

The Gendered Nature of the Criminalization of Drugs

An Approach to the Argentine Case

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Introduction¹

For the last century, the dominant approach towards illegal drug production, commercialization, and consumption has been prohibitionism. In the 1970s, this approach radicalized with the onset of the so-called “war on drugs”, rapidly consolidating into an international regime that relies on militarized rhetoric and repressive strategies to tackle both the supply and demand of illicit drugs. Since then, it has remained the dominant framework for addressing the “drug problem”. From the beginning, the war on drugs has been intertwined with geopolitical interests and power asymmetries (Buxton & Burger, 2021; Durán-Martínez, 2021) and conceptualized as a matter of global security governance.

Latin America, in general, and countries such as Colombia, Mexico, and Brazil, in particular, have served as laboratories for the implementation of repressive measures in response to the drug problem. The diffusion and radicalization of the prohibitionist paradigm across the

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region has generated an interplay between punitive legal reforms, state repression, organized crime responses, and escalating homicide rates (Moncada, 2016; Durán-Martínez, 2018), while also consolidating the illegal drug trade as a highly profitable enterprise (Bergman, 2016). Another major outcome has been the sharp rise in incarceration rates among vulnerable populations, particularly women from marginalized sectors (Bergman & Fondevilla, 2021). According to data published in the sixth edition of the World Female Imprisonment List, the female prison population is growing faster than the male prison population worldwide. In the Americas (excluding the U.S.), the number of women incarcerated climbed 186% between 2000 and 2024.² Further, many studies elaborated by civil society organizations have shown that about half of the women incarcerated in the region are prosecuted or serving sentences for minor drug offenses—a phenomenon that negatively affects not only these women, but also their children and the communities to which they belong (CELS, 2018; Youngers et al., 2020; International Drug Policy Consortium and Penal Reform International, 2021).

Although Argentina only recently radicalized its punitive approach to the drug problem compared to other Latin American countries, it has nevertheless followed the regional trend. The number of women in prison increased by 78% between 2002 and 2023, and by 110% among those incarcerated for drug-related offenses. In some provinces, such as Buenos Aires, the increase is even more acute: between 2007 and 2023, the female population imprisoned for these offenses rose by 153%.³ Despite this constant and significant growth, the phenomenon has received little attention from the public and from policymakers concerned with drug offenses and public safety in the country. Moreover, much of the existing research has concentrated on incarceration rates (Palavecino, 2025; Acquaviva & Innamoratto, 2016), while giving less attention

2 These reports are elaborated by the Institute for Crime & Justice Policy Research of the University of London.

3 Own elaboration based on the most recent data available from the National Statistical System on the Execution of Sentences.

to other important aspects of judicial responses to women involved in drug-related activities.

This chapter explores the processes of criminalization of women for drug-related offenses in Argentina, focusing on judicial responses. In particular, this study seeks to address the following research questions: How is the criminalization of drugs affecting the female population? What are the main patterns in prosecutorial and sentencing practices, and how do they shape the drug problem? What do judicial practices reveal about the gendered nature of these criminalization processes? To this end, this chapter examines the most common forms of women's involvement in drug-related activities, while also shedding light on the functioning of the criminal justice system. In addition to presenting statistical data from the National Statistical System on the Execution of Sentences, the analysis draws on archetypal cases constructed from interviews and court rulings in the criminal justice system of the province of Buenos Aires and at the Federal level. Interviewing female defendants and reviewing judicial rulings is essential to complement the insights provided by available statistical data.

This research shows that the radicalization of the prohibitionist approach has fueled the increasing criminalization of women, also revealing that the intensification of punitive measures is both grounded in and reinforces structural class and gender inequalities. The almost exclusive focus on non-violent, minor drug-related offenses evident in judicial practices demonstrates that the so-called "war on drugs" has, in fact, been a war on the poor (CELS, 2019), but especially on poor women.

Examining judicial responses is fundamental to understanding the main features of the late war on drugs. This implies assuming that crime is not an already constituted phenomenon and that penal agencies do not simply 'react' to it; instead, they are key participants in the production of 'the criminal question'. Sociological and criminological research has shown that criminalization processes shape the problems they address and may even amplify and deepen the conflicts they seek to solve, particularly by stigmatizing certain groups and contributing to the creation of criminal careers (Becker, 1963; Goffman, 1986). These processes have important material and symbolic consequences for those entering

the penal circuits and also for the broader citizenship. For this reason, the intertwining of violence, marginalization, and the dynamics of the illicit drug trade cannot be understood without considering how criminal justice systems actively shape this interplay, contributing to a cycle of inequality and marginalization that is central to the process itself.

The chapter is structured into five sections, in addition to this introduction. The first section contextualizes the radicalization of the ‘war on drugs’ in Argentina and its impacts on women’s incarceration rates. The second section examines the main characteristics of the female population imprisoned for drug-related offenses. It presents archetypal cases to illustrate common forms of women’s involvement in these activities, as well as patterns in prosecutorial and sentencing practices. The third section discusses key dimensions of the gendered nature of judicial practices regarding drug offenses. In its fourth section, the chapter examines alternative approaches adopted in some Latin American countries – though not in Argentina – as a response to the growing criminalization of women driven by the radicalization of the prohibitionist paradigm. Finally, the fifth section offers concluding remarks.

The Argentinean “War on Drugs” and its Impact on the Incarceration of Women

As in other Latin American countries, in Argentina, the redefinition of the drug problem as a security issue began in the 1990s. This redefinition occurred in the context of the consolidation of the prohibitionist paradigm and the internationalization of the “war on drugs”, promoted by the United States since the 1970s and rapidly adopted worldwide (Caiuby Labate et al., 2016). The control of illegal drugs was thus institutionalized as an international regime with its own norms, governance structures, and monitoring systems (Buxton & Burger, 2021).⁴ The gen-

4 One key organ of this regime is the Commission on Narcotic Drugs (CND), which is the main UN policy-making body dealing with narcotic drugs, the United Nations Office on Drugs and Crime (UNODC) which acts as a secretariat of the

eral strategy of this regime derives from international treaties, which have been fundamental in consolidating the repressive and militarized approach to the drug problem. The most recent one is the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which continues to shape the dominant international approach to this issue today.

In Latin America, the radicalization of the prohibitionist paradigm to deal with unauthorized drug consumption, production, and distribution led to important reforms in drug legislation, laying the groundwork for a punitive strategy toward drug offenses. While these legal reforms in Argentina date back to the 1990s, the punitive strategy began to gain traction in the first decade of the 2000s and reached full consolidation only in the past decade. In 2005, the National Congress passed a law (Law No. 26.052) that modified the Law of Drugs (Law No. 23.737), enabling its partial defederalization.⁵ The provincial judicial systems gained the authority to investigate and prosecute certain offenses included in this law, especially drug possession for personal use and retail sales. Therefore, the scope of penal agencies expanded, foregrounding a wide range of illegalities (minor drug offenses) that had previously remained outside the reach of judicial systems. These changes, in turn, resulted in a dramatic increase in incarceration rates for drug offenses (see, for example, Ciafardini y Olaeta, 2020; Corbelle, 2021). Between 2007 and 2023, incarcerations for drug-related offenses grew by 210% at the provincial levels (that is, for minor drug offenses), while at the Federal level (that is, ostensibly for large-scale drug trafficking) they increased by 80%. As we shall see, this trend has been accentuated especially since 2016.

The acceleration of imprisonment at the provincial levels is particularly evident in Buenos Aires, the first province to adhere to the

CND, and the International Narcotics Control Board, in charge of the implementation of the United Nations international drug control conventions.

- 5 A concise analysis about the evolution of Argentina's criminal legislation on narcotic drugs can be found in Corda (2016). For an analysis about the social construction of the drug problem in Argentina, see Corbelle (2019).

defederalization of the Law of Drugs in 2005.⁶ Although there has also been a significant increase in men incarcerated for drug offenses, the overcriminalization of women has been a significant consequence of this process. In this province, between 2007 and 2023, the female incarceration rate due to drug-related offenses doubled, increasing from 3.7 to almost 8 inmates per 100,000 women.⁷ In addition, data show that, while women account for around 5% of the whole penal population, in drug cases they represent around 15%. Moreover, 37% of the women in prison in Buenos Aires are prosecuted or serving sentences for drug-related offenses, while in the case of men, this percentage is 11%. If women under house arrest are also considered, this proportion rises to 41%.⁸

Although the period generally shows an upward trend in incarceration rates of women, some peaks deserve attention. The first one was immediately after the Congress passed the Defederalization Law, which shows its direct impact on the imprisonment of the female population. In 2002, women prosecuted or convicted for drug offenses accounted for approximately 32% of the total female prison population. By 2007, this percentage had increased to 45%. However, data also show that, after 2011 and during some years, there was a significant decrease in women's

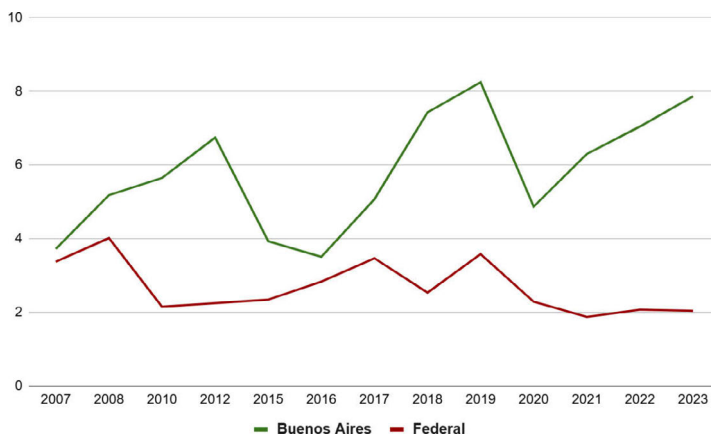
6 In addition, with nearly half of all detainees in the country, the Buenos Aires penitentiary system is a central reference point for understanding national incarceration patterns.

