

A monster called justice: Female incarceration and motherhood in Mexico's prison system

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Abstract: *Female incarceration has been growing at a higher rate than the general prison population around the world and Mexico has been no exception: between 2000 and 2022 the country has witnessed an increase of the female prison population by 100%, vs a 60% global tendency. The main cause for women's incarceration is theft, followed by more serious crimes, such as kidnapping and homicide. Most women in prison come from poor households, have basic schooling and are primary or sole caregivers of small children. Despite a growing international and national attention to the issue of women in prison and the impacts of female incarceration on small children, the Mexican prison system is not legally designed nor practically equipped to uphold children's rights and mainstream a children rights' perspective in the adult criminal justice system. This paper aims at analyzing the conditions of female incarceration in Mexico and its impacts on children, with a focus on those living with their mothers. It is based on publicly available quantitative data and literature review as well as on semi-structured interviews and focus groups with women in prison from 2005 onwards and, more recently, with women detained in the country's federal female prison "CPS femenil Morelos" in 2023. It also draws from the lived experience of formerly incarcerated women.*

Key words: *children, female incarceration, Mexico, motherhood, national law of penal execution, non-custodial measures*

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1. Introduction

This paper focuses on two issues and their intersection: on the one hand, the growing phenomenon of female incarceration; on the other, its impact on children with incarcerated mothers in Mexico, from a legislative, quantitative and qualitative perspective.

Since 1980s, with the pioneering work of authors such as Carol Smart (Smart, 1977) and Pat Carlen (Carlen, 1983), feminist approaches to criminology have been shedding light on women's paths to criminalization, the continuum of gender-based violence that they are subject to since early childhood and how the state's faculty to punish reproduces gender stereotypes and different forms of violence, including sexual torture (Corte Interamericana de Derechos Humanos, 2018).

Feminist studies, as well as studies framed in gender studies without self-defining as feminist, unmask gender inequalities in criminal law and the prison system, in its conceptualization, design and everyday operations. They have brought forward women's lived experiences, enriching the spectrum of questions, methodologies and contributions that academic studies generally present (Gelsthorpe, 2020). Since the early works of Rosa Del Olmo (Del Olmo 1998), Carmen Antony (Antony, 2000) and Elena Azaola (Azaola and Yacamán, 1996), studies on female incarceration have been proliferating in Latin America as well. In recent years, an important activism and advocacy work has impacted on how this issue is seen and addressed in the region (WOLA 2016; Youngers, Castro and Manzur, 2020), with a prominent role being played by the Inter-American Court of Human Rights (CIDH, 2023) and the Inter-American Court of Human Rights (Corte Interamericana de Derechos Humanos 2022).

Characterized by a transformative vision aimed at improving women's life, feminist methodologies break with the positivist subject-object approach to scientific research and put women at the center, through attentive listening, active participation and horizontal peer work between the researcher and women with lived experience (Blazquez Graf *et al.*, 2012). Thus, women's own account of their life is woven with a critical analysis of the legal and prison apparatus, the visibilization of intersections in women's processes of criminalization, the multiple forms of violence that are reproduced inside prisons which comprise symbolic, geographic, psychological, emotional, physical and sexual violence-, and the enormous difficulties that the post-release process entails. They also reveal how gender-based inequalities intersect with others, particularly poverty-being the criminalization of poverty an ongoing striking aspect of criminal justice systems around the world and since the becoming of prison as the main feature of state punishment. Age, nationality, race and ethnicity, as well as disabilities, sexually transmitted diseases and substance dependence, also

intersect with gender and at times one aspect can be more prominent than others in defining a person's contact with the criminal justice system and the intensity of it.

In Mexico, the pioneering work of Elena Azaola (Azaola and Yacamán, 1996) showed that incarcerated women proceed mostly from poor households, are primary caregivers of small children and become involved in illicit conducts through their involvement by male partners. Since then, women's profile has not changed significantly, although the education level has increased (INEGI, 2021) from primary to basic secondary education and the offences women are incarcerated for have changed, mainly due to reform in the criminal justice system and the criminalization for drug offences, as well as for a changing criminal landscape; for instance, in the nineties and during the first decade and a half of the 21st century, women were incarcerated mainly for theft and for non-violent drug offences, related to their role as human couriers or to drug dependence (Giacomello, 2013). Currently, whilst theft continues to represent the first cause of incarceration, other offences, specifically kidnapping and homicide, have become the second and third cause for women's imprisonment. However, gender-based violence since childhood and social exclusion are still a staggering feature in women's accounts of their own life and experience of criminalization: not only violence before incarceration, but also during the arrest (Secretaría de Gobernación, 2022) and as part of the prison conditions. Gender intersects with other conditions of vulnerability and discrimination, with indigenous women being more subject to stigma and human rights violations during police detention and while in prison (Hernández Castillo, 2010).

For many women, the experience of incarceration is defined primarily by motherhood¹ and the anguish and the pain caused by not living with their children, not being able to take care of them and constantly being concerned about their wellbeing. Thus, deprivation of liberty becomes a pain of the soul that strikes harder and more constantly than the constriction on the body.

As profoundly and excruciatingly described by *Vale*, a woman who was incarcerated and whose testimony is included in this work (see section 1.1 of this paper):

1 Parenthood encompasses a wide spectrum of identities, attachments, aspirations, fears, possibilities and barriers. Not all people parent in the same way and not all parents choose to be one. In this paper, when talking about incarcerated women who are mothers, I refer to an arbitrarily defined middle point: women who have not necessarily planned each pregnancy nor chosen the person and the moment they reproduced with -possibly having been victims of sexual violence and rape- and who are constrained in the exercise of their parental role by their legal situation and other conditions of vulnerability, such as poor incomes and little tangible connections. I refer to mothers who are emotionally and practically interested in parenting their children in ways that do not put them at risk and that move in favor of their children's holistic wellbeing, despite the difficulties that they may encounter when trying to fulfil their aspirations as mothers.

Moving on to the subject of what it was like to let go of my children, there are no words to describe the situation. You miss out on everything, you miss their first little steps, when they start to talk, their first little tooth, when they get sick, when they finish kindergarten, when they finish primary school.

Every eight days it was seeing them arrive [visiting her in prison], see them leave, see them crying, screaming: "Please mum, I don't want to go. I want to stay with you".

And I think it's not so much the confinement, but the psychological and emotional wear and tear that kills you. It's not the walls, it's not the steel door, no! It's all this emotional wear and tear, thinking all day long: what are my children doing, have they eaten yet, has something happened to them?

All this pilgrimage of anguish, because we all share the same pain, because we are all mothers, and the government forgets this: they forget that inside the prison there are mothers, daughters, wives, sisters and friends.

Worldwide there are an estimated 21 million children with incarcerated parents², mostly (93%) with their father in prison. More than 10% of those children live in Latin America and about between 333,946 and 417,433 in Mexico³. A tiny percentage live as being *de facto* deprived of their liberty: approximately 19,000 around the world in 2017 (Nowak, 2019, 343), and 325 at the end of 2022 (INEGI, 2023, 50), in Mexico.

Parental incarceration is one of the adverse childhood experiences (Bellis et al., 2015), which are associated with health risk behaviours, chronic diseases, low life potential and premature death.

The effects of an adult referent's deprivation of liberty on their children are multiple and are felt in the economic, psychological, emotional, educational and socialization spheres (Jones and Wainaina-Woźna, 2012; Nowak, 2019). Furthermore, parental imprisonment exposes children to stigma and discrimination by the community, family and society at large (Giacomello, 2019; Murray, *et al.* 2014).

Whilst there is no evidence that the gender of the incarcerated parent directly influences the long-term effect of parental incarceration on children, maternal imprisonment is more disruptive in the immediate

2 <https://inccip.org/statistics/>.

3 Information provided by Luciano Cadoni, Program Officer for Children's Rights Protection, Church World Service, Regional Office at Buenos Aires. The estimates were calculated using the methodology presented in Giacomello, 2019: 32 and the data of World Prison Brief in June 2023.

term (Murray *et al.* 2014). Women tend to be largely abandoned in prison and they must carry out the double role of providers and caregivers. Furthermore, it is mainly other women who, outside prisons, continue to take care of children (INEGI 2021), facing huge economic hardships and difficulties to provide for the children (Red Internacional de Mujeres Familiares de Personas Privadas de la Libertad, 2022).

With regards to prison conditions for women and their children, as shown with more detail when presenting quantitative data, in Mexico they are mostly allocated in mixed prisons, that is in female sections which can be robust structures as well as small, crowded, precarious little houses-attached to a usually larger male prison. Prison conditions will vary depending on the state in which it is located and the size of the prison but, in general terms, studies from the National Commission of Human Rights (2022 and 2023) show that women and children have little or no access to basic rights, such as food, hygiene articles, proper living conditions, specialized services and places for children living with their mothers, medication and health care, etc. They are an invisible and overlooked population amidst a deteriorated prison system. Women are generally invisible and abandoned and children are treated like *de facto* inmates, considered and dealt with as their mothers' appendices (Giacomello, 2018).

Whereas the increase in the female prison population worldwide has risen awareness and thus pulled in from the margins the studies and recommendations that span from abolitionist perspective, transformative ones and reformist positions- that for decades dedicated scholars and activists have developed on and with incarcerated and formerly incarcerated women, the reality of female detention, at least in Latin America and Mexico, has undergone little changes and maintains patterns of human rights violation and torture, for women and their children (Fuchs and González Postigo, 2021; CIDH 2023). According to a study on sexual torture conducted with incarcerated women in Mexico (Secretaría de Gobernación, 2022), eight out of ten affirmed to have been victims of some type of violence during arrest, including sexual torture.

1.1 Methodology and Contents

The paper contains an analysis of the national legal context on female detention. The legal critical review comprises regulations on women and children and compares them with the international standards. The paper also reviews public data on female detention and the socio-demographic characteristics of incarcerated women. The sources consulted for this component are all compiled by the federal government and are presented in the corresponding section.

