

THE EARLY PUNISHMENT OF ACCUSED WOMEN: EXPERIENCES OF PRETRIAL DETENTION OF MOTHERS AND CHILDREN IN A MATERNAL-CHILD UNIT IN CHILE

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Abstract

The widespread use of pretrial detention as a response to crime has led to an increase in the population deprived of liberty in Latin America and the Caribbean. This situation has significantly affected women accused of drug crimes, with those accused representing a higher proportion than those convicted of this type of crime in prison. In the face of structural gender inequalities that overburden women's care, this heightened deprivation of liberty implies significant challenges hindering motherhood. As a result, in Chile, as in other countries, infants up to the age of two are allowed to be placed in maternal and child units in prison, both for convicted and accused persons, under the pretense of safeguarding the best interests of the child and strengthening the attachment bond. Based on interviews with accused women living in a mother-child unit with their children in Chile, this Article explores the experiences of mothers and children in the context of pretrial detention. The findings reveal precarious living conditions, difficulties in meeting children's basic needs, and an institutional bureaucracy that contributes little to the well-being of mothers and children. In contrast to convicted women, this situation is exacerbated in the context of pretrial detention. Imprisoned children are deprived of their rights and suffer deficiencies in food, health, education, and recreation. As a result, women experience unique pains of imprisonment associated with the exercise of motherhood and care, such as uncertainty

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about their child's future. This Article chronicles how pretrial detention is an early sentence that punishes, above all, based on gender and class.

INTRODUCTION

In Chile, as in many other countries, there has been a significant increase in the population deprived of liberty in recent decades, from 142 people per 100,000 inhabitants in 1974 to more than 300 in 2024, fifty years later.¹ In recent years, this rising figure has been even more pronounced in the context of an increasingly punitive criminal justice landscape. In the face of new challenges around criminality and high levels of perceived societal insecurity, the massive use of prison and the strengthening of criminal sanctions has been gaining more publicity and popularity in the government agenda and for citizens.²

A key manifestation of this punitive shift in Chile is the rising use of pretrial detention in recent years. Pretrial detention was a common practice until the inquisitorial procedural system of the last century, but with the modernization of the Code of Criminal Procedure in 2000, pretrial detention became an exceptional regulation.³ Pretrial detention in the modern era should guide a precautionary system in a criminal process that respects individual rights, and, in particular, the presumption of innocence.⁴ However, evidence shows that the

1 *World Prison Brief Data*, PRISON STUDIES, <https://www.prisonstudies.org/country/chile> [https://perma.cc/L5TF-EZY2].

2 *65% Cree que Chile está Peor en Comparación al 2000 y 59% Se Siente Pesimista Respecto a la Situación del Mundo en los Próximos 25 Años* [65% Believe that Chile is Worse Compared to 2000 and 59% Feel Pessimistic About the Situation of the World in the Next 25 Years], CADEM RSCH. & ESTRATEGIA (Jan. 5, 2025) (Chile), <https://cadem.cl/estudios/65-cree-que-chile-esta-peor-en-comparacion-al-2000-y-59-se-siente-pesimista-respecto-a-la-situacion-del-mundo-en-los-proximos-25-anos/> [https://perma.cc/CH5S-935K]; Latinobarómetro Survey 2023, LATINOBARÓMETRO (Chile), <https://www.latinobarometro.org/latContents.jsp> [https://perma.cc/73EY-DUPF].

3 See Mauricio Duce, *Prisión Preventiva en Chile: ¿Uso o Abuso?* [Preventive Detention in Chile: Use or Abuse?], CIPER (Chile) (Jan. 24, 2024), <https://www.ciperchile.cl/2024/01/24/prision-preventiva-uso-y-abuso/> [https://perma.cc/Z2A3-BF77]; Mauricio Duce & Cristián Riego, *La Prisión Preventiva en Chile: El Impacto de la Reforma Procesal Penal y de sus Cambios Posteriores* [Preventive Detention in Chile: The Impact of Criminal Procedure Reform and Its Subsequent Changes] 151, 163 (Universidad Diego Portales, 2015) (Chile), https://biblioteca.cejamerica.org/bitstream/handle/2015/1983/estudio_chile_pp.pdf [https://perma.cc/R454-TWFG].

4 See *id.*

number of accused persons deprived of liberty has doubled in the last ten years.⁵ We have reached pretrial detention figures similar to those seen in the inquisitorial system, again coinciding with setbacks in the extended duration of the processes.⁶

Women are the group most affected by this growth, despite representing only 8% of the total number of people deprived of liberty.⁷ From 1991 to date, the population of incarcerated women has increased fivefold, in contrast to the population of incarcerated men, which increased by a factor of 2.6.⁸ Chile is the Latin American country with the second highest proportion of women in prison in the region, a position it held at least until the end of 2024.⁹ Concerning pretrial detention, data from the Chilean Penitentiary Services also reflect gender inequality: 46% of the total number of women deprived of liberty have the procedural status of defendants, in contrast to 35% of men.¹⁰

Most women are deprived of liberty for crimes contained in Law No. 20,000, which establishes the sentences associated with drug crimes.¹¹ Of the total population of

5 Mauricio Salgado, *Un Sistema Desbordado: Radiografía al Sistema Penitenciario [An Overwhelmed System: An Overview of the Prison System]*, CENTRO DE ESTUDIOS PÚBLICOS (July 18, 2024) (Chile), <https://www.cepchile.cl/investigacion/voces-del-cep-07-julio-2024> [<https://perma.cc/E8LR-XD8N>].

6 See Duce, *supra* note 4.

7 Gendarmería de Chile, *Caracterización de Personas Privadas de Libertad [Characterization of Persons Deprived of Liberty]* (Dec. 31, 2024) (Chile), https://www.gendarmeria.gob.cl/car_personas_pp.html [<https://perma.cc/962V-8THD>] [hereinafter *Characterization of Persons Deprived of Liberty*].

8 Estimated based on data collected from 1991 to 2023 from Gendarmería de Chile, *Compendios Estadísticos desde 1991 [Statistical Compendia Since 1991]* (Chile), <https://www.gendarmeria.gob.cl/compendios.html> [<https://perma.cc/W47N-44R5>] [hereinafter *Statistical Compendia Since 1991*]; JACINTA RODRÍGUEZ ET AL., *TRAYECTORIAS DE CIDA DE MUJERES PRIVADAS DE LIBERTAD POR LA LEY 20.000: PRESENTACIÓN DE RESULTADOS [LIFE TRAJECTORIES OF WOMEN DEPRIVED OF LIBERTY FOR CRIMES UNDER LAW 20.000]* 4 (Centro de Estudios Justicia y Sociedad, 2024) (Chile), https://justiciaysociedad.uc.cl/wp-content/uploads/2024/07/Presentacion_Mujeres-y-ley-20000_V1_ok.pdf [<https://perma.cc/V9SV-PUEL>].

9 NAT'L INST. OF HUM. RTS., *ANNUAL REPORT 2024: HUMAN RIGHTS SITUATION IN CHILE*, 249 (2024) (Chile), <https://www.indh.cl/informe-anual-situacion-de-los-derechos-humanos-en-chile-2024/> [<https://perma.cc/T6DV-U4NC>] [hereinafter *INDH*].

10 *Characterization of Persons Deprived of Liberty*, *supra* note 7.

11 Law No. 20000, *Sustituye La Ley N° 19.366, que Sanciona el Tráfico Ilícito de Estupefacientes y Sustancias Sicotrópicas [Replacing Law No. 19.366, which Penalizes the Illicit Traffic of Narcotics and Psychotropic Substances]*, February 2, 2005, DIARIO OFICIAL [D.O.] (Chile). See also Biblioteca del Congreso Nacional de Chile, *Historia de la Ley N° 2019.000366 [History of Law No. 20,000]* (Feb. 16, 2025) (Chile), <https://www.bcn.cl/historiadelaley/nc/historia-de-la-ley/5755/> [<https://perma.cc/N5MR-UT8J>].

incarcerated women, 61% are charged with violation of Law No. 20,000, in contrast to 24% of the total population of incarcerated men.¹² In this context, it is essential to note that the proportion of women detained pretrial by Law 20,000 is twenty points higher than the general average—67% of women charged.¹³ This shows a greater use of this type of exceptional punishment for drug offenses than for other crimes. In other words, almost seven out of ten women imprisoned for drug crimes are accused but have not yet been convicted.

The increase in the number of accused women deprived of liberty has prompted critique of prison policy since it has been evidenced, mainly from feminist criminologists, that there are gender inequalities associated with prison that are scarcely considered by the criminal justice and carceral systems.¹⁴ One of the main consequences of a patriarchal structure where care responsibilities fall mainly on women is the hindrance of motherhood.¹⁵ Nine out of ten women in prison are mothers, and 60% of the children are left in a home without a parental figure when they are deprived of their liberty—in contrast to 35% of them when it is the father.¹⁶

To address this issue, Chilean regulations since the 1990s have mandated the creation of maternal-child units within prisons to accommodate pregnant women and mothers with children under two years old. Since then, there have been several changes to the regulations, during which time thousands of children have lived temporarily in these

12 Estimated based on 2023 data from *Statistical Compendia Since 1991*, *supra* note 8.

13 MINISTERIO DE JUSTICIA Y DERECHOS HUMANOS, PLAN DE TRABAJO CONDICIONES CARCELARIAS DE MUJERES PRIVADAS DE LIBERTAD [WORK PLAN FOR PRISON IMPROVEMENTS FOR WOMEN DEPRIVED OF LIBERTY] 19 (2023) (Chile).

14 See, e.g., Carmen Antony, *Mujeres Invisibles: Las Cárceles Femeninas en América Latina* [*Invisible Women: Female Prisons in Latin America*], NUEVA SOCIEDAD 73 (2007) (Arg.), <https://nuso.org/articulo/las-carceles-femeninas-en-america-latina/> [<https://perma.cc/LUM2-238H>].

15 See Eduardo Valenzuela et al., *Impacto social de la prisión femenina en Chile* [*Social Impact of Female Imprisonment in Chile*], in PROPUESTAS PARA CHILE [PROPOSALS FOR CHILE] 279, 295 (Centro de Políticas Públicas, Pontificia Universidad Católica de Chile ed., 2012) (Chile), <https://justiciaysociedad.uc.cl/wp-content/uploads/2023/02/Impacto-social-de-la-prision-femenina-en-chile.pdf> [<https://perma.cc/QP3V-AC88>].

16 Aldo Cortázar et al., *¿Qué asa con los hijos de madres encarceladas? Cómo amortiguar los efectos nocivos para los niños cuyos padres están privados de libertad* [*What Happens to the Children of Incarcerated Mothers? How to Mitigate the Harmful Effects on Children Whose Parents Are Deprived of Liberty*], INSTITUTO DE POLÍTICAS PÚBLICAS 2 (Diego Portales University, 2015) (Chile), <https://www.camara.cl/verDoc.aspx?prmID=117002&prmTIPO=DOCUMENTOCOMISION> [<https://perma.cc/9CTY-B62D>].

sections.¹⁷ These spaces purport to safeguard the best interests of the child by fostering attachment bonds with the mother. However, concerns have been raised by civil society, academia, and international organizations about the living conditions in these units, the caregiving dynamics, and the broader legal and social framework.¹⁸ Part of the challenge in this area is the lack of available information to inform public policymaking regarding women and children.

This Article explores the experiences and narratives of women in pretrial detention with their children, revealing that these women suffer the pains of anticipated punishment in a socio-legal context that criminalizes them based on their class and gender.

The Article aims to investigate and reflect on the pains of anticipated punishment suffered by women who are in pretrial detention with their children in a sociolegal context that criminalizes significantly by class and gender. Our inductive analysis of the content of the interviews with women in prison revealed key categorizations of these women's experiences. Our approach incorporates a mixed methodology with (1) a quantitative introductory analysis that shows the surprising number of women in this condition, which is complemented by an analysis of secondary studies of the subject, and (2) a qualitative analysis based on the interviews conducted with six women serving sentences and six women in pretrial detention at El Centro Penitenciario Femenino de Santiago ("CPF").

There is a dearth of literature examining women who are serving a sentence or pretrial detention in prison with their children. There is even less scholarly analysis of the differentiation between detained women's two experiences: being charged or convicted. This Article aims to fill that gap by examining the impact that more punitive legal frameworks can have on pretrial detention conditions from a gender and human rights perspective.

The structure proceeds as follows. First, we evaluate the legal framework governing maternal-child units and pretrial detentions. Then, we critically examine existing research on motherhood in confinement and the use of pretrial detention. After identifying the gaps in the existing literature that motivated our work, we share key insights from our interviews with women incarcerated at the CPF, highlighting the compounded suffering of mothers

17 See Paola Beatriz Medina Martínez, *Maternidad y Lactancia Materna en la Cárcel: Análisis Desde la Etnografía Institucional* [Motherhood and Breastfeeding in Prison: An Analysis from Institutional Ethnography] 11 (2017) (MGPP Thesis, University of Chile) (Chile).

18 See, e.g., NAT'L INST. OF HUM. RTS., *supra* note 9, at 253.

and children held in pretrial detention. Finally, we offer reflections on our findings and policy recommendations to address the identified gaps and challenges to creating a just system.

I. History of Regulation Regarding Women Who Live in Prison with Their Children: Progress and Legal Discussions

The admission of infants with their mothers to prison in Chile is regulated by minimal legislation.¹⁹ Article 19 of the 1998 Prison Regulations mandates that in Women's Penitentiary Centers, there must be "units that will have adequate spaces and conditions for pre-and post-natal care and treatment, as well as for the care of breastfeeding children of inmates. In those places where these Centers do not exist, the inmates will remain in separate rooms from the rest of the population."²⁰

Allowing children to enter prison with their mothers is intended to safeguard the best interests of the child,²¹ recognize the importance of ensuring the attachment bond, and allow the continuity of breastfeeding, in acknowledgement of how important these factors have proven to be in the biopsychic development of each child.²² The policy also intends to prioritize access to maternal care, especially when there is an absence of networks on the outside that can offer such care—most children are left in a home without a dependent mother or father when the mother is deprived of her liberty.²³

From the policy's implementation until 2005, the care of children inside prisons was implemented through the Provisional Shelter Program for Infants between the Chilean Penitentiary Services and the National Service for Minors, with fifty places available for children. Then, from 2005 until 2014, the policy was implemented through the Transitional

19 See Javiera Cecilia Ramírez Albornoz, *La situación actual que viven niños y niñas menores que residen con sus madres en prisión y su regulación en Chile* [The Current Situation of Children Under the Age of Majority Living with Their Mothers in Prison and Its Regulation in Chile], REVISTA ESTUDIANTEL DE DERECHO PROCESAL [STUDENT J. PROCEDURAL L.] 36, 37 (2022) (Chile).

20 Decree 518, art. 19, Aprueba "Reglamento De Establecimientos Penitenciarios" [Approving "Regulations for Penitentiary Establishments"], Mayo 22, 1998 (Chile).

21 See INDH, *supra* note 9, at 251.

22 See *Lactancia materna y alimentación complementaria* [Breastfeeding and Complementary Feeding], PAN AMERICAN HEALTH ORGANIZATION, <https://www.paho.org/es/temas/lactancia-materna-alimentacion-complementaria> [<https://perma.cc/4ZWT-MVDC>]; JOHN BOWLBY, 3 ATTACHMENT AND LOSS 201 (1969).

23 See Cortázar et al., *supra* note 16, at 2.

Residency Program between the same institutions, and it was expanded to 110 mother-child places. In 2008, an agreement was signed with the foundation Integra so that infants could be ensured access to food, health, diapers, and preschool education while living in prisons. Between 2014 and 2016, the program was transformed into the Program of Care for Pregnant Women and Breastfeeding Children (“PAMEHL”), in which the limit on maximum places was eliminated, and a transportation service for children to the free environment was added. Eventually, in 2017, this program was incorporated into the Creciendo Juntos program, providing greater health care (pediatricians visited some units), toiletries, diapers, and maternity and parenting items.²⁴

At the end of 2021, the National Service for the Specialized Protection of Children and Adolescents was created, separating from the Servicio Nacional de Menores (“SENAME,” later the National Service for Youth Social Reintegration).²⁵ Beginning 2025, the stay of children in prison is protected under the Abriendo Caminos program of the Intersectoral Social Protection System, which attends to children with a significant adult deprived of liberty abroad.²⁶ While the program provides that only children up to two years of age are allowed to enter, in practice children sometimes stay until they are two and a half years old, which is the maximum age at which they are allowed to be in the available levels of preschool education in prisons.

In 2017, bill Bulletin 11073-07 was promoted and discussed in Chilean Congress from a human rights standpoint. The bill Bulletin proposes a modification of the Code of Criminal Procedure to add a new Article in the Title on the execution of convictions, the “Suspension of the Execution of the Criminal Sentence.”²⁷ In the case of a pregnant woman or mother of a son or daughter under three years of age at the time of the conviction, its execution shall be deferred until the son or daughter reaches three years of age . . . [or]

24 See Medina, *supra* note 17, at 12.

25 U.S. DEP’T OF LAB., 2021 FINDINGS ON THE WORST FORMS OF CHILD LABOR: CHILE (2021), [<https://perma.cc/CS65-LG6B>].

26 *Chile Seguridades y Oportunidades* [*Chile Securities and Opportunities*], MINISTERIO DE DESARROLLO SOCIAL Y FAMILIA [MINISTRY OF SOC. DEV. & FAM.] (Chile), <https://www.chileseguridadesyopportunidades.gob.cl/programa-abriendocaminos> [<https://perma.cc/NQ2H-Z956>].

27 Bill No. 11073-07, Modifica el Código Procesal Penal en materia de procedencia de la prisión preventiva y de suspensión de ejecución de la sentencia, respecto de mujeres embarazadas o que tengan hijos o hijas menores de tres años [Modifies the Criminal Procedure Code Regarding the Propriety of Preventive Detention and Suspension of Sentence Execution for Pregnant Women or Women with Children Under Three Years Old], Enero 4, 2017 (Chile).

in the case of women who become pregnant during the execution of their sentence” and the addition of a new numeral in Article 141 was proposed, which lists the circumstances where it is prohibited to decree preventive detention that “the defendant is pregnant or has a child under three years of age.”²⁸ In the project discussions, suspension was modified by substituting the measure or sentence. To date, it is a project that has not yet been approved.

The Committee that monitors compliance with the provisions of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) expressed its concern about the risks faced by pregnant women in the face of problems of access to obstetric and gynecological health.²⁹ However, as seen through our normative analysis, the discussion and advances on this issue have primarily focused on the well-being of children, without explicitly considering the consequences that all this also has for women. Our study aims to recenter women in this story, analyzing how their unique pains interact with the violations of their children’s rights and pointing toward the need for immediate, systemic reform in the Chilean criminal justice system.

II. Bibliographic and Documentary Review

Recently, there has been an uptick in scholarly attention to the conditions of infants living inside prisons with their mothers who are deprived of liberty in some countries. Most studies on the topic apply the lens of psychology and public health due to the known impact of imprisonment on the development of the infant, the mother’s well-being, and their attachment bond.³⁰ From a criminology perspective, scholars have examined the possible impacts policies may have on deterrence, and the phenomenon has also been discussed from a broader structural, gender, and socio-legal perspective.³¹

28 Ramírez Albornoz, *supra* note 19, at 39.

29 U.N. Convention on the Elimination of All Forms of Discrimination Against Women, *Concluding Observations on the Seventh Periodic Report of Chile*, ¶ 48, U.N. Doc. CEDAW/C/CHL/CO/7 (Mar. 14, 2018).

30 See, e.g., Rachel Dolan, Jenny Shaw & Mark Hann, *Pregnancy in Prison, Mother and Baby Unit Admission and Impacts on Perinatal Depression and “Quality of Life”*, 30 J. FORENSIC PSYCHIATRY & PSYCHOL. 551, 553 (2019); Rachel Dolan et al., *Pregnancy in Prison, Mental Health and Admission to Prison Mother and Baby Units*, 30 J. FORENSIC PSYCHIATRY & PSYCHOL. 448, 449 (2019).

31 See, e.g., Carlo Lai et al., *Motherhood in Alternative Detention Conditions: A Preliminary Case-Control Study*, 19 INT’L J. ENV’T RSCH. & PUB. HEALTH 6000 (2022); Jo Taylor et al., *Rapid Review of the Evidence on Models of Service Delivery for Correctional Centre-Based Mothers and Children’s Units: Does Our Approach Need to Change?*, 9 BMJ GLOB. HEALTH 1 (2024).

However, there is little specific literature on the conditions of women who are in pretrial detention with their children. This may be because the sample is significantly reduced—the proportion of women deprived of liberty who have children, live with their children in prison, and are in the condition of defendants—or because it is a population sometimes characterized by high turnover.

Given this context, the following bibliographic review maps the existing scholarship on the following topics: the pains of the imprisonment of women and their children living in prison, the pains of incarceration in persons deprived of liberty in pretrial detention, and the configuration of the trajectories of women deprived of liberty and their overrepresentation in pretrial detention. Our work fills a gap in the literature, synthesizing these findings to examine the particular pains of mothers held in pretrial detention and concluding that these women and their children suffer unjust anticipatory punishment with wide-ranging social consequences.

A. Pains of the Imprisonment of Women and Their Children Living in Prison

When treating women deprived of liberty, the extant literature usually emphasizes the differentiated gendered consequences of being in prison, both in terms of the pain experienced during incarceration and the unique problems women face.³² Not only are women more likely to have trajectories of greater marginalization and vulnerability,³³ but also, the so-called “pains of imprisonment”³⁴ in women differ. Family relationships and children are among the most central concerns for detained women.³⁵

32 See, e.g., An Nuytiens & Esther Jhaes, *When Your Child Is Your Cellmate: The “Maternal Pains of Imprisonment” in a Belgian Prison Nursery*, 22 CRIMINOLOGY & CRIM. JUST. 132, 132–33 (2022) (“The experience of imprisonment for women is both quantitatively and qualitatively different: not only do women suffer *more* from being imprisoned, they also suffer in *distinctive* ways.”) (emphasis in original).

33 See Pilar Larroulet, *Cárcel, Marginalidad y Delito [Prison, Marginalization, and Crime]*, in LOS INVISIBLES: POR QUÉ LA POBREZA Y LA EXCLUSIÓN SOCIAL DEJARON DE SER PRIORIDAD [THE INVISIBLES: WHY POVERTY AND SOCIAL EXCLUSION CEASED TO BE A PRIORITY] 162 (Catalina Siles ed., 2016) (Chile); Cristina Rodríguez Yagüe & Esther Pascual Rodríguez, *LAS MUJERES EN PRISIÓN: LA VOZ QUE NADIE ESCUCHA. EXPLORANDO NUEVAS VÍAS DE CUMPLIMIENTO DE LAS PENAS IMPUESTAS A MUJERES A TRAVÉS DE LA CULTURA [WOMEN IN PRISON: THE VOICE NO ONE HEARS. EXPLORING NEW WAYS OF SERVING SENTENCES IMPOSED ON WOMEN THROUGH CULTURE]* 51 (2022) 9 (Spain).

34 See GRESHAM M. SYKES, *THE SOCIETY OF CAPTIVES: A STUDY OF A MAXIMUM SECURITY PRISON* 63–83 (Princeton Univ. Press rev. ed. 2007) (1958) (coining term “pains of imprisonment”).

35 See SANDRA ENOS, *MOTHERING FROM THE INSIDE: PARENTING IN A WOMEN’S PRISON* 21 (2001).

Another consequence accentuated by gendered realities is the double stigmatization women suffer for being in detainment. Carmen Antony has argued that in prison, women suffer the stigma of breaking not only with the legal norm but also with the gendered norm of their role in society: “A woman who goes through prison is described as ‘bad’ because she contravened her role as a wife and mother, submissive, dependent and docile.”³⁶

In this sense, some authors suggest that in association with this doubled burden, a third distinct sense of social shame emerges: having their children living with them behind bars.³⁷ This situation would not only impact women’s emotional well-being, sense of guilt, shame, and frustration,³⁸ but could also contribute to the disintegration of social support networks from the outside world as an extension of the carceral punishment.³⁹ This phenomena has been recognized as the maternal pains of imprisonment.⁴⁰

Although much of the literature has examined how separation from their children is the primary source of pain for mothers, some authors reflected on the unique pains that can arise from living with children in prison.⁴¹ This experience seems to present dual tensions, as described in the scarce literature on the subject.⁴² On the one hand, there is the positive

36 Antony, *supra* note 14, at 76.

37 See María Florencia Actis, *Un acercamiento a las identidades maternas en contextos carcelarios: sexualidades, disciplinas y deseos* [A Study on Maternal Identities in Carceral Contexts: Sexualities, Disciplines, and Desires], 10 IDENTIDADES 67, 73 (2016) (Arg.); Camila Boza Orellana et al., *Maternidad en privación de libertad: arreglos de Cuidado de infantes en la Unidad Materno-Infantil del Centro Penitenciario Femenino San Joaquín* [Motherhood in Deprivation of Liberty: Infant Care Arrangements in the Maternal-Child Unit of the San Joaquín Women’s Penitentiary Center], 61 PERSONA & SOCIEDAD 47 (2020) (Chile).

38 See Claudiana Perenson, *La maternidad en el encierro: una aproximación a las femeneidades desviadas* [Motherhood in Confinement: An Approach to Deviant Femininities], VI JORNADAS DE JÓVENES INVESTIGADORES DEL GINO GERMANI [CONF. OF YOUNG RESEARCHERS, GINO GERMANI RSCH. INST.] 9 (2011) (Arg.).

39 See Amanda Burgess-Proctor, *Comparing the Effects of Maternal and Paternal Incarceration on Adult Daughters’ and Sons’ Criminal Justice System Involvement: A Gendered Pathways Analysis*, 43 CRIM. JUST. & BEHAV. 1034, 1038 (2016).

40 See ISLA MASSON, *INCARCERATING MOTHERHOOD: THE ENDURING HARMS OF FIRST SHORT PERIODS OF IMPRISONMENT ON MOTHERS* 41 (2019).

41 See, e.g., Nuytiens & Jehaes, *supra* note 32, at 135.

42 See, e.g., Livia Rangel de Christo Nunes et al., *Narrativas sobre as práticas de maternagem na prisão: a encruzilhada da ordem discursiva prisional e da ordem discursiva do cuidado* [Narratives on Mothering in Prison: The Crossroads Between the Prison System’s Discursive Order and the Discursive Order of Care], 36 CADERNOS DE SAÚDE PÚBLICA 1, 5 (2020) (Braz.).

aspect of having the opportunity to exercise the role of mother with their children inside⁴³ and the importance of respecting the naturalness of a baby being with its mother.⁴⁴ Some studies have pointed out that the presence of children makes the stay easier for detained mothers.⁴⁵ However, on the other hand, pain and stress are a transversal finding about the conditions in which they live. Generally prisons offer insufficient resources and access to services, but other harms include the limited possibilities for early socialization, infant and maternal healthcare, and direct exposure to the prison regime.⁴⁶ There is also an overarching sense of discomfort stemming from the mother's how inappropriate it is for their children to be subjected to carceral circumstances with them.⁴⁷ Hence, all the pains associated with that psychological trauma arise as well.

B. Pains of the Imprisonment in Persons Deprived of Liberty in Pretrial Detention

Just as the literature has scarcely delved into women who are deprived of liberty living with their children in prison, it has also only briefly investigated the comparative experience of those who are specifically in jail because of pretrial detention.⁴⁸ While much has been written about the legal consequences of this form of deprivation of liberty, the pain, conditions, and well-being of those who serve have not been considered to the same extent. This measure has also not been approached from a gendered perspective.

A study conducted in the United States concluded that pretrial detention centers have higher turnover rates of both incarcerated persons and staff, more limited resources, and

43 See Boza et al., *supra* note 37, at 59; Nunes et al., *supra* note 42, at 4–8.

44 See Tarja Pösö et al., *Children Residing in Prison with Their Parents: An Example of Institutional Invisibility*, 90 PRISON J. 516, 526 (2010); Jane R. Walker, Eileen Baldry & Elizabeth A. Sullivan, *Residential Programmes for Mothers and Children in Prison: Key Themes and Concepts*, 21 CRIMINOLOGY & CRIM. JUST. 21, 28 (2019).

45 See Ana Máisa Freitas, Ana Risca Inácio & Luísa Saavedra, *Motherhood in Prison: Reconciling the Irreconcilable*, 96 PRISON J. 415, 425 (2016).

46 See Martha Paynter et al., *Mother-Child Programs for Incarcerated Mothers and Children and Associated Health Outcomes: A Scoping Review*, 33 NURSING LEADERSHIP 81, 92 (2020); Lai et al., *supra* note 31, at 5.

47 See Nuytiens & Jhaes, *supra* note 32, at 141.

48 See Claudia N. Anderson, Joshua C. Cochran & Andrea N. Montes, *How Punitive Is Pretrial? Measuring the Relative Pains of Pretrial Detention*, 26 PUNISHMENT & SOC'Y 790, 803–07 (2024).

provide fewer services than postconviction prisons.⁴⁹ These conditions are replicated in Chile, and people in pretrial detention are not eligible for reintegration programs.⁵⁰ Likewise, the literature that has investigated the impact of prison on mental health accounts for two main findings that may suggest how harmful pretrial detention can be to people's well-being. First, it has been shown that the initial phase of confinement presents a greater risk of emotional distress, suicide or self-harm and disruptive behaviors,⁵¹ demonstrating that even brief periods of incarceration severely harm people's mental health. Secondly, uncertainty—a daily state of being in pretrial detention when individuals do not know how long they will be detained and whether they will be sentenced—harms detainees' mental health, causing particular stress and anxiety.⁵² Oleski shows in his study that anxiety levels in those who are in pretrial detention increase over time, unlike those who are serving sentences, where it decreases when adjusted after the initial stress.⁵³ This pain would be exacerbated by heightened uncertainty.

The consequences of pretrial detention can be just as harmful as deprivation of liberty in convicted persons, presenting a greater risk of recidivism, family disruption, damaged work development, and projections of lower income and worse health.⁵⁴ The authors suggest that this could be due to the increased risk of conviction but also because of the same experience during deprivation of liberty with the loss of social ties, victimization, and mistreatment by prison staff.

When comparing people in pretrial detention and those serving sentences, those in pretrial detention are less likely to report that prison staff keep them safe and secure and

49 See Elisa Toman, Joshua Cochran & John Cochran, *Jailhouse Blues? The Adverse Effects of Pretrial Detention for Prison Social Order*, 45 CRIM. JUST. & BEHAV. 316, 318 (2018).

50 See Bernardita Frez Ciscutti, *Preventive Detention: Deepening Gaps*, JUNTOS POR LA REINSECCIÓN (Feb. 6, 2024), <https://www.juntosporlareinsersion.cl/post/columna-de-opinion-prision-preventiva-ahondando-brechas> [<https://perma.cc/G7JS-ASLB>].

51 See Kenneth Adam, *Adjusting to Prison Life*, 16 CRIME & JUST. 275, 300 (1992).

52 See Gary Mason, *Indeterminate Sentencing: Cruel and Unusual Punishment, or Just Plain Cruel?*, 16 NEW ENG. J. CRIM. & CIV. CONFINEMENT 89, 103 (1990).

53 See Merritt S. Oleski, *The Effect of Indefinite Pretrial Incarceration on the Anxiety Level of an Urban Jail Population*, 33 J. CLIN. PSYCHOL. 1006, 1007 (1977).

54 See Anderson et al., *supra* note 48, at 803.

report a more violent environment.⁵⁵ Pretrial detainees are more likely to report concerns about being victimized, to be labelled as exhibiting violent behavior, and to engage in physical fights with prison staff. In this way, pretrial detention is sustained as an anticipated punishment.⁵⁶

C. Status Quo of Women Deprived of Liberty and Inequalities in the Use of Pretrial Detention

National and international literature has shown that, although most of the prison population has trajectories of high levels of adversity and social exclusion, women experience these effects even more acutely.⁵⁷ Although the figures vary by country, it has been shown that in Latin America, the proportion of women deprived of liberty due to drug criminalization ranges between 40 and 80%, while the proportion of men detained on drug charges is significantly lower.⁵⁸

In Chile specifically, this difference between the proportion of women and men is almost forty percentage points, followed by the crime of robbery which has the second largest difference with men leading.⁵⁹ A recent study characterized the trajectory of women deprived of liberty by drug law, providing an account of the various adversities that accumulated in their histories in which class and gender oppressions intersected, generating experiences of acute exclusion.⁶⁰ Many women had suffered various forms of violence, and most became pregnant during adolescence and ended their educational career in a family context without social or economic networks, state support, or the presence of the father.⁶¹ The crimes they were accused of were usually economically motivated, and

55 See *id.*; see also David May et al., *Going to Jail Sucks (and It Really Doesn't Matter Who You Ask)*, 39 AM. J. CRIM. JUST. 250, 260 (2014).

56 See Mikaela Rabinowitz, “*What Will Become of the Innocent?*”: Pretrial Detention, the Presumption of Innocence, and Punishment Before Trial, 7 UCLA CRIM. JUST. L. REV. 1, 26 (2023).

57 See Larroulet, *supra* note 33.

58 COLETTA A. YOUNGERS, *LIBERARLAS ES JUSTICIA: MUJERES, POLÍTICAS DE DROGAS Y ENCARCELAMIENTO EN AMÉRICA LATINA* [RELEASING THEM IS JUSTICE: WOMEN, DRUG POLICY AND INCARCERATION IN LATIN AMERICA] 6–8 (2023), https://www.wola.org/wp-content/uploads/2023/11/Briefing-Paper-Liberarlas-es-justicia_Final_Web.pdf [<https://perma.cc/RN4Q-8FMT>].

59 See RODRÍGUEZ ET AL., *supra* note 8, at 6.

60 See *id.* at 26.

61 See *id.*

except for profiles of acute trauma of lesser prevalence, there was a low level of criminal involvement.⁶² Most of the women worked independently and were usually convicted or charged with micro-trafficking, not as part of an important drug trafficking organization (nor as a leader). The exception to this rule was migrant women who, in the intersectionality of oppression and trajectories of greater economic precariousness, had most often worked transporting drugs as *burreras*.⁶³

In Chile, micro-trafficking is punishable by a medium or maximum term of imprisonment, which implies a time limit of between 541 days and five years in prison.⁶⁴ This legislation makes it difficult for pregnant women or women with breastfeeding children to access the measures contemplated in Law 18.216, which establishes alternative penalties for deprivation of liberty.⁶⁵ Article 4(a) of that law provides that the custodial sentence must not exceed three years to be eligible for an alternative sentence.⁶⁶

This context shows the reasons for the hardening of criminal policies on drugs, specifically in Chile with Law 20,000. The Inter-American Commission on Human Rights (CIDH) has established the obvious: in Latin America, women are more likely to receive the precautionary measure of pretrial detention.⁶⁷ It has also been shown that access to justice and services is worse in the region for those in pretrial detention than for those who are serving sentences,⁶⁸ which would further exacerbate gender inequality in prison conditions that are already inequitable for women. In this way, the tightening of drug policies has generated a severe increase in the levels of female incarceration of both prosecuted and convicted women. In particular, the CIDH warns that this situation occurs in a context that, in addition to a lack of proportionality in the treatment of these crimes, excessive use

62 See *id.* at 23.

63 See *id.*

64 INDH, *supra* note 9, at 262–63.

65 See Law No. 18.216, *Establece Penas que Indica Como Sustitutivas a las Penas Privativas o Restrictivas de Libertad* [Establishes Substitutes for Custodial or Liberty-Restricting Sentences], Febrero 12, 2025 (Chile).

66 See *id.* at art. 4(a).

67 See INTER-AM. COMM’N ON HUM. RTS., *Women Deprived of Liberty in the Americas*, H.R. Doc. 91/23, 24, 26 (2023).

68 See *Uso excesivo de prisión preventiva en A. Latina afecta de manera desproporcionada a las mujeres* [Excessive Use of Pretrial Detention in Latin America Disproportionately Affects Women], DEJUSTICIA (June 3, 2019), <https://www.dejusticia.org/uso-excesivo-de-prision-preventiva-en-a-latina-afecta-de-manera-desproporcionada-a-las-mujeres/> [https://perma.cc/G2QH-PECA].

of pretrial detention, and restrictions on procedural benefits, is characterized by a lack of consideration of the circumstances surrounding the commission of crimes by women and the personal factors that cause their involvement in these activities, on the part of judicial operators.⁶⁹

This evidence, alongside the knowledge gaps regarding the consequences of the use of pretrial detention, Chile's massive reliance on imprisonment, and the lack of a gender, class, and children's perspective on prison policies, motivated our study.

III. Objectives, Methodology, and Contribution

A. Methodology

Our study⁷⁰ sought to investigate the conditions in which women live with their children in prison, both in pretrial detention and postconviction, highlighting the relevant differences between these experiences. To achieve this objective, a mixed methodology was applied. First, we conducted a quantitative analysis of administrative records of the Chilean Penitentiary Services of Chile that recorded how many pregnant women or women with infant children were deprived of their liberty in the last five years. Our analysis also added information about each detainment's procedural quality.⁷¹

The quantitative analysis was complemented with qualitative methodologies. The latter consisted of interