



Like flowers cracking cement. Paths of criminalization and female detention in Mexico

Corina Giacomello¹

Abstract

Worldwide, the female prison population is growing and Mexico follows similar trends: while women still represent less than 5% of the total prison population, female incarceration is growing at a faster pace than male prison population. The profile of women in detention has been changing in the last years, with violent offences -such as kidnapping and homicide- representing the main causes of incarceration after theft. However, the profiles of women in prison remain very similar: young women with low levels of education, employed in the informal economy, mothers of two or more children and, often, primary or sole caregivers of their children or other dependent people. The paths of criminalization often start with sexual violence during childhood, followed by cycles of gender-based violence and substance dependence. The majority of women in prison are allocated in sections or buildings attached to a male prison and while the legal framework on prisons has seen some important improvements in the last years, women in prison are still largely invisible or seen exclusively in relation to their reproductive functions and roles.

Keywords: Mexico, sexual violence, women, incarceration, reintegration.

¹ Corina Giacomello, Professor at Institute of Judicial Studies, Autonomous University of Chiapas, Mexico.

1. Introduction

Mexico is a multifaceted country: incredibly beautiful and rich in nature and culture, tragically spiraling into growing violence that touches upon, albeit with vary degrees, on all its inhabitants, and equally capable of resilience and brutality. Its 248 rehabilitation centres (Centros de Reinserción Social) concentrate and exacerbate the famous Dostoyevsky's observation that, in order to understand a country's civilization, one must cross the doors of its prisons (Garland, 1999).

When I started carrying out research on Mexico's prison system, at the beginning of 2005, I had been intermittently living in Mexico for approximately four years. I was in my early twenties, driven by the thirst of youth, enthusiasm and the quest for more experiences, eager to grasp every corner of this new country. I was absolutely, blindly in love with the country that has been my home ever since. Between 2001 and 2005, I visited and temporarily lived in indigenous communities in Chiapas, the poorest state of Mexico, which became famous thanks to the Zapatista movement, which attracted hundreds, if not thousands, of foreigners. The experience of fieldwork in the autonomous municipality "Primer de Enero", which was the basis for my master's dissertation on Zapatista women at the National Autonomous University of Mexico, was always inspiring and motivating. It was kind and it infused hope and strength. I always left the community feeling happy and grateful, thinking about my next trip, longing to be back since before I even left.

Visiting prisons brought very different feelings: the gratitude for being authorized to go in to do research but also the relief for being allowed to step out, and the anguish for the people left. Every time I entered and exited prisons, I would encounter with and bring home with me the sticky weight that looms in prisons' alleys, cells and common areas, the solitude that each individual carries with him or her and that yet is paired, in only apparent contradiction, by the virulence of human strife, like a flower growing out of concrete: the pervasive capacity for creating bonds and forge relationships and connections even when the whole system stands against them.

Since 2005, I have spoken with tens and tens - perhaps hundreds - of incarcerated and formerly incarcerated people, mostly women, who generously and informedly participated in my various researches and whose voices are included in my publications. It is simply impossible to count the hours spent talking with only one or with more women at the same time, all the time passed going in, chatting, going out, processing and healing, learning how to make sure that their life stories would stay with me and would not be betrayed while, at the same time, making sure that I would not collapse. Some meetings did not go beyond the interview and the space of trust we could build and share there. Others became friendships which lasted for years and sometimes are still ongoing. Some conversations were private, others were in group. Tears never failed to appear and, often, neither did smiles and out loud laughs. At times there were concerts

in the prison, usually during a visiting day, and food and families accompanied the moments shared. Children were always present with us: those who lived with their mothers in prison, and those longed for in the outside. Even those who were lost and would not be recuperated again.

However, prisons arrived at my life quite unexpectedly, unlooked for. When, at the beginning of 2005, I gave the steps which would lead to the publication of my first book on this subject (Giacomello, 2007) I did not know that I would develop my professional career around the topic of female incarceration for drug offences, which would expand, during the course of the following years up to these days, to comprise studies on the right to vote of incarcerated people, the impacts of incarceration on children and families, juveniles in contact with the criminal law, arbitrary detention in compulsory drug treatment centres, alternatives to incarceration, etc.

In way, looking retrospectively, it was always prisons and the people who lived in them who led the way. Doing research in Mexican prisons was a reality check, like a slap in the face, with their appalling living conditions, the pervasive corruption, the sexual malice, the impossibility of solidarity. Prisons filled with women sentenced to 10-15 years for carrying insignificant amounts of drugs. Prisons outside of which I queued with hundreds of women and children lined up before me and other hundreds after me, to spend a few hours with a beloved -or not so loved- one -usually husbands, sons, brothers, friends, or

even unrelated people who were part of drug trafficking chains that involve inmates and female couriers- during a messy, dirty, disrespectful, yet graceful and joyful, sometimes even tender, day open to external visitors.

But Mexican prisons are not only their horrors: women resiliently make use of incarceration to explore and consolidate new possibilities of self-knowledge, self-love and sexuality, engage in theater and art to open the mind and the heart and shape thoughts and experiences which cannot be expressed in other ways. They share the legal battles and the regular, constant alternance of hope and despair. They tell of their longing for the life outside and yet the strikes and the fights that continue once liberty is recuperated.