The quantitative and qualitative analysis interweaves with the lived experience of three formerly incarcerated women. Before and after their release, they all have participated in public fora, conferences, trainings etc. However, their full name is not identified in this paper, whilst a pseudonym of their choice is used. One of them, Gaby, and the author befriended in 2017 during a project aimed at raising awareness on women in prison for drug offences in Latin America. Back then Gaby was still in prison, sentenced to 10 years imprisonment for marihuana trafficking and was given a non-custodial measure in 2019, after seven years in prison. *Vale* and Luisa, were met by the author thanks to the contact provided by the Aída Hernández Castillo, an internationally renowned Mexican feminist academic and activist. Gaby, Luisa and *Vale* facilitated the training and validated the questionnaire of the research project CF-2023-G-68 "Women deprived of their liberty, maternity and children's rights in Mexico. Comparative legal and empirical perspectives", which is financed by the National Council of Humanities, Sciences and Technologies. Luisa and Gaby also participated in a public seminar organised by the author in September 2023 as part of the same project. The extracts of their testimonies are taken from their participation in two workshops and the public seminar.

Furthermore, in October 2023, the author and her colleague Dr. Alicia Azzolini conducted field work in the federal female prison -"Centro Federal de Readaptación Social Número 16 "CPS Femenil Morelos"-, interviewing ten women who live in the dedicated area for women with children. The full analysis of the questionnaires is still in process; therefore, the paper does not present a full description of the women, their life stories and prison conditions, but only some of their reflections concerning the above-mentioned points of analysis. Because of the prison security level, the interviews could not be recorded, therefore their experiences are not reproduced *ad litteram* but through the researchers' fieldwork notes. The article concludes with a section of final remarks and recommendations.

As a last note, the author would like to highlight that she has been conducting qualitative research in female prisons in Mexico since 2025. Research has always been intended to create scientific knowledge but also as a privileged position from where to advocate for women's rights and the use of prison as a last resort. The life stories of the women that have generously accepted to share their experiences have been listened to attentively and with care, based on empathy as a key to objectivity. In this regard, this paper is written with a methodology of care, which has at its core women's voices and their own account of incarceration.

2. Legal framework: between Blindness and Inconsistencies

The international reference tools on women in prison and children with incarcerated parents are, respectively, the Bangkok Rules and the

Convention on the Rights of the Child (CRC). Whilst the former is not an obligatory document, it is based on an international morally binding consensus as well as on rights which are recognized in binding human rights instruments. The Bangkok Rules establish a clear minimum road map for UN State members on how to organize and regulate women's first hours of arrest, living conditions inside prisons - with a strong focus on pregnant women and women living with infants and small children-, non-custodial measures and special categories of prisoners, such as girls and foreign women. The Bangkok Rules highlight women's history of victimization, their role as caregivers and that fact that many women in prison do not represent a threat to society. They also emphasize the negative effects of incarceration for women and their children.

The Convention on the Rights of the Child is a landmark in children's rights and human rights more broadly. It unifies civil, social, cultural and political rights and transforms the way in which children are seen from passive recipients of adults' decisions to rights' holders with the capacity and the right to form their opinions, express them and see them influencing their immediate surrounding and society at large. The CRC establishes children's rights in all the pertinent spheres (health, education, participation, family life, leisure, protection from violence, administration of Juvenile Criminal Justice, child labor, etc.) and promotes a dynamic relation between children, family members and the state in which, whilst parents and the state are equally responsible for children's holistic development, children also have a say and the appropriate mechanisms and culture for their empowerment and participation must be guaranteed. Children with incarcerated parents are entitled to all human rights and to all the rights expressed in the CRC and are explicitly referred to in Article 9.4.

Women and children's rights should be guaranteed independently, ensuring that women are not reduced to their parenting roles and that children are not seen as an extension of their parents and "appendixes" of their mothers (Giacomello, 2018). At the same time, when there is no risk for the child's wellbeing under their mothers' care, mothers and children, both those living together and those outside of prison, must be considered and treated as a dyad, given the possibility to thrive and reducing any pain associated with the imposition of disproportionate and cruel custodial measures, in appalling living conditions and inhumane prison regimes.

Unfortunately, that is not the case in Latin America (CIDH, 2023) and Mexico. This section analyses Mexico's law on prisons and reveals its main contradictions and traits, particularly the subjection of children's rights to the prison regime. The ill treatment that children and their mothers are victims of in Mexican prisons is further demonstrated in the following section on data and thorough the lived experience of incarcerated and formerly incarcerated women.

Since its approval in 2016, Mexico's prison system is regulated by the National Law of Penal Execution (*Ley Nacional de Ejecución Penal*), which is framed within a human rights paradigm set off by an important constitutional reform in criminal justice that took place in 2008 and led to a cascade of legal changes, of which the law under study was a much-expected consequence.

It goes beyond the scope of this paper to provide a full explanation of the reform or the law itself, but it is important to highlight some of its characteristics, before focusing on specific regulations regarding women and children. In the first place, the law implied the derogation of the 32 state laws and one federal law on the matter, unifying the regulation of prisons under national legislation. This happened in 2014 also on procedural matters, with the approval of the National Code of Criminal Proceedings (*Código Nacional de Procedimientos Penales*) and in 2016, with the creation of the National Law on the Integral System of Juvenile Criminal Justice (*Ley Nacional del Sistema Integral de Justicia Penal para Adolescentes*).

Previous state laws and the federal law contained regulations only concerning people with a conviction, leaving people on remand (which represent about 40% of the total prison population) in legal limbo.

The current law establishes the functions of an institution created under the above-mentioned constitutional reform of 2008: the courts of penal execution. Before the constitutional reform, decisions on sentence reduction and modifications, such as the granting of a non-custodial measure, were administrative processes led by the prison authority, through "personality studies" and legal criteria: for instance, non-custodial measures were prohibited in the case of drug-related offences. This created the perfect conditions for corruption as well as a totally unbalanced relationship of power, since the authorities in charge of keeping people behind bars were also those invested with the faculty of releasing or keeping them inside. The courts of penal execution (*Juzgados de Ejecución Penal*) are given numerous responsibilities by the corresponding law, among them, but not exclusively, rule on non-custodial measures, a feature that, whilst still underused in Mexican criminal justice system, led to a reduction of the prison population between 2014 and 2019. This was reversed by a constitutional reform which expanded the scope of mandatory pre-trial detention and by the COVID-19 pandemic.

With the regards to the subject of this study, the Law of Penal Execution contains specific regulations on women and their children, whereas the previous laws basically only established the separation of female and male inmates, and the maximum age allowed for children to live with their mothers.

Currently, there are nine articles that directly address either women in prison or their children, namely Articles 5-separation of prison population by sex; 10-rights of women in prison and their children; 33 protocols, 34 medical care, 36 women in prison with their children, 43 restrictions on solitary confinement, 53 restrictions on transfers of women, 59 visits, 144 prison substitution for home detention for people who are primary caregivers of children up to 12 years old, with disability.

The articles echo some recommendations of the Bangkok Rules and claim the best interest of the child as a leading principle in decisions regarding children with incarcerated parents. The law establishes a whole set of rights for women with children in terms of medical care, specialized personnel, education, provision of goods and services, flexibility of visits' regime for children in the outside, etc., in compliance with international standards. However, not only the law is not implemented in practice, but it contains severe contradictions that reproduce the legal subjection of children to the prison system and the prison regime, through provisions that are clearly against the best interest of the child and the recognition of children as rights holders.

Article 10 establishes that children can live with their mothers until they are three years old and that, in the case of children with disabilities, their stay in prison with their mothers can be extended. The authority in charge of assessing and authorizing children's entry and permanence in the prison center, as well as the prolongation of their stay, is the prison authority, which is also responsible, in cooperation with the other co-responsible authorities (for example, the health and education ministries) to provide the facilities and the living conditions apt for their holistic development.

Article 36, on the other hand, states that only children born during their mother's imprisonment can live in prison with them, thus creating a contradictory legal framework that can be used against infants and small children born before their mother's incarceration. Furthermore, it establishes that the authority in charge of ruling on children's permanence in prison and the extension of their stay is the court of criminal execution.

In both cases, Articles 10 and 36 put decisions which are strictly related to children's rights in the hands of authority who oversee the adult prison population and who most likely do not have, and have no obligation to have, competences on children's matters.

The authority responsible for children in Mexico is the Office for the Protection of Children (Procuraduría de Protección de Niñas, Niños y Adolescentes). Such authority is referred to in the law under analysis, but only as the authority to be notified of decisions taken by other authorities, and not as a body directly involved in the decision-making process. In interviews with women incarcerated in the federal prison, "CPS Femenil

Morelos” they referred that the office of protection was involved in the processes of temporary leave of their children, for example, when they go to spend some time with their father or other family members outside.

The law also determines that visits of children will have no restrictions in terms of physical contact, frequency and time. However, the same Article 10 also determines that the days and times will be established according to the centre's organizational needs. This is clearly the case in the federal prison system, where the day for family visits changes every week: for instance, if a woman is allocated in module 1 of the federal female prison, she will be allowed to receive family visits on a Monday, then the week after on Tuesday, then Wednesday and so forth. Women in this prison receive very little visitors because of the prison location and the high costs it implies, but also because for a normal family, with a regular working and school schedule, it is simply impossible to go on a family visit on constantly changing days. This increases women's isolation and children's separation from their mothers, causing tremendous pain, which is equivalent to state-caused cruel treatment.

Another indicator of the law's blindness in terms of children's rights is Article 144. In summary, this article establishes a set of conditions under which a person can be granted a non-custodial measure, namely house detention -which is quite a harsh one-. One of them is persons who are sole or primary caregivers with no gender limitation of children up to 12 years old or with severe disability that prevents them from taking care of themselves. The limit “12 years old” is totally arbitrary, as is the limit of three years old for children living in prison, as a matter of fact, and its strict implementation through a formal interpretation of the law may put children in danger. The Committee on the Rights of the Child (Committee on the Rights of the Child, 2011) has been emphatic in prompting a case-by-case approach to the issue of children living in prison with their mothers and this should be the case also regarding children living outside.

3. The Numbers of Female Detention in Mexico

This section describes what offences women are incarcerated for in Mexico as well as some of their socio-demographic characteristics, with a focus on their age and income level. It also addresses women's maternal status and their access to goods and free items for their children in prison. The information presented in the following pages is based on three public sources published by the federal government based on data provided by state governments and the federal prison system: the Monthly Notebook of National Prison Statistic Information (*Cuaderno Mensual de Información Estadística Penitenciaria Nacional*) with data from November 2023 (Secretaría de Seguridad Pública y Protección Ciudadana, 2023); the National Survey on Prison Population 2021 (*Encuesta Nacional de*

Población Privada de la Libertad, -ENPOL 2021) (INEGI 2021 and 2021a) and the National Census of State and Federal Prison System 2023 (*Censo Nacional de Sistema Penitenciario Federal y Estatales 2023*) (INEGI 2023).

Since the late 1980s and with more prominence since the 1990s, the female prison population has been increasing in Latin America, with punitive drug policies representing one of the leading causes of such phenomenon. Between 2002 and 2022, the male prison population has increased by 28% (Fair and Walmsley, 2021) vs a soar of the female prison population by 60% (Fair and Walmsley, 2022). In the same period, in Latin America the number of women in prison has grown by 151% and in Mexico by 100%, going from 6,813 women in prison in 2000⁴ to 13,286 in november 2023 (Secretaría de Seguridad y Protección Ciudadana, 2023: 3).

In Mexico, women in prison represent 5.68% of the total prison population, a percentage that has not varied in the last years (Giacomello, 2013). According to the national census of state and federal prison system 2023, the main cause for which women are imprisoned, either in pre-trial detention or with a conviction, are property-related, with theft occupying the first position, followed, by kidnapping, homicide and drug-related offences. Theft is also accounted for as the leading cause for the implementation of mandatory pre-trial detention (INEGI, 2023), a criminal justice figure that has been ruled as in violation of the american convention on human rights by the Inter-American Court of Human Rights in a 2023 sentence against Mexico (Corte Interamericana de Derechos Humanos 2023) and that constitutes a major cause for the increase of the prison population since 2019.

The same source and the Monthly Notebook of National Prison Statistic Information show that pre-trial detention in general and mandatory pre-trial detention are used in higher percentages for women (49% and 53% respectively) than for men (40% and 49.9%) and for longer time.

Incarcerated women are mainly young, with over 70% being between 18 and 39 years old and 4,615, that is 35%, are between 18 and 29 years old (Secretaría de Seguridad y Protección Ciudadana, 2023: 44)

About 73% (INEGI, 2021: 25) were working before being imprisoned, although the main employment lies in the informal sector or the economy of care, mainly looking after their children or other family members (CNDH, 2022).

More than 50% used to earn less than 5,500 Mexican pesos a month before being incarcerated, which are equivalent to almost 300 euros at

4 Información disponible en <https://www.prisonstudies.org/country/mexico>.

January 2024 exchange rate. One in three women used to earn less than 160 euros per month (INEGI, 2021a: 2.53).

In 2021 (INEGI, 2021), 67.8% of incarcerated women reported having underage children and 53% of them had between two and three children, which increases the levels of vulnerability and deprivation they are likely to suffer (INEGI, 2023). Fathers tend to be absent figures when a woman goes to prison and whilst 90% of children while their father is in prison were looked after by their mother, only 30% of women in prison reported the father of their children as the person responsible for their case. It is mainly grandparents, and grandmothers (CNDH, 2022) that become the main caregivers. This has a cascade of implications, which span from economic hardships to health issues and less supervision of older children. Children may be exposed to physical and sexual violence, discrimination in their family, school and community, little access to food and clothing, as well as child labor. For mothers, the thought of what their children are living outside is a greater pain than incarceration.

Such was the case for Luisa, who was imprisoned for 25 years for kidnapping. As many other women before and after her, the case against her was based with little or no evidence and she was subject to torture by the security forces who arrested her. Luisa was detained in 1988. She had a son who was eight years old and another who was 11 months old. She was tortured for four days before being taken before the prosecutor. The accusation was based on the alleged declaration of a ten-year-old child victim of abduction who said that Luisa was responsible for feeding her and taking care of her while she was held captive. The child, now an adult, had spoken publicly about the case and said that she had never met Luisa in her life.

However, Luisa spent 25 years in prison and is now fighting a legal battle to have her innocence recognized. In Luisa's words:

"I was detained on January 6th, 1998: I was in a restaurant when suddenly I saw some hooded men. They took me to a safe house, they tortured me for 4 days, they detained me on the 6th and handed me over to the public prosecutor's office on the 10th. Torture was the most difficult thing you can imagine. Apart from the physical torture, the sexual torture, the psychological torture, they said they had my children, they even had a child there in the safe house crying, they said they were my children, so from that moment on it was hell for me. I was handed over on the 10th to the attorney general's office and there the police were still torturing me, saying that they had my children and telling me to sign a paper so that they would let me go, they would hand them over to me, right? Since they told me that they already had them and that if I signed a paper, they were going to give them to me, I signed so many papers that day, I don't know how many, but I got prison instead of my children.

I didn't have a lawyer; they never gave me a lawyer to defend me. They sentenced me to 30 years for which I spent 25 years in prison.

So, you can imagine the arbitrariness I have gone through. To spend 25 years for an alleged kidnapping, for an accusation that a child made against me, and today she says that this was a lie, that she never accused me, that she doesn't know me. Can you imagine what I have lived through? What have I gone through? The most painful thing was leaving an 11-month-old child and an 8-year-old. It's a pain that I don't think I can recover from, because I left prison on February 2nd 2023 and one of my children is now 33 years old and the other is 26 years old.

I am a stranger to them; it was and is the most difficult thing that a mother can live through in prison: to be separated from her children. The State, the authorities, the competent people who are supposed to impart justice do not know the irreparable damage they do to you as a mother when you have small children.”

Gaby has a son with a severe disability, who makes him completely dependent on her. She trafficked marihuana to pay for medical studies for her son and, when incarcerated, she took him with her. However, the prison system and the judiciary did not put her in the conditions of providing for both her son's health and the possibility to live with her in prison, let alone to grant her a non-custodial measure. She took the decision to allocate him to a public institution where they could give him medical treatment. At the same time, her youngest daughter she was about two years old and her brother about seven, who was also living with Gaby, her mother and her son in prison, moved out to live with her aunt and uncle. For Gaby it was a tremendous pain: she did not want to be separated from her children and worried immensely for them, but she also felt guilty for holding them in captivity they were not responsible for. In her words:

“Insomnia became my companion at night. The pain and loneliness of not being with my children became my torment: did I do right or wrong? Were they hungry? Were they cold? My life changed, but I also wanted to get out of prison to be with them, so I did everything I could to show good behavior.

I had been sentenced to 10 years in prison for transporting cannabis, but I was released after seven years. Finally, the long-awaited freedom came, and I was reunited with my children. But now I faced a new challenge: punishment and discrimination from society for being both a single mother and a former prisoner, with no possessions, as I had lost everything. Now I face another challenge in my life, but this time I am not alone, but with my children.”

Gender mandates and the eternal culpabilization of mothers, exacerbated by stigma against women in prison, intrinsically considered as unfit and unworthy of motherhood, are reinforced by prison personnel. As reported by Gaby, mothers in prison were constantly brainwashed so that they would send their children away. Children are a nuisance and a risk for prisons; but since they cannot be legally forbidden to live with their mothers, psychological abuse, deceit and shaming are used instead (CNDH, 2022, 184-85):

“The reality is that in many cases there is a prevailing prejudice on the part of public servants and/or state agents who “interpret” the best interests of the child by considering that being in a center is harmful to children, that there are no conditions for them to be with their mothers and that is why they should spend as little time as possible with them and be released as soon as possible, ignoring the weighting of the right of children to receive maternal care, as well as the right of women to exercise their maternity, as this is a valid right even if they are PL (Persons Deprived of Their Liberty).

Opinions ranging from “PL women should not have children” are reproduced, to the point of committing serious violations of human rights, especially reproductive rights, as occurs in the centres in Baja California, where it was documented that they are practically deceived by being told that pregnancy is “not allowed” and those who are pregnant are forced to hand them over to the institutions in case a family member is not found as soon as the child is born.”

Another implication of female incarceration is that families have less economic possibilities to visit the mother in prison, because of the time, the administrative practices and costs that this implies. The configuration of the prison system, its geography and intensity impact directly on the continuity, interruptions and intermittencies of an incarcerated woman's connectivity with her children and vice versa. In Mexico, prisons are places of severe precarities, poor infrastructure and insufficient services for all people. However, women are particularly vulnerated in most of the centres to which they are allocated.

Out of a total of 284 prison centres, only 22 are exclusively for women: a federal one, in the hot State of Morelos, in the middle of the country, next to Mexico City, and 22 state ones. Not all Mexican states have a women-only prison: some states (such as Mexico City and Coahuila) have more than one, but 15 states have none. Therefore, many women are allocated in 94 mixed state centres, that is in male prisons that have a specific female section: this can be a separate building, dedicated dorms, little houses or other forms of usually precarious constructions. Whilst in theory women only centres should provide better prison conditions than female sections in predominantly male centres, a study of the National Commission of Human

Rights (CNDH, 2022) on female detention as well as the annual national assessment of prison supervision (CNDH, 2023), indicate that women only and mixed centres alike present numerous irregularities and deficiencies in terms of infrastructure and service provision for both women and their children. Women and their children suffer all kinds of deprivation: in terms of nutrition, health and access to medication, specialized health and pedagogic personnel for children, adequate and dedicated spaces for mothers and their children, access to educational materials and toys, clothing, diapers, and so on. Incarcerated women, who dedicated themselves to the care of their children before incarceration, look after their children 24/7 inside prison, with only four states having educational facilities for the children living in prison with their mother (CNDH, 2023, 188).

