatory manner. It also clarifies that, in the case of LGBTI+ persons deprived of liberty, public manifestations of affection, physical appearance, or any bodily manifestation of sexual orientation or gender expression and identity must not be considered punishable behavior. The Regulation specifically prohibits transferring people to other cells, units, or establishments just because of their sexual orientation or gender identity.<sup>98</sup>

In countries such as **Brazil, Colombia, and Costa Rica**, prison regulations expressly allow incarcerated LGBTI+ persons to have intimate visits.<sup>99</sup> In **Costa Rica**, the Supreme Court ruled in favor of a person deprived of liberty who filed a complaint about the discriminatory nature of prison rules stipulating that intimate visits could only take place among heterosexual couples. After this ruling in 2011, the regulations were modified to ensure that all of those in prisons would also have the possibility of accessing conjugal visits.<sup>100</sup>

## Recommendations<sup>101</sup>

Trans women experience multiple social and structural inequalities that hinder their pursuit and enjoyment of full citizenship. That is why governments must design comprehensive public policies to guarantee the promotion and protection of their rights. In recent decades, human rights protection systems at the international and regional levels have established diverse protection mechanisms

against discriminatory acts based on gender, gender identity, and/or sexual orientation. However, the development of guidelines benefiting trans women as a group falls short in terms of criminal law and/or situations of confinement. **We therefore recommend that States:**

- Incorporate international standards on recognition of gender identity and citizenship policies into their national laws to guarantee full access to rights.
- Promote a thematic agenda that would include, in a permanent and intersectional way, the human rights situation of trans women in conflict with the law and/or deprived of liberty.
- Promote drug policy reforms with a gender perspective that would include the decriminalization of drug consumption and possession for personal use; proportionality in sentencing; and pardons, amnesties, sentence commutations, or retroactive prison term reductions, taking into account the specific structural inequalities that trans women as a group experience.
- Promote the creation of specific data collection systems on trans women involved in drug offenses with the aim of producing more knowledge on the issue of trans women and drug policies.
- Promote access to alternative measures to incarceration.
- Adopt legislative, administrative, and/or any other type of binding measures for the prevention of and protection against torture and cruel, inhuman, or degrading treatment perpetrated for reasons related to sexual orientation and/or gender identity.

- Develop reparation measures and policies in scenarios of torture and systematic persecution.
- Establish mechanisms within the criminal justice system to collect and analyze data and statistics on trans people deprived of liberty with the goal of developing and implementing specific, evidence-based policies for this high-risk group. The data should be disaggregated by gender identity and/or expression, legal situation, offenses, health conditions, education, and people's characteristics, among other factors.
- Harmonize the internal regulations of prisons and of the criminal justice system with the human rights protection system of the LGBTI+ collective, such as the Yogyakarta Principles.
- Incorporate the participation of LGBTI+ civil society and human rights organizations in the design and planning of measures and programs on preventing deprivation of liberty and social integration.
- Guarantee that trans women be able to make decisions on where they will be housed while being deprived of liberty.

**During their time in prison:**

- Respect the sexual orientation and gender identity and expression of trans women deprived of liberty, guaranteeing them the right to enjoy all human rights, without discrimination.
- Promote the sensitization and constant training of prison staff and other judicial system officials and employees on sexual orientation and gender identity and expression. These trainings should be coordinated with specialized civil society organizations that have experience in this area, and include the active participation of trans women.
- Avoid the use of solitary confinement or segregation, except in cases of grave threats to the physical security of the individual.
- Promote and facilitate the entry of LGBTI+ civil society organizations into prison centers to foster programs, workshops, talks, and any other initiative that addresses the needs of this group.
- Guarantee that trans women have adequate access to comprehensive health care and counseling suited to their needs and specificities. The continuity of hormone treatments and reassignment surgery should be ensured, when women opt for it.
- Carry out official assessments, in collaboration with civil society organizations, of the trans population's living conditions inside the penitentiary system and after release.

With regard to trans women's **living conditions in prison**, penitentiary policies that contemplate gender diversity are lacking across the region. For that reason, it is indispensable that the following recommendations be taken into account:

**During the admissions process:**

- Provide information to people deprived of liberty so they may know their rights and obligations within the penitentiary center, with the aim of guaranteeing the protection of their dignity, sexual orientation, and gender identity and expression.

## During the release process:

- Implement government programs and work with civil society organizations—forging strategic alliances with the private sector when appropriate—to guarantee access to work, personal development, health, housing, and education for LGBTI+ persons who have been deprived of liberty.

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