Being a mother is perhaps the most dominating feature of most women's narrative, together with violent partners and a context of what could be euphemistically called a disadvantaged background: hunger, child labor, chronic poverty, drug use in the family -mostly alcohol-, rape, teenage pregnancies and, finally incarceration. Not a single story began with "So, one day I decided I would break the law and I became a hit-woman". Or: "When I was a child, my dream was to be dependent on substances and to sell drugs outside schools to children". Not a single story began after their main characters turned 18 years old.

Everyone of them had to do with childhood, and violence, and impunity and the selective repression of the punitive State: most of the women I have spoken with in

the last 18 years at some point committed an action or a set of actions which is criminally punishable, and usually they are aware of it. However, the law was “broken against them” numerous times, i.e., they were victims, long before they undertook those action that sent them to prison. But those actions, those rapes, the hunger, the lack of schooling, it was never looked upon, it never mattered to anyone and neither did they. They began to count only when a criminal responsibility could be attributed to them and when their bodies, so repeatedly violated, could be locked in.

This article is about those women. It is about their lives and the prisons they live or lived in. It goes beyond the numbers behind which their voice is silenced and it attempts to undermine the stigma that reshapes them as “criminals” and forgets to ask: “what happened?”.

It also about female incarceration as a gendered social phenomenon which has been increasingly occupying international debates and fora, albeit with perhaps little impacts on the population with lived experience, at least in the Latin American context.

It aims at making women visible and their life story heard, but also to offer to the readers an informative overview of Mexico’s prison system.

With these purposes in mind, its contents will be distributed as follows: the first section briefly describes the current Mexican law on the prison system, with a focus on the regulations that regard women and their children. In the second section, I will present official data on the numbers and

profiles of female incarceration in Mexico. This section will also present comparative data with the male population -public data is disaggregated only by “men” and “women” and does not include non-binary people- as well as information on prison centres. Subsequently, section “paths of criminalization” contains the life stories of some of the women that I have met in the last years. It does not aspire to be representative or to encompass all the possible nuances of women’s paths of criminalization. However, most of the cases selected share the common thread described above: sexual violence during childhood, precarious living conditions and incarceration. Indeed, it would be difficult to find, among the hundreds of women and girls I have spoken with -not only in prisons but also in residential drug treatment centres, one who has not experienced deprivation and sexual violence. The chapter closes with two cases of women after their release from prison.

2. The national law of penal execution

In 2016 the Mexican parliament approved a new national law on prisons-which led to the derogation of 32 state laws and a federal one- homogenizing the standards according to which prison conditions should be set. The legislative process and the approval of the law occurred within a larger framework of reform which started in 2008, when a major transformation of the criminal justice system took place, and advanced further in 2011, with a constitutional reform on human rights.

It goes beyond of the scope of this paper to describe all the details and nuances of the National law of penal execution (*Ley nacional de ejecución penal*); however, I would like to highlight some of its distinctive features: in the first place, the law encompasses also people in pre-trial detention, whereas the previous 33 laws only included people who had already been sentenced, that is, less than 60% of the total prison population.

Second, the law embodies the transition - imprinted by the criminal justice reform of 2008- from the concept of readaptation (*readaptación*) to that of reintegration (*reinserción social*), thus no longer seeing -at least in theory- the person in conflict with the law as someone to be acted upon and transformed through incarceration because of some inner flaw, but as a person entitled to rights, namely, as explicitly outlined in the Mexican Constitution and in the law under analysis, the right to health, education, training, employment, sports and human rights (Sarre, Manrique, 2018). Despite this change, the law still foresees reintegration and the elements that compose it, as a mean to prevent recidivism, which clearly denotes the perdurance of discriminatory views towards people in conflict with the law or even violate the principle of presumption of innocence in the case of those in pre-trial detention (Giacomello, 2022).

Another relevant feature of the law is that, because of a reform to Article 21 of the Constitution in 2008 (Champo Sánchez, 2022), the counting and modification of sentences - which before was under the

control of the prison authority - are now a matter of judicial competence, for which special courts -the judges of penal execution- have been created. These judges also have, among their numerous tasks, the resolution of controversies between the prison population and the prison authorities. In other words, the principle and mechanisms of due process and the oral model finally enter prisons, whereas before, once a person was sent to prison, her or his conditions in detention and the access -or not- to sentence reduction or alternatives to incarceration, was dependent exclusively on the prison authority, outside of the view of the justice system. With this law, there was also a change in the types and application of alternatives to incarceration during sentence. A positive aspect in my field of research was that people accused of drug-related offences are no longer banned from being granted an alternative to detention. The prohibition persists, however, for people sentenced for human trafficking, kidnapping and organized crime.

Finally, this law includes regulation on women in detention - the previous ones only referred to the separation of men and women -, although with a focus on those who are pregnant or mothers and live with their children. While this is still a progress, it is not without flaws, which demonstrate on the one hand, the myopic, if not plainly ignorant, views of the legislators and their advisors on the matter and the general irrelevance of this topic; but, on the other hand, is also the product of the very difficult negotiations and compromises that underlay the drafting and approval of the

law, between opposite sides: ones more well established in positions that defend and promote the rights of prisoners and their families and the judicialization and transparency of prison conditions vs. others more resistant to losing power and control and more inclined to the preservation of the administrative -rather than judicial- control of prisons.

The articles that include the main regulations on women in detention are Articles 10 and 36. The first “Rights of women deprived of their liberty in a Prison Centre” outlines the rights of women but also expands to determine those of their children. Actually, the position of identifying a woman in prison intrinsically or only as a mother is so embodied that the first right of women in prison is “the right to motherhood and breastfeeding”. Article 36 “Women deprived of their liberty with daughters and sons” specifically focuses on women who live in prison with their children.

In both articles there are the rights to health, dignified prison conditions, education, medical attention, visit regimes, regulations on transfers and disciplinary measures, etc. They both determine that children up to the age of three years old are authorized to live with their mothers in prison. But what is most interesting and outrageous is not what the articles say or share, but what they imply and how they differ.

By instance, Article 10 indicates that children can live with their mother until they are three years old and that, if the child carries a disability, the stay can be

extended and that the prison authority will grant -or deny- the corresponding authorization. Also, if the mother does not want to live with her or his child and there is no extended family available to take care of the child, the prison authority will determine the criteria for the exit of the child.

Article 36 foresees that only children born during their mother’s detention may live with her, that is, children born to women incarcerated during pregnancy or who become pregnant during their prison time. Also, the article establishes that the above-mentioned decisions regarding the prolonged stay of the child in case of disability will be taken by the judge of penal execution. In both articles, the child protection system is referred to but only as an authority to be informed on decisions taken by other authorities -either the prison authority or the judge of penal execution- that do not have, or should not have, competence in matters regarding children’s rights.

Not only there are clear contradictions between the two articles, but, in both cases, children are treated as their mothers’ appendix or as a population to be handled by authorities which are in charge of adult prison population, thus assimilating children to the prison population and legally treating them as prisoners *de facto*.

3. The numbers of female detention in Mexico

This section is based on public figures, which might be useful for those interested in knowing more about the profiles and

conditions of incarcerated people in Mexico.

The “Monthly notebook of information on national prison statistic” (*Cuaderno mensual de información estadística penitenciaria nacional*) is published online by the federal department responsible for prisons, which is attached to the Ministry of Public Security and Citizen’s Protection (*Secretaría de Seguridad y Protección Ciudadana*). It contains information on the number of people in prison, their judicial status, the number of people per prison centre divided by gender, as well as information on age groups and education level of the prison population. It also provides data on prison overcrowding, international transfers and extraditions, people under a non-custodial measure, etc. The information presented here corresponds to the month of February 2023 (Secretaría de Seguridad y Protección Ciudadana, February 2023).

In 2021 the government also published the results of the National Survey on Prison Population (INEGI, 2021), which -will be referred to as ENPOL hereinto- and which shares information on the following topics: socio-demographic and socio-economic characteristics of the prison population; family and employment background; criminal and judicial background, as well as on how detention was carried out and the prisoners’ experience with attorney officers, courts, prison living conditions, violence and corruption. The survey also investigates on the prisoners’ expectations with regards to re-entry.

In February 2023, there were 230,730 people in prison, of whom 13,073 women, which represented 5.67% of the total prison population (Secretaría de Seguridad y Protección Ciudadana, February 2023). Therefore, while Mexico represents one of the countries with the highest female prison population in absolute terms, according to the latest World Female Imprisonment List (H. Fair and R. Walmsley, 2022), in percentual terms, the country mirrors international tendencies. The same source indicates that worldwide the female prison population has increased by 60% between 2000 and 2022. In Mexico, in the same period, the female prison population has risen by almost 100%.

In total there are 284 prison centres in Mexico, of which 14 are federal ones. There are 22 centres only for women: 21 state prisons and a federal one. While some states, such as Mexico City and Coahuila, have more than one female prison centre, others, such as Guerrero or Tabasco, do not have any. This means that women in prison are still largely allocated in 124 mixed centres (Secretaría de Gobernación, 2022), that is in buildings which are separate to men, but still belong to prisons where most of the population is male.

National data indicate that almost 42% of people in prison in Mexico are on remand, waiting for a sentence and that this percentage is higher for women than for men: according to another source, the National Census of the Federal and State Prison Systems 2022 (INEGI, 2022), in

2021 41.5% of men in prison were in pre-trial detention, whereas 52.9% of women in prison were in the same situation. The Census also shows that a slightly higher percentage of women (14.2%) than men (12.6%) spent more than two years in pre-trial detention-which is the legal maximum term- before receiving a sentence.

In terms of previous convictions and arrests, ENPOL 2021 shows that, in the period between July 2020 and July 2021, 20.5% of the people in prison indicated to have been judged for an offence previous to their current incarceration. The percentage disaggregated by gender was 21.3% of men and 6.8% in the case of women. Also, 17.4% of the surveyed population said to have been previously imprisoned; in the case of the female population, 5.6% of women had been previously incarcerated. The offences which led to a previous conviction are mostly theft and drug possession. In the case of women, 20.7% of those who indicated to have been previously found guilty of a crime pointed drug possession as the cause of their conviction.

Before deepening into the offences women are incarcerated for, it is important to explain how Mexican criminal system is organized. Mexico is a federal state, composed by a federal government and 32 state governments. It has 33 criminal codes, one national code of criminal procedure (since 2014) and the above-mentioned National law of penal execution.

People can be accused of and convicted for a state crime or a federal crime,

depending on the typification of the crime which might reflect its perceived severity in a given time. To illustrate with an example: before 2009, all drug-related offences were included in the federal criminal code. This implied a minimum sentence of 10 years with no rights to parole mechanisms. When I carried out my first research on prison population and gender-based discrimination, it was actually the nude reality that brought me to decide to focus, in my doctoral studies, on women in prison for drug offences, because one after another, the women I interviewed were either incarcerated for minor thefts or for non-violent, drug offences which involved small quantities or even drug possession or consumption: nevertheless, they were sentenced to spend at least ten years in prison. In the case of those found guilty of attempting to take drug into prison hidden in their vaginas or shopping bags when entering as visitors, the minimum sentence was 15 years.

In 2009 there was a legal change which led to the separation of state drug-related offences (such as possession for the purpose of selling, introducing drugs into a prison centre or possession for personal consumption above of the permitted thresholds) to federal ones (such as international trafficking). Therefore, depending on the type of offence and the amount of drugs involved -or sometimes, on the judicial competence of the arresting authority- people might have to face a state or a federal court.

Crimes such as homicide, femicide and kidnapping and so long might be defined as state or federal, whereas others, such as forced disappearance or organized crime are always prosecuted as federal offences.

Most of the prison population is trialed or convicted for a state offence. In February 2023, there were 200,971 (87.10%) people in prison for state offences and 29,759 (12.90%) for federal crimes (Secretaría de Seguridad y Protección Ciudadana, February 2023). For men, the three first causes of incarceration in the case of state offences are theft, homicide and rape, whereas in the case of women are theft, kidnapping and homicide. At the federal level, men are incarcerated, in decreasing order, for weapons and explosives related offences, deprivation of liberty (kidnapping) and federal drug-related offences. In the case of women, the most frequent federal crimes they are accused of are kidnapping, organized crime and drug-related offences.

With regards to the socio-demographic characteristics of the prison population, this is concentrated in the age range between 18 and 34 years old: 14% of women are between 18 and 24 years old, while 36% are between 19 and 34 years old. The percentage of men with no education (4.6%) is slightly higher than that of women (3.8%), but in both genders prevails the attainment of only basic education (including pre-school, primary and secondary school). However, a higher percentage of women has high school studies, specifically 20.4% against 16.9% of men. The main reason that the

respondents to ENPOL provided to explain why they did not continue to study is that they had to start working or lack of economic resources. In the case of women, the prevailing answer is “other motives” (INEGI, 2021).

In terms of family and economic background, the ENPOL 2021 provides interesting data. Of the prison population surveyed between July 2020 and July 2021, 85.4% of men and 73% of women indicated that they worked in the week before their arrest. 37.2% of the women who responded to have worked signaled as her occupation “trader or employed in sales”. This refers to employment in the informal economy, usually preparing and selling food or other items on small, informal selling points, such as outside of schools. 20.9% of women was working in “personal services”, that is, as cleaners or other domestic services. It is important to stress that the way in which the questions are elaborated in the survey does not allow for a clear comprehension of women’s jobs and the impact of gender roles and informal economy on their subsistence.

80% of the prison population answered that they had people who were economically dependent on them before their arrest. Of these, 82% signaled that they had two or more people depending on them. The state with the highest number of people responding affirmatively (85.5%) is Chiapas, which is also Mexico’s poorest state. In the case of incarcerated women, 68% indicted that they sustained other people dependent on them before their arrest.

Also, 67.8% of women and 60.3% of men indicated that they have children under the age of 18. While 90% of men shared that their underage children were under the care of their mother (meaning the children's mothers), the children of women were mostly with their grandparents (55.2%), whereas only 30% of women indicated the father of their children as their children's current caregiver. The absence of fathers has implications for the care arrangements of children and the impacts of the mother's incarceration and puts a further pressure on the grandparents, who remain in charge of the kids and often hardly have enough resources to provide for themselves. While it goes beyond the scope of this paper to look into the impacts of a main caregiver's incarceration on children, it is important to highlight that the incarceration of the mother has more disruptive immediate negative effects (Murray *et al.*, 2014) This has led to the promotion of alternatives of incarceration of women who are pregnant or sole primary caregivers of small children; however, in the case of Mexico, such international recommendations are far from finding echo in reality.

With regards to the experience of violence in the household where they grew up, 90% of the respondents indicated that they parents or caregivers took care of them. Alcohol and other drugs use in the family was reported by 25% of men and 21% of women. In total, 32% of men and 37% of women said that they were victims of violence (yelling and physical maltreatment). Sexual violence was higher among women (4.6%) than men (0.7%) although

both numbers are likely to be underestimations (INEGI, 2021).

Unfortunately, ENPOL 2021 does not look into experiences of violence during adulthood or outside of the family home.

With regards to violence perpetrated by state authorities, I will present now some information from ENPOL 2021 on the experience with public officers immediately after detention and before being taken to the prosecutor, since this is usually the moment in which people in contact with the criminal justice system are more vulnerable to physical, verbal and psychological violence, planting of evidence -usually weapons or drugs- and other human rights violations. Particularly, women may be subject to sexual violence and rape by security forces, as demonstrated in several cases in which Mexico has been found guilty by the Inter-American Court of Human Rights.

64.5% of people in prison said that they were victims of some act of violence carried out by the police or authority in charge (by instance, the army) before being taken to the prosecutor's agency. Of the 64% of women who responded affirmatively to this question, the following actions are those that were mostly reported:

- 49% was uncommunicated or isolated;
- 39% was threatened with being falsely accused;
- 34% was threatened with physical harm;

- 33% was held in a car and driven around for hours (this is a typical practice of Mexican police, for extortion and intimidation);
- 30% was threatened with harm against her family;
- 27.5% was pressured into accusing someone else;
- 25%: was threatened to be murdered;
- 23% was blindfolded;
- 22% was undressed.

As denounced by Amnesty International Mexico office in a study published in 2016 (Amnistía Internacional, 2016), with the participation of 100 women deprived of their liberty, 72% reported sexual violence during arrest or in the hours that followed.

In 2018 Mexico was found guilty by the Inter-American Court of Human Rights in the case “Case of women victims of sexual torture in *Atenco vs Mexico*” and one of the outcomes of the sentence was the publication, in 2022, of the national assessment on Sexual Torture against women deprived of their liberty in Mexico (Secretaría de Gobernación, 2022). In total, 1,280 women participated in the study: 70% recognized themselves as victims of some form of violence, including sexual torture, during different stages of the criminal procedure, spanning from detention to prison transfers. Since violence is normalized in Mexico and gender-based violence is normalized among women, particularly women in prison, being a structural part of their life since early childhood, some of the women who

participated in the study identified, during the development of the questionnaire, other practices which they were submitted to as violence, thus raising the number of women who identified themselves as victims of violence to 80%.

To close this section, it is important to underline that the quantitative sources used in these pages provide the interested readers with more information which, for reason of space and scope of this paper, is not included here, but can be easily accessed online.

4. The paths of criminalization

The purpose of this section is to share some of the life stories of women who have gone through incarceration in Mexico. As explained in the introduction, it does not attempt to be representative, nor to lead to a uniform theoretical or empirical analysis, but rather to approach the foreign reader to who some of the women behind bars are, how they frame and re-frame their life and the opportunities and losses that incarceration entails. It is important to emphasize that when talking about “opportunities” in prison, this is never meant as a support of incarceration as a practice. Quite on the contrary, it highlights precisely how social exclusion and gender violence can be so pervasive and conditioning of people’s experience than even being in prison becomes an opportunity for certain aspects of one’s life. It is, therefore, an argument against incarceration and in favor of social justice.

Secondly, highlighting positive paths during incarceration, as in the case of Natalie, is also an attempt to pay justice to women's narratives: at least in the Latin American contexts, the academia and the international and national organizations that I have collaborated with and been part of tend to denounce all the aspects of female detention. This is based on the reality of prisons and the injustices committed against women and aim at promoting radical change in terms of prosecution policies and the use of incarceration. However, some of the women in prison also experienced the opportunities I mentioned above, such as finding liberty with regards to their sexuality or discovering theater and art. That is almost never voiced out, for the obvious reason that it might be misunderstood and used as a counterargument against reforms aimed at the reduction of the scope of the criminal justice system and the use of incarceration. In this space, however, I reckon that it is important to also share what has been considered as a positive outcome during incarceration. Again, this is never meant as a positive message about prison, but definitely as an assertion of one's life and the capacity of moving on, undefeated, even under the most hostile circumstances: it would be unjust to sum-up seven, ten or a life spent in prison only through words of anger and deprivation, silencing positive experiences, personal achievements and collective sentiments of resistance.

4.1 Berenice

The first story is that of Berenice whom I interviewed in Chiapas' prison centre called El Amate. El Amate is the biggest prison in Chiapas. In February 2023 there were 1,691 people deprived of their liberty, most of them (1,591) for state offences. In total, there were 133 women, of whom 82 in pre-trial detention.

I visited El Amate in June 2019, when I was carrying out a research on women who use drugs and are deprived of their liberty in prison centres or compulsory drug treatment centres (Giacomello, 2020). I did not have much time to carry out the interviews at my disposal, since I was driven there and back by personnel from the state prison department. First, I met with a group of women in a huge common room, near the yard for visits. We had privacy and we could talk for a while, approximately two hours. After explaining to them who I was and why I was there, I started the interview. Since the research was about drug use, I did not inquire about the offences they were in prison for. It was up to them to say it or not.

I do not remember if Berenice told me, it did not really matter given the narrative she made of her life. She was 27 at the time of the interview. When talking about her drug use, she provided a linear explanation of herself: she began using drugs when she was 13 years old, basically tobacco, alcohol and marijuana. At 14 she started using crack cocaine which is the substance she developed dependence on. When she was 15 she began to consume

“chemo”, inhalants. Before she was 18 she was involved in a homicide and was imprisoned in a juvenile centre. Subsequently, she described her life as being mainly involved with drug use, sex work - she called it “prostitution”- and circuits of drug using people. She portrayed herself very negatively, perhaps repeating the labels she heard other attach to her so naturally and so often.

I still remember her profile and some change on her face when I said «You had a difficult life». She replied «After a situation that happened to me... I changed. Before I was happy, happy...». I decided to cross a line which I had imposed on the investigation: to not ask overt questions about violence. I asked «Did someone hurt you?». Hell unleashed and, sitting one beside each other, we looked down into it, hearing her voice describing the horrors she had gone through.

She was a little girl and she lived in a rural community in Chiapas, with her grandmother. She used to go to school walking, together with a friend she had a little crush on. But one day he was not waiting for her to go to school and she went by herself. Until two men from the village attacked her. They started to push her deep into the surrounding fields, whipping her ankles with a stick. They raped and beat her up for hours. «They did everything they wanted to me». She went back home, distressed, bleeding and bruised. The two men had threatened her: if she told anyone, they would rape her sister too.

After a few days, she shared what happened with her grandmother. Yet even

after her family told the police, nothing happened. The two men appeared in front of her house, standing there with the certainty given by absolute impunity. She went back to school a few days after that, changing the way she went back home, trying to avoid them. But one day the same two men intercepted her. They took her to a house and kept her captive, raping and beating her. «There were kids in the room», she said, perhaps the men’s sons or nephews, and they would say to them: «Watch and learn how to treat women». After three days, they released her.

I presented Berenice’s story in other publications. In Mexico, her experience is shocking and yet very common. For me, it crystalizes the paths to criminalization for women and girls. But it is not the only reason that pushes me to “use it”. The main reason is perhaps subjective and is linked to the vivid remembrance of the moment, of how her pain transpired and filled the room, of the absolute injustice done to her and how she labelled herself not through the lens of the crimes she was victim of, not through the violent interruption of her happiness as a child, but through the discourses that others have violently and disrespectfully sealed on her body and her identity: whore, drug user, criminal, murderer.

4.2 Natalie

I met Natalie years ago, perhaps around 2010, in Santa Martha Acatitla, Mexico’s and possibly Latin America’s largest female prison. At the time, I was going to Santa Martha to do the interviews for my

doctoral research but also to teach Italian with some colleagues and friends with whom I worked at the Italian Institute of Culture of Mexico City. Natalie was one of our students: French, vibrant, full of leadership, funny and witty. We met again years later, around 2014, the year in which I had the fortune of becoming involved with an amazing project: *Mujeres en Espiral*, *Women in Spiral*, a gender-transformative art project, which led, among its many outcomes, to the realization of powerful, critical and huge murals that still paint the high walls of Santa Martha's outside areas for family visits (Belausteguitia, 2013).

Two or three years later, I do not recall exactly, but between 2016 and 2018, I heard that Natalie had been released, after spending ten years incarcerated for international trafficking of cocaine from Perú. Mexico was supposed to be only a transit country. It is now the country where she lives, together with her wife -they met and married in prison-, who was also at Santa Martha Acatitla and who spent about 16 years in prison for allegedly killing her mother.

We met near my home, and we have been in contact, albeit very sporadically, ever since. Natalie has many talents and an extremely resilient personality; there is no way of doing justice to her character in a few paragraphs. I remember how, when teaching a class to the students of a course on drug policies, Natalie explained how, after her release, she was welcome by one of the people involved in the project *Mujeres en Espiral*. This woman and her

family live in the south of Mexico City and Natalie had to travel to the north part of the city for her temporary residential permit. One hour and a half to go and one hour and a half back. She was astonished by how people did not say a single word to each other, but they all minded their own business, watching their phone or into the void. She explained that in prison, no matter the differences or even the animosity that might exist between some people, there would always be someone to tell you "How are you?" or to greet you while you go down the alley, or who would give some food to the person who has no visitors and no money.

During her incarceration and after, she never stopped fighting: she worked for a while for an NGO in which I was working as well and that had a project on incarcerated and formerly incarcerated women. She then opened her own NGO, with a focus on cultural project, but COVID-19 pandemic came and funds were lacking. She started working in a French café, never giving up. At the same time, she would fight for her wife's release and never stopped visiting her -within the restrictions imposed by COVID-.

Her wife was released in 2022 and the last time I saw them it was at the presentation of one of their theater pieces: *FueraDentro: OutsideInside*, in which they describe a woman's path through incarceration, from detention to release.

Natalie remade her life from her imprisonment, finding her wife and theater. At the time of writing this paper (April 2023) she and her wife are presenting one of

their pieces in one of the most important theaters in Mexico. The piece has been presented many times before, but it is the first time that both her authors can be met at the show.

4.3 Tiffany

In November 2019, I visited the female prisons the state of Zacatecas, severely hit by a growing presence of extremely violent criminal organization, which enroll children from their early adolescence. The purpose of my visit was to draft a guide on women who use substances for the local government. Therefore, I asked to speak with women who had or had had a dependent substance use. Given the very limited time I had at my disposal and the fact that the research was government-led, I did not have the possibility to request more time, more privacy or a particular profile other than substance use. Once the focus group with the six women sitting around the table began, I realized there was no need to ask for anything else and I was not prepared for the extremely rich interaction that arose in such little time and with no prior notice for them or myself on whom we would be interacting with.

All the women around the table had had a similar path: they were victims of rape when they were just children and they were blamed for it by their families, usually their mothers. In 2019 I listened to the same path tens of times, before than in all my previous years of fieldwork; it was due to the angle of the interview: not the offense they were in prison for, but the story

that led to the development of substance dependence. Little girls raped usually by their stepfathers, uncles and grandfathers, sometimes by their biological fathers, brothers or cousins. Sometimes even by aunts and sisters. And then blamed for it, for being “little sluts” who would provoke their mothers’ husbands and would try to take him away. Such story, so unimaginable for many people, is simply the common thread for many little girls and young women in Mexico. Some of the women I spoke with that morning in Zacateca’s female prison took were initiated into drug use very young, in their puberty, usually with alcohol, inhalants and marihuana, and then with crack cocaine and crystal meth. One of them moved to live in the street, where she was much more protected than in her own home. Another went away with some older guy and was soon pregnant.

They were all in their early twenties and they all had been accused of some organized crime-related offense: hit women, *sicarias*, most for them while another one was responsible for moving large quantities of drugs. For those who were accused of multiple homicides, they were likely to never leave prison alive.

The woman sitting in front of me named herself Tiffany. I had not asked them why they were in prison, but she brought it up. She said «I don’t mind saying it» and I said «I don’t mind hearing it». «Sicaria» she said, which can be a demeritorious term, like “drug mule”, but she used it and spoke about it as her profession. And so, we would speak about her “*trabajo*”, job,

from then on. She and the other young women were recruited by local criminal groups when they were very young and gradually trained into the use of weapons.

What was most interesting in her narrative was how she explained *sicariato* as a space of gender and economic empowerment and protection from men's violence: being a *sicaria* allowed her to give her daughters an economic living standards which would have been unattainable given her background. Also, since she was a useful good for the organization -not a disposable one like so many women are- her colleagues could not mess with her, like raping her or harassing her. Drugs were not allowed and that reduced the risks for her life.

At the end of the very intense two hours conversation, I told them: «So, to sum up: you were raped when you were little girls and you were deemed responsible for the violence against you. You left your house to go and live in the street or with some older guy, who was also violent, and you had children at a very young age. You started using substances when you were children and you were recruited by criminal organizations. Where was the State in all this?»

And they replied: «Nowhere. The State only beats us, detains us and kills us».

I also asked them what they would change of their past, and Tiffany said: «My job. Because violence... you can work on it and still have your life and be happy.... But what they (the criminal organizations) turned us into... that can never be changed».

5. Conclusions: never ending incarceration

This paper intentionally closes without a concrete set of final remarks and recommendations, but with two other case studies which point out *per se* some indications of legal and structural changes which are indispensable to reduce the use and impacts of incarceration while showing how, at least in some cases, incarceration does not cease upon release.

Gaby and Maria are two women from an indigenous community in Oaxaca, one the poorest states of Mexico. I have published about and with them on several occasions, mainly on Gaby's life story and how she experienced motherhood in prison, living with her second son, who suffers from cerebral paralysis.

I met them in 2017 and our friendship goes on still today. In 2012, Gaby was sentenced to ten years in prison for marihuana trafficking. She was released in 2019 under a pre-liberation scheme which is foreseen in the National Law of Penal Execution described at the beginning of this paper. Gaby faced legal, structural, cultural and social barriers for her reintegration. In legal terms, Mexican legislation determines that people who are subject to a criminal sentence undergo the suspension of their political rights. These can be reestablished once the sentence has been completed. In the case of people who are on parole, this applies not when they recuperate their physical freedom, but when they end their sentence: this meant, for Gaby, November 2022. This would not be particularly problematic, especially

since after being released from prison most people face such a wide range of difficulties related to housing, employment, stigma, family reunion, etc., that voting and being voted is probably well down in their priorities' list. However, in Mexico the political rights are closely attached to the only personal ID identification card, informally called "INE", which is the acronym for the National Electoral Institute (*Instituto Nacional Electoral*).

If a person does hold not an INE, each aspect of life becomes problematic, if not impossible: to open a bank account, to receive state economic support for, by instance, single mothers or women whose children have severe health conditions. It is also indispensable to obtain scholarships for one's children, which was another of Gaby's necessity for her older and younger children. Without an INE and with a criminal record, reintegration is bureaucratically impossible and socially even more difficult.

But Gaby also was rejected by her misogynous community, for having been in prison but also for being a single mother. It was very hard for her to start again and even though she found some underpaid employment in the informal economy as a house cleaner, COVID-19 arrived and she soon lost her job.

Gaby was released in July 2019. Her mother, María, however, was still inside, with the same charge and the same sentence. Nonetheless, she was to be released under conditioned release, which requires that the person has paid at least 50% of her or his sentence in prison -in the case

of Gaby, the minimum time for being granted pre-liberation is 70% of the sentence-. María reached 50% of her sentence in July 2019. However, due to judicial procrastinations, she left prison in Oaxaca until October and was taken by her daughter Gaby to Mexico City to present herself before the Penal Execution Judge, her attorney, myself and a private business representative to her final. After the hearing, the high executive from the private firm put an electronic bracelet around her ankle. The device was meant to be taken off six months later. Although the law establishes that the State is responsible for the expenses that such electronic surveillance measure implies, it is not the case, at least at the federal level. María was spared to pay the monthly cost of the device (around 250 US Dollars), which was gifted to her by the private security firm for her conditions of vulnerability, but her family still had to pay 800 US Dollars as guarantee.

María's post-release experience was marked by the rejection of her community and increased poverty: her previous, modest home had been looted by her neighbors. Furthermore, because of her indigenous identity and age, María only uses skirts, which meant that she had to disguise the device with a bandage, in order not to be stigmatized further. Finally, the COVID-19 pandemic also impacted negatively on María's submission to electronic surveillance: because of the increased slowness of judicial procedures during the pandemic and the change of the judge appointed to her case, she ended up wearing the bracelet for 16 months

instead of six. The high temperature that the device reached when charging, ended up affecting María's skin causing the reduction of her foot's size.

Gaby and her family currently still face the severe economic conditions which characterized their life before being employed as drug couriers and subsequently incarcerated. They carry the social and legal stigma of a criminal record which will not be erased and live in conditions of deprivation in terms of housing, health and access to basic food.

Gaby's eldest daughter, -who was institutionalized during her mother's incarceration and does not want to speak of it, leaving space to suspects about possible situations of traumas and abuse which would not be uncommon in Mexico- had to leave school and she found a low-paid informal employment. Both her and sister are constantly vulnerable to live -if they have not lived it already- the sexual violence which their mother herself was victim of when she was only a child.

In my opinion, after years of research, perhaps this is the most distinctive feature of women's detention in Mexico.

References

- Amnistía Internacional (2016), *Sobrevivir a la muerte. Tortura de mujeres por policías y fuerzas armadas en México*, <https://amnistia.org.mx/contenido/wp-content/uploads/2020/03/sobrevivir-a-la-muerte.pdf>
- Belausteguigoitia Marisa (2013), a cura di, *Pintar los muros. Deshacer la cárcel*. PUEG-UNAM, Mexico City.
- Champo Sánchez Mihael (2022), *Ejecución penal en México. Un breve análisis*, in Champo Sánchez Mihael, Rueda de León Ordóñez Rogelio, *De la ejecución de la pena al modelo penitenciario mexicano*, Instituto de Investigaciones Jurídicas, UNAM, Mexico City,
- Garland David (1999), *Castigo y sociedad moderna. Un estudio de teoría social*, Siglo XXI Editores, Mexico City-Madrid.
- Giacomello Corina (2022), *The Legal Flaws and Material Implementation Gaps of Mexico's Rehabilitation Paradigm*, in Vanstone Maurice, Priestly Philip (eds), *The Palgrave Handbook of Global Rehabilitation in Criminal Justice*, Palgrave Macmillan, Cham, Switzerland.
- Giacomello Corina (2020), *Mujeres que usan drogas y privación de la libertad en México. Análisis y propuestas a partir de las voces de mujeres y adolescentes en cárceles y centros de tratamiento*, Equis Justicia para las Mujeres, A.C., Mexico City, <https://equis.org.mx/wp-content/uploads/2020/07/Informe-Mujeres-que-usan-drogas-y-privacion-de-la-libertad-en-Mexico.pdf>.
- Giacomello Corina (2007), *Rompiendo la zona del silencio. Testimonios sobre el penal de máxima seguridad del Altiplano, antes La Palma*, Ediciones Dipon, Ediciones Gato Azul, Mexico City.
- Fair Helen and Walmsley Roy (2022), *World Female Imprisonment List (fifth edition)*, Institute for Crime & Justice Policy Research, London, https://www.prisonstudies.org/sites/default/files/resources/downloads/world_female_imprisonment_list_5th_edition.pdf.
- INEGI (2022), *Censo Nacional de Sistema Penitenciario Federal y Estatales 2022 Presentación de resultados generales*, https://www.inegi.org.mx/contenidos/programas/cns-pef/2022/doc/cnsipef_2022_resultados.pdf.
- INEGI (2021), *Encuesta nacional de población privada de la libertad. ENPOL 2021. Principales resultados*, https://www.inegi.org.mx/contenidos/programas/enpol/2021/doc/enpol2021_presentacion_nacional.pdf.
- Murray Joseph, Bijlaved Catrien C. J. H., Farrington David P., Loeber Rolf (2014), *Effects of parental incarceration on children. Cross-national comparative studies*, American Psychological Association, Washington D.C.
- Sarre Miguel, Manrique Gerardo (2018), *Sistema de justicia de ejecución penal. Sujetos procesales entorno a la prisión en México*, Tirant Lo Blanch, Mexico City.
- Secretaría de Gobernación (2022), *Diagnóstico nacional sobre tortura sexual cometida*

contra mujeres privadas de la libertad en México,
Secretaría de Gobernación, Mexico City.

Secretaría de Seguridad y Protección Ciudadana (2023), *Cuaderno mensual de información estadística penitenciaria nacional*. Febrero 2023,

https://www.gob.mx/cms/uploads/attachment/file/811965/CE_2023_02.pdf.