The federal female prison CPS 16 Morelos is a semi-privatized complex, a monster of cement and electric wire, inappropriate for the flourishing of life and the preservation of women's wellbeing. It lies in an extremely hot region, and even if women were not confined to their cell for most of the day, they probably would not walk out their module anyway. The place is a huge emotional grave, a place for the death of the soul and, in recent times, for the death of the living: between July and November 2023, eight women died, presumably by suicide (Guillén, 2023). Non-governmental organizations and family members have denounced the living conditions, the lack of medication and the terrible quality of the food which is provided by a private company. The mothers who participated in the interviews did so mainly because they hoped to find in the researchers a channel to share what they are going through.

Children and their mothers are allocated in a dedicated area. Usually, the number of children is low, hardly more than 10, and they are small, between one and two years old. Children's lives are not conducted under the supervision of specialized personnel while their mothers can work, study, do sports, etc. but under the close watch of prison guards and prison bars. Children and mothers are 24/7 together, in a confined space: the area is huge and even colorful in comparison to the constant grey and blue of the prison's walls and electric doors but is totally prison like. Children's schedule is not free, they cannot go out when they please and have no access to education or stimulation. Medical care is scarce and, according to their mothers, there is no pediatric medication available: children are given medication for adults in reduced doses.

Women are isolated from their families because, being the only federal prison in the country, women from all Mexico are taken there and Mexico is a huge country: most families have to fly to get there and, unless women and their families come from a legal or illegal middle-middle high economic sector, it is unlikely that their family members can afford the trip and take the women's children as well. This adds to the issue of family visits' day changing every week.

While the National Law of Penal Execution establishes that women and their children will have free access to goods and services for their holistic wellbeing and development as well as specialized areas and care, the truth could not be further from the norm. Once again, the federal prison constitutes an exception, since the prison does provide women and their children with basic goods, such as items for personal hygiene, toilet paper, diapers, body cream etc. although, according to the women interviewed, in insufficient amounts. But in the rest of the country and acknowledging that there may be interesting experiences which are not known to the author, it is accurate to say that most women in prison must provide for themselves and their children.

In the National Survey on Prison Population 2021, women living in prison with their children were asked if they had access to a series of goods and services (INEGI, 2021a, 6.77). With regards to medical services, 77.4% answered affirmatively, 56.9% said that they received medication, 34% diapers, 17.9% articles of personal hygiene and so on. However, when asked what services they had to pay for, some of the answers were: medication (71.3%), medical services (61%), diapers (60%), etc.

Since basic items in prison tend to be expensive and not always available, women depend on their families to enter goods for them, particularly medications and specific items for their children. This leads to a spiral of poverty, dependence on visitors that come from poor households and the state's power to facilitate, inhibit or block the contact of the prison population with their families.

In frank terms, based on years of research, field work and long lasting relations with formerly incarcerated women and family members of people in prison, it is not an exaggeration to say that Mexican prison system relies on the work and economic efforts of family members, mainly female partners and older women, who chase lawyers -so that they do their job, they provide emotional support, food, blankets, mattresses, work materials, cloths and so on to their incarcerated family members, while looking after their children.

Women in prison have access to little or no formal employment and they support themselves and their children through self-employment, such as working for other fellow women, cooking, cleaning, etc. Educational opportunities are scarce and prison rehabilitation programs offer activities that do not provide a solid base for a subsequent economic reintegration and often reproduce gender stereotypes.

The children living in prison with their mothers are legally and **de facto** subject to the same legal, institutional and concrete, everyday restrictions their mothers have. For example, foods that are prohibited to inmates such as pineapple are forbidden for children as are the number of pieces of clothing that they can keep.

As explained by Gaby:

“The 3 years that I was with my son, living together and struggling, trying to survive in that place, and in cold weather: there is no access to many blankets, there is a limit to the clothes, there is a limit to the blankets. For example: we can only have five changes of clothes, we cannot have more clothes, and we cannot have more blankets, and we cannot cover the doors and the windows in cold weather. It was martyrdom.

“And, on the other hand, there was also the limitation of food: we couldn't bring in a certain type of fruit for our children because they ferment, and they (other inmates) can make alcoholic beverages with them. As a mother, I would never in my head think of doing anything illegal inside, because what I want is to get out, what I want is to behave well so that I can be released as soon as possible and to be able to be with my children.

So that was also one of the terrible sufferings, that there was no access to food, that everything had to be limited, everything had to be just a little bit, and fruit was forbidden, we couldn't have access to food for our children.”

Children's possibilities to know the outside world are confined to their mothers' and their families limited economic and social capital, with no public policy addressing the right to development, education, health and recreation they are entitled to. Phone calls with and visits as well as the possibility to work are used as tools for retaliation if women claim their rights.

As explained above, since each prison center is almost a prison system *per se*, some realities may not coincide, but a recognizable trend is that Mexican prisons are not legally designed nor materially equipped for to fulfil the State's obligations with women in prison and even less so with their children.

The challenges for women who are mothers are enormous, both when they live with their children in prison as well as when their children live or live outside, with little or no support from the state:

In the case of children who live with their mothers, the prison system guarantees quality care only in some entities. In the case of those who are separated, responsibility is generally transferred to the family they stay with, and others are institutionalized, In both cases, the Mexican state does not lose its responsibility to guarantee the care and protection of children, as well as to provide information on the conditions of the children to their mothers and fathers; however, the reality is that in many cases, their mothers never hear from them again, as there is no timely follow-up to guarantee full respect for children's rights (CNDH, 2022, 180).

4. Final Remarks and Recommendations

A monster called justice is an expression coined by *Vale* during one of the workshops. She did not talk much about her case, but she said that, like many other women, she was incarcerated for her partner:

“The problem was with my children’s father because after being a victim I became a victimizer.

These are things that mark you because, I think that out of ten women in prison, eight are innocent and the ten of us were or are there because of their intimate partner. It was very clear to me that in prison there are people who don’t have the money to pay for their freedom.

Women are more attacked, discriminated against, my stay in prison was very difficult, the prison guards, the system inside, the norms, the rules and talking about motherhood, what was it like in prison?

I don’t find the words to describe the pain of having your whole life taken away from you, of having everything you know taken away from you from one day to the next, it’s something totally, I can’t find the words.

One day you are with your family and the next day you are already in prison and the next day you have been sentenced to so many years, because the judges give you years as if they were giving you sweets, so from my perspective, if you ask me at this moment if there is social reintegration, I can tell you that there is not, I can really tell you that no, there is no social reintegration within the prisons, I experienced it firsthand. Why is there no social reintegration? Because the system itself puts obstacles in your way, it hinders you, because the real social reintegration should be here on the outside.”

Female incarceration is a consequence of an ongoing victimization of women through gender-based violence since their childhood. Whilst this does not limit their agency, it creates specific conditions that often lead them to be criminalized by the state. A state which represents a further cause of violence and human rights violations, including torture.

Blindness, inconsistencies and the threat or the exercise of violence in multiple forms characterize the state’s relation with criminalized women. This has uncountable effects on them and their children, and the outcomes are usually seen as a failure of their families, namely their mothers. Women are blamed for leaving their children or for keeping them in prison. But prison conditions are not women’s responsibility, but rather an additional punishment and form of degradation. They are made feel that they and their children deserve poverty and suffering and that they brought it upon themselves. As a federal judge told Gaby when

she asked for a temporary permit to accompany her child to therapy so that he could continue to live with her in prison: "Crime is one thing, and children are another. You should have thought about your kids before committing a crime".

This paper argues that children are legally and concretely **de facto** deprived of their liberty in prison centres that are completely adult-centric and that, while proclaiming repeatedly the best interest of the child as a leading principle, subjugate children and their mothers to cruel treatment and structural deprivations. The judicial sentence becomes a daily punishment of the body and the soul, putting children's development at risk and creating for mothers a profound sense of guilt because, even if they want to be with their children, they feel that they should let them go and that they are being bad mothers for keeping them locked in.

Legal reforms must be made with the aim in mind of reversing the trend of female incarceration and eradicating the incarceration of pregnant women and women with small children, to start with, as a progressive move towards a use of incarceration as a measure of last resort. Prison conditions in Mexico do not seem to possibly undergo changes in the near or distant future. This jeopardies children's wellbeing and creates room for arguments in favor of separation for their mothers, despite the empirical evidence (Nowak, 2019) that it is recommendable that children stay with their mothers during their first years of life. It is thus in the realm of non-custodial measures that better solutions can be found.

Mexican criminal justice system requires some urgent and basic changes, among them, the abolition of pre-trial detention, which is used indistinctively and constitutes a violation of due process. In line with international standards, non-custodial measures should be privileged in the case of pregnant women and women with dependent children at all stages of the process and with no mandatory exception for specific offences. The best interest of the child should be legally and operationally mainstreamed in judicial resolutions when they concern persons who are responsible for dependent children. Children are to be treated as rights' holders and citizens whose wellbeing is a state responsibility, and not, as it is currently the case, as an extension of their parents (Constitutional Court of South Africa, 2007, 11). Mainstreaming the best interest of the child in judicial resolutions concerning their parents implies, at least, that the consequences of incarceration are weighed against the impacts on the children.

Whilst legal and judicial changes are urgently needed to reduce the growth of female incarceration and its impacts on children, non-custodial measures are not sufficient unless, as outlined by the Bangkok Rules, they

are not matched by interventions that address the needs and vulnerabilities that women often face before their criminalization.

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