7 Data compiled by the author from the National Statistical System on the Execution of Sentences (SNEEP, for its acronym in Spanish). The rate reflects only women currently incarcerated in prison facilities and does not include those under house arrest, whose inclusion would further increase the rate. The methodological decision to use this source rather than the Unified Detainee Registry in Buenos Aires (RUD, for its acronym in Spanish) is based on the fact that SNEEP publishes raw databases covering all provinces as well as the Federal system, thereby enabling comparisons. It should also be noted that there are some differences with RUD regarding the number of detainees in Buenos Aires, which, however, cannot be addressed in this chapter.

8 As the databases from the National Statistical System on the Execution of Sentences do not include individuals under house arrest, these data are drawn from the Unified Detainee Registry in Buenos Aires (RUD, for its acronym in Spanish).

imprisonment rates due to these offenses. This dynamic took place in a context where less punitive discourses and measures around the drug problem began to emerge (Cutrona, 2021). More broadly, scholars have also identified a specific “blockage of penal populism” (Sozzo, 2016, p. 34) during the period 2008–2015, expressed in a slowdown in the growth of the general incarceration rate and a reduction of punitiveness by penal agencies.

Evolution of female incarceration rate due to drug-related offenses at the Federal level and in Buenos Aires (2007–2023) – per 100,000 women



Note: Data do not include women under house arrest. Federal incarceration rates are based on the female population of the entire country. Source: Author's elaboration based on data from the National Statistical System on the Execution of Sentences.

The decline in the levels of incarceration of women, which brought the rate back to 2007 levels, stopped in 2016 when it started to increase at an accelerated pace. This upsurge took place amid a highly promoted change in criminal policy that declared an explicit, and already outdated, “war on drugs”. It is also important to underline that this shift was not

the result of major legal reforms, but rather a political decision to radicalize a punitive criminal policy towards drug offenses, which resulted in a deeper criminalization of vulnerable groups from low social classes. As Tokatlian argues, since 2016, there have been substantial efforts to “argentinize the war on drugs” (2017, p. 137), explicitly promoted by the ruling coalition Cambiemos (under Mauricio Macri’s leadership) and supported by hegemonic mass media. In this context, in 2017, the Argentinian legislature introduced a legal reform to eliminate the possibility of parole in drug-related cases. This change impacted incarceration rates and was especially harmful to women who had to serve full sentences in custody. Due to the pandemic, in 2020, the incarceration rate decreased (as for other offenses as well), but since 2021, it has been growing steadily again.

At the Federal level, the trend has been broadly similar, with a few exceptions. Federal incarceration rates were affected by the fact that, during this period, many provinces adhered to the Defederalization Law, meaning their justice systems began prosecuting and judging minor drug offenses. The stabilization observed after 2021 is associated with this process, which intensified after 2019 and led to an increase in women’s incarceration in many provinces, similar to what had happened in Buenos Aires.

Prosecuting and Sentencing Women Involved in Drug-related Offenses

According to the most recent data (2023), prisons of the province of Buenos Aires (i.e., under provincial jurisdiction) house approximately 55% more women charged with drug offenses than the Federal System (around 750 women in this province compared to 490 at the federal level).⁹ These women are middle-aged (39 years old on average) and, as the vast majority of the penal population, belong to low social classes.

9 Data compiled by the author from the National Statistical System on the Execution of Sentences.

Furthermore, the data show that these women have very low levels of formal education, with only 14% having completed high school, and that they were in precarious situations before their detention – 62% were unemployed and 16% held part-time, informal jobs.¹⁰ These details highlight the close nexus between unemployment, social exclusion, and the exercise of crime control, as well as the well-documented class selectivity of the penal system. This is not a feature exclusive to the Argentinean situation, but has already been identified in many other countries of the region (see, for instance, Adorno, 1996; Misse, 2010; Iturralde, 2023). Moreover, a significant number of women, with similar socio-demographic characteristics, are currently under house arrest for these offenses. As we shall see, this is a typical measure for women with children under 5 years old. The data further indicate that most women incarcerated for drug-related offenses have no prior criminal record.

To understand the extent and forms of women's involvement in drug offenses, as well as judicial responses, I will analyze several archetypal cases in this section. These cases correspond to investigations and rulings at both the Federal level and in the province of Buenos Aires. The analysis is based on in-depth semi-structured interviews with women who are or have been incarcerated for drug-related offenses, as well as on judicial rulings. In total, I conducted seven interviews (three of them online) during the second semester of 2024, and analyzed 20 judicial rulings. While the sample is non-probabilistic, the selected cases provide a general overview of distinct patterns of women's involvement in drug-related offenses and the most common judicial responses.

Women Involved in Storing or Retailing Illegal Drugs

These cases were reconstructed from court rulings and involve women prosecuted for two different drug-related activities: keeping illicit drugs at home or retailing them.

10 See CELS (2018) and Ojeda (2017) for a deeper analysis about women incarcerated in Argentina. For a regional study on this question, see the recent report from the Inter-American Commission on Human Rights (2023).

(a) The Federal Justice System investigated the first case. A 38-year-old woman was arrested in December 2018 at her home in a marginalized neighborhood of the province of Buenos Aires, following an investigation into a group allegedly selling illegal drugs in the area. Police raided her house and found two packages of marijuana, totaling 1.5 kilograms. She was initially held in prison for one month and later placed under house arrest, as she is a single mother of seven children.¹¹ She remained under house arrest for 26 months during pretrial detention and was later sentenced to four years in prison for commercialization. Given her situation of vulnerability, the large number of dependent children, and lack of prior criminal records, she was allowed to continue serving her sentence under house arrest. It is also worth noting that her mother was under house arrest at the same time, leaving no other family member available to care for her children.

(b) The second case involves the provincial justice system of Buenos Aires. The local police received an anonymous tip and searched the home of a 33-year-old woman, where they found “eleven metallic foil wrappers containing a whitish substance weighing 2.5 grams of cocaine hydrochloride, one sealed metallic foil packet, six cut pieces of foil, and other items indicative of the alleged drug dealing activity”¹² (extract from the court ruling, own translation). At the time of her arrest, she had not completed secondary school, was unemployed, and had no prior criminal record. The woman was immediately arrested and charged with illegal drug retailing. She spent 1.5 years in pretrial detention before being convicted to four years of incarceration. She was not eligible for conditional release and therefore served the full sentence, being released in 2022.

(c) The third case was also investigated by the Federal Justice System in 2017. A woman, her husband, and her 18-year-old son were prosecuted for the commercialization of illegal drugs. The three of them were arrested in a municipality of the province of Santa Fe in their home,

11 Tribunal Oral Federal de San Martín 3. FSM 36877/2018/TO3. Date: July 2020.

12 Tribunal de Casación Penal de la Provincia de Buenos Aires, Sala II. Case 116.052. Date: June 2022.

after the police found a digital scale, plastic packages, and 54 grams of cocaine. All three were held in pretrial detention for 1.5 years. After this period, the son was acquitted, while the woman and her husband were convicted and sentenced to four years of incarceration in 2019.¹³ The woman was granted house arrest after one month of detention and was allowed to serve her sentence at home. The ruling to allow house arrest was grounded in her family situation: she had a 2-year-old and a 15-year-old daughter, along with a 16-year-old son, who had been under the care of a neighbor during her pretrial detention.¹⁴

Women Involved in Transportation of Illegal Drugs (known as “Mules”)

(d) The first case involves a 30-year-old woman who was transporting three kilos and 100 grams of marijuana, divided into three packages. She was apprehended at a police checkpoint while traveling by taxi within the Buenos Aires Metropolitan Area. According to the court ruling, the woman

stated that while on Route 8 near Villa 18, Tres de Febrero, a fat man with a moustache, whom she had never seen before and whose address she did not know, was travelling in a blue Renault and offered her a ‘fast work.’ He took her to Ciudadela so she could take a taxi to [...], where she would be given a bag that she should not open and about whose contents he gave her no instructions; she was then to take it to the Posadas Hospital, where she would meet him again and he would pay her the sum of \$25,000 for doing so, which she never received. (excerpt from the court ruling, own translation)¹⁵

13 Tribunal Oral Federal de Rosario 1. FRO 31752/2017/TO1. Date: August 2019.

14 The information from this case was taken from the court ruling and also from the interview conducted with this woman while she was in prison because of a later conviction also related to illegal drug activities.

15 Tribunal Oral Federal de San Martín 1. FSM 37541/2020/TO1. Date: August 2021.

She was arrested, held in pretrial detention for almost two years, and was eventually sentenced to four years in prison for transporting illegal drugs. The court noted that she received the minimum sentence in the penal scale due to mitigating circumstances: she was a teenage mother of three children – one aged five (deceased), another aged ten with a neurological disability who would be cared for by the paternal family, and an eight-year-old one under the care of her maternal grandmother. In addition, she had no stable residence prior to her arrest and had been a victim of violence by her father. Despite these factors and a history of problematic substance use, she was convicted and sentenced to prison.

(e) This case involves three women (one Argentinean and two Paraguayan citizens, aged 43, 29, and 23) who were arrested in 2019 at Buenos Aires airport while transporting, inside their bodies, three packages containing 166, 180, and 167 grams of cocaine. They were attempting to board a flight to the south of the country. The three were prosecuted as secondary participants, as the prosecutor determined that “their involvement as the final link in a hierarchical organization dedicated to drug trafficking removes them from the core decision-making process, and the transport of the narcotics was entrusted to them by one or more persons with authority over them, taking advantage of their vulnerable situation”¹⁶ (excerpt from the court ruling, own translation). In 2021, the women were found guilty of illegal drug transportation and received a three-year suspended prison sentence. However, since the Argentine woman had previously received a 4.5-year sentence of house arrest for a similar offense (transporting 155 grams of cocaine), the judges combined both sentences, resulting in a final conviction of five years of incarceration.

Women Indirectly Involved by Male Partners

(f) This case involves a 49-year-old Peruvian woman who had been living in Buenos Aires for nearly ten years. She was in the same car as her

16 Tribunal Oral Federal de la Capital Federal 3. 2751/2023. Date: July 2023.

husband when he was transporting 12 kilos of cocaine between neighborhoods of Buenos Aires. The case was reconstructed from an in-depth interview conducted after her release from prison. According to her account:

My husband is a taxi driver. Because of that, he was offered, you know how customers are... He was convinced. I will not lie: he did one delivery and it worked. They told him: take this... And in the second one, he was caught, and I was as well, because if I had taken the bus, I would not have been caught. I asked my husband to take me to the hospital because I was not feeling well, and he told me 'Okay, I will make a delivery'. I knew it, I knew what he was carrying. Something told me I did not have to go with him, but I did [...] We arrived at the location, my husband got out of the car and started speaking with the man who was waiting, and then many men appeared. We were all arrested. I had to claim that I did not know what he was doing. They found 12 kilos of cocaine, but they reported only 7 [...]. It is always like this: they find more than what they report. (own translation of the interview)

The woman and her husband were initially detained at a police station for two weeks and one month, prior to their transfer to a prison facility, where they remained for two years in pretrial detention. She received a three-year suspended sentence for her secondary participation, while her husband was sentenced to five years of incarceration. It is important to note that, although her sentence was suspended, she spent the entire two-year process in prison.

What do Judicial Practices Reveal About the Gendered Nature of the Criminalization of Drugs?

The cases above illustrate the most common forms of women's involvement in drug-related activities. As shown in case (f), some women are indirectly involved in drug-related activities through their male partners, which often results in charges as secondary participants rather than acquittals. Furthermore, although women in Latin America have

traditionally been associated primarily with transnational smuggling (see, for example, Fleetwood, 2014), these cases suggest that they are also becoming increasingly involved in retail-level activities. Analyzing the specific contexts in which these changes occurred exceeds the scope of this work. It is important to note, however, that in Argentina this shift has taken place against a backdrop of deepening inequality, particularly since 2016, which has disproportionately affected women who are household heads and primary caregivers. Most of these women have several children, a factor closely tied to their age – another notable feature of women's criminalization in this sphere. Compared with the broader prison population, women prosecuted and sentenced for drug-related offenses tend to be older: on average, around 39 years old (Lassalle, 2024a). In comparison, the rest of the penal population is around 35 years old. Furthermore, other studies also note that this shift took place in the context of a 'new feminist wave' sparked by the 'Ni Una Menos' movement in 2015, which questioned different forms of femininity and masculinity (Elizalde, 2018, cited in Cozzi, 2024, p. 25).

Despite this diversification of women's roles in drug-related activities, the cases analyzed reveal that, in Argentina, women often occupy the lowest positions in the supply chain, handling minimal quantities of substances, which makes them easily replaceable when arrested. This does not imply portraying women as 'passive actors', who may also contest power within these illegal activities (Actis, 2022), nor does it overlook the fact that some women "may choose" to participate in drug retailing – whether to earn income or due to emotional ties with others already involved (Cozzi, 2024).¹⁷ However, it does underscore that, within the structure of the illegal drug trade, the vast majority of women targeted by penal agencies occupy subordinate positions characterized by low profits and high risks of detection by the criminal justice system. As documented in other studies in the Latin American region (Anthony, 2007;

17 See Vissicchio and Pawlowicz (2022) for an analysis of life stories of women who were imprisoned for drug-related offenses in Argentina, and the subjective impacts associated with these experiences.

Giacomello & Youngers, 2021), these offenses are also typically non-violent.

Moreover, the previous cases also highlight the most salient features of judicial responses to drug-related offenses committed by women. First, it is important to note that such cases are typically resolved through “abbreviated procedures” (Somaglia & Sozzo, 2021) – in fact, all the cases presented above were settled in this manner. The abbreviated procedure is a legal mechanism frequently used to secure convictions without a trial. It involves a negotiation between the defendant and the prosecutor, where the defendant pleads guilty in exchange for a concession, often a recommendation for a less severe sentence to the judge (Bombini, 2023). By definition, this process is asymmetric and almost always results in a conviction, with the judge’s role limited to ratifying the agreement and confirming the sentence.¹⁸ It is also worth noting that, particularly since the Covid-19 pandemic in 2020, these agreements – and the subsequent judicial confirmation – are often conducted via video call. Interviews with the women in cases (c) and (f) revealed that they never met the prosecutor or the judge in person.

Second, these cases illustrate that, although pretrial detention should be an exceptional measure, it is widely applied in drug-related offenses. Data show that about 60% of the prison population incarcerated for these offenses in Argentina is currently held in pretrial detention (Lassalle, 2024a). All the women in the presented cases experienced pretrial detention for approximately two years, the national average.¹⁹ This means that they were deprived of their freedom for two years before being convicted (through an abbreviated procedure), including those women who ultimately received suspended, non-custodial sentences. Beyond the human rights implications and the undermining of due process associated with the excessive use and long duration of pretrial detention, this measure is particularly harmful to women with secondary participation in drug-related activities. One specific

18 For a discussion on the use of this mechanism in Latin America and its implications, see Kostenwein (2018), Langer and Sozzo (2023) and Sozzo (2025).

19 This figure was compiled by the author on the basis of the SNEEP databases.

aspect of the abbreviated procedure aggravates this situation: namely, to complete the agreements, all defendants involved in the same case must accept the charges and agree with the prosecutor's proposal. Consequently, individuals with secondary roles – frequently women – often remain in pretrial detention longer, waiting for those with greater involvement to finalize their agreements and the corresponding sentence. For example, the woman from case (f) explained in her interview: “I would have been free before, but the other guy involved in the case, not my husband, the one receiving the product, did not want to sign the agreement because he wanted a lower sentence. So, this process took more time until he agreed to sign for 5.5 years because he had a prior criminal record” (excerpt from the interview). This prolongation of pretrial detention is particularly common among women with secondary or indirect involvement, as they are often part of cases with multiple participants.

The length of convictions and the possibility of house arrest are two additional factors relevant to understanding judicial responses toward women who commit crimes. Scholarship in Global North countries has developed the concept of “judicial paternalism” to describe how judges and prosecutors perceive and respond to crimes committed by women. Generally, most studies highlight paternalistic or chivalrous attitudes, particularly toward women who commit homicides, which often translate into more lenient sentences (see, for example, Daly, 1989; Smart, 1992; Steffensmeier et al., 1998; Carlen, 2002; Kutikoff, 2017; Fridel, 2019; Holmes et al., 2020; Pierce, 2023). In contrast, research in Latin America (Azaola, 1999; Ribeiro, 2010; Rodríguez & Chejter, 2014; Núñez Cetina, 2015; Lassalle, 2020, 2021, 2024) has shown that judicial responses to women tend to be highly punitive, even in cases involving typical “female crimes”, such as homicides of children or male partners.²⁰ For instance, in a previous work, I demonstrated that in Argentina, women who commit homicide are three times more likely than men to receive life sentences, and that mothers and fathers are treated differently when

20 See Lassalle (2025) for an analysis of shifting judicial practices concerning women who kill their male partners in contexts of gender-based violence.

they harm or kill their children (Lassalle, 2023). In this article, I argue that the myth of the “Woman-Mother” – an array of social significations about what it means to be a mother and, by extension, a woman – permeates judicial decisions, shaping how the system interprets and punishes homicides committed by mothers against their children, and resulting in the imposition of particularly harsh sentences.

Regarding drug-related offenses, statistical data indicate that, in Argentina, the length of sentences for men and women does not vary significantly. The average sentence for individuals currently in prison is 5 years in Buenos Aires and 5.5 years at the Federal level.²¹ These averages reveal a first element of disproportionality in drug-related convictions: there is almost no difference between the provincial and Federal systems. In both cases, the criminal justice system remains focused on minor drug offenses rather than on large-scale actors in the illegal drug trade. One of the key arguments used to justify the defederalization of drug law enforcement – which, as I have shown, led to a dramatic increase in incarceration rates – was that the Federal system would thereby have more resources to concentrate on major traffickers. However, twenty years after the reform, the data clearly show that this objective has not been achieved.

It is important to note that these averages come from penitentiary data and therefore exclude convictions of individuals serving house arrest or suspended sentences – a typical situation for women, as we have shown. Given that justice systems do not publish disaggregated information on individual convictions, interviewing female defendants and reviewing judicial rulings is essential to complement the insights – and reveal the gaps – provided by available statistical data. These qualitative sources indicate that women's sentences tend to be slightly shorter, particularly for those not involved in retail activities; whereas at the retail level, sentences for men and women are similar. However, statistics alone do not reveal that even these minor differences are disproportionate relative to women's actual roles in drug-related activities. In other

21 These data were compiled by the author from the databases of the National Statistical System on the Execution of Sentences.

words, the secondary roles that women frequently occupy are not reflected in sentencing practices, as women often receive sentences similar to those of men. Case (f) illustrates this very clearly: the woman spent two years in pretrial detention and was subsequently given a three-year suspended sentence, while her husband was sentenced to 4.5 years of incarceration.

Additionally, as noted, even when women are directly involved in retailing, they generally occupy subordinate positions in the supply chain, yet their average sentences remain similar to those of men. A clear indicator of this is the type and quantity of substances with which they are typically apprehended. For example, as shown above, women may receive around 4 years of incarceration for possession of two kilograms of marijuana – a substance that is decriminalized for personal use and even already legalized for retailing in many countries²² – or for as little as 50 grams of cocaine.

The disproportionality of sentences for minor drug offenses becomes even clearer when compared with the penalties imposed for violent crimes. In Buenos Aires, for example, around one-third of intentional homicides have been punished with less than 11 years of incarceration, and half of these with sentences ranging between 8 and 9 years (Lassalle, 2024). In contrast, the average sentence for women convicted of non-violent minor drug offenses is 5 years. This means that many homicides – often committed by men – receive sentences only a few years longer than those given for minor drug offenses committed by women.²³ Moreover, while those convicted of homicide may be eligible for conditional release, this is not the case for drug-related offenses. As shown in some of the cases discussed above, defendants must serve their full sentence in custody (even under house arrest). In contrast, a person convicted of a non-aggravated homicide at the minimum of the sentencing scale may spend six years in custody and the remaining two under conditional release.

22 See Linares in this volume.

23 For a sociological explanation of this trend toward homicide, see Lassalle (2024).

Mandatory minimums that prevent the imposition of suspended sentences are the leading cause of this disproportionality. Indeed, high mandatory minimums have been a key instrument for hardening drug policies and radicalizing the war on drugs across Latin America (Chaparro et al., 2017). However, both statistical data and the cases discussed above confirm what sociological and criminological research has long emphasized: there is always a gap between the written law and the actual practices of judges and prosecutors. First, the significant shift observed after 2016 in Argentina does not correspond to any change in the penal scale's minimums. The 4-year minimum for "commercialization" and the 2- to 6-year range for possession, which allows for custodial sentences, have both been in place since the 1990s. However, women's incarceration rates have surged, particularly over the past decade. Second, the cases analyzed show that prosecutors can, in fact, file charges for "secondary participation," which makes suspended sentences possible. Thus, although mandatory minimums undoubtedly encourage more punitive outcomes, prosecutorial and sentencing practices require sociological attention, as they are always more complex than what legal codes alone prescribe, thereby expressing relevant features of actual penal governance.

One last point that deserves attention regarding typical judicial responses to these offenses is the imposition of house arrest. As I have shown, this is a standard measure among women who have young children under 5 years old. Some scholars (i.e., Savolff, 2020; Ariza et al., 2021) argue that these measures are far from beneficial and instead constitute a "site of neglect where women must fend for themselves to perform reproductive labor as a way to complete their sentence" (Savolff, 2020, p. 1).²⁴ Given the scope of this chapter, I cannot delve into these debates, which also carry important political implications. Although these measures are evidently less repressive and harmful than prison, they can still be "counterproductive if the conditions are so strict that

24 In Argentina, relevant studies have explored the relationship between motherhood and incarceration. See, for instance, Tabbush and Gentile (2015) and Vilalta (2019).

they prevent working or fulfilling family responsibilities” (Giacomello & Garcia Castro, 2020, p. 161). This point is particularly relevant in drug cases, as many of these women have dependent children and experience severe social and economic inequalities. Complying with such measures often conflicts with the urgent need to secure livelihoods in contexts where support and safety networks may be fragile. For this reason, alternatives such as avoiding unnecessary pretrial detention and imposing suspended sentences appear to be less harmful and more effective in preventing the reinforcement of cycles of marginalization and exclusion, underscoring the crucial impact of judicial decisions in this regard. As we shall see in the next section, these are relevant pragmatic considerations for shaping criminal policy and guiding judicial decisions – considerations that, while not yet addressed in Argentina, have already been taken into account in other Latin American countries.

Recognizing the Problem: Alternative Approaches in Latin America

So far, the prohibitionist approach to the drug problem, along with the repressive responses that support it, have prevailed in most Latin American countries. Despite this general scenario, over the last decade, several initiatives have emerged acknowledging that this approach is both ineffective and harmful – not only to vulnerable groups but also to society at large. Many of these initiatives have also highlighted the differential impact on women, emphasizing the need to incorporate a gender perspective into debates on drug policy. Costa Rica was a pioneer in this matter. For instance, in 2013, the Public Defender’s office promoted a legal reform, later approved at the Legislature, that ensured more proportionate punishments for women from marginalized sectors with caretaking responsibilities who were caught smuggling drugs into prisons. The reduction of the minimum of the penal scale to 3 years enabled the application of alternatives to incarceration and, as it was retroactive, permit-

ted the release of many women.²⁵ Later, in 2017, Costa Rica passed Law No. 9,361, which led to a criminal record reform. This allowed judges to eliminate criminal records from the court registry if certain conditions were met – for instance, after serving a sentence of less than three years or for misdemeanors committed by people in situations of vulnerability, among other cases. This legal reform constitutes an important precedent to counter the labor market exclusion and the stigmatization that incarceration produces.

Uruguay also had initiatives in similar directions. The most important one was the legal regulation of adult use of cannabis in 2013. By then, the government was concerned about the growing incarceration of women, and the gender unit of the Drug National Board worked hard to produce changes in criminal policy, which resulted in a decrease in the number of women prosecuted for drug offenses between 2010 and 2021 (Youngers, 2023).²⁶ Furthermore, other countries, such as Ecuador in 2008 and Bolivia between 2012 and 2018, used amnesties, pardons, and sentence reductions to alleviate prison overcrowding and reduce the negative impacts of incarceration. Especially in Bolivia, the gender-focused amnesties, pardons, and sentence reductions enacted by the president of the country aimed at releasing individuals charged with minor drug offenses, especially pregnant women and household heads, people who suffered illnesses, and other vulnerable groups. As a result, after 5 years, the number of women in jail for drug-related crimes was reduced by 84% (Youngers, 2023).

More recently, in 2020, Mexico passed a Federal Amnesty Law, which aimed at releasing and expunging criminal records from individuals from vulnerable groups (indigenous people, women from marginalized sectors, etc.) charged with certain types of crimes, such as drug offenses. So far, many requests have been presented, and women prosecuted for

25 For a deeper analysis about this reform, see Pieris (2017).

26 In 2020, there was an important backlash when "The Law of Urgent Consideration", key for Lacalle Pou's government, was passed by the Uruguayan Congress. Among other things, this law eliminated the possibility to have alternative measures to incarceration for drug-related offenses.

drug-related crimes have been released. However, the impact of this law has still been relatively narrow because of two main factors. On the one hand, because it is a Federal law, most of the crimes it targets are of local jurisdiction. Some Mexican states have adopted local amnesty laws, but their implementation at the local level remains limited. On the other hand, the enforcement of this law also showed important judicial discretion in approving amnesty requests.²⁷

Colombia has also made important progress in reducing the levels of incarceration of women. In 2023, Congress passed the Law of Public Utility (*Ley de Utilidad Pública*, Law No. 2.292), which created mechanisms to replace imprisonment in cases of women who are household heads and are serving sentences for minor crimes produced in contexts of vulnerability. If released from prison, these women must serve their sentence doing unpaid community service in public institutions or in organizations of civil society. According to data from the Ministry of Justice, as of March 2025, 130 women have been released and are currently undertaking community work. The enforcement of this law and the potential to reach a larger number of women are certainly challenging.²⁸ One of its main challenges is the important role of the justice system in this process and, in some cases, the opposition of some judges to granting these alternative measures.

In contrast, as I have shown, the orientation of drug policies and of the judicial system in Argentina appears to be moving in the opposite direction. In the name of the ‘war on drug-trafficking’, punitive mechanisms targeting non-violent, minor drug offenses have been intensified, further criminalizing women in multiple ways. Highlighting alternative experiences from other countries is, nevertheless, crucial, as they demonstrate that the overcriminalization of women has already been recognized as a significant adverse effect of the war on drugs, and, more

27 For a deeper analysis about this law and its enforcement, see Fernández Vilaseñor (2021).

28 For a juridical analysis of the general scope and limitations of this law, see Orozco López (2025).

importantly, that alternative approaches are not only necessary but also feasible.

Closing Remarks

In this chapter, I have argued that, as in other countries of the region, the “late war on drugs” waged by the Argentine criminal justice system is not directed at the illegal drug business but rather at non-violent, minor drug offenses. Within this context, mainly since 2016, the radicalization of this model has fueled the increasing criminalization of women from the lowest social classes. The intensification of punitive measures can be seen not only in the sharp rise in female incarceration rates but also in judicial practices that reveal how criminalization processes are grounded in structural gender and class inequalities. In particular, prosecutorial and sentencing practices disproportionately target unemployed women with very low levels of formal education who are involved in minor drug offenses. I have also demonstrated that these women are typically middle-aged, have no prior criminal records, and are increasingly being drawn into penal circuits for such offenses. Furthermore, I have shown that pretrial detention is excessively used, even in cases where women ultimately receive non-custodial sentences, and that the sentences imposed are disproportionate both to women’s actual roles in these activities and to judicial responses to other crimes. Taken together, these dynamics are doubly harmful for the women targeted by criminal justice systems, who are not only in a situation of structural inequality but are also socially assigned caregiving responsibilities, whether for children or other dependents.

By presenting archetypal cases, the chapter also sought to systematize the different forms of women’s involvement in drug-related activities. Broadly speaking, women are primarily engaged in minor drug-related offenses and occupy subordinate positions within the supply chain. This assertion, however, does not mean portraying women as “passive actors”, nor does it exclude the fact that some may hold high-ranking positions within these illegal activities. As demonstrated, women frequently

participate in retail-level drug sales, not merely in storing substances or as mules. Nevertheless, the chapter seeks to emphasize a structural perspective on the phenomenon, highlighting its most salient patterns and showing how systemic judicial responses play a crucial role in framing the drug problem as bounded to a specific portion of the population and to retail-level activities. As I suggested, these judicial responses actively contribute to the reproduction and consolidation of the cycle of inequality and marginalization that is central to the dynamics of the contemporary illegal drug business.

Finally, the chapter has examined initiatives in some Latin American countries that acknowledge the negative consequences of these intensified punitive measures for women. These initiatives are important for two reasons. First, they highlight that drug policies and judicial responses prevalent in Argentina have already been recognized as harmful, both for women entering the penal circuits and for the broader community. Second, they demonstrate that alternative approaches are possible and that adopting them is fundamentally a political decision, reflecting a contest over how the phenomenon is understood and defined.²⁹ Future research is important to explore the social meanings underlying these seemingly ‘automatic’ and systemic judicial responses toward women who commit these offenses – meanings about motherhood, womanhood, as well as women’s relationship to illegal substances and criminality. Such work would be valuable for broadening the understanding of the clearly gendered nature of the criminalization of drugs.

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29 For specific policy recommendations on how the levels of criminalization of women in Argentina could be reduced, see Lassalle (2024a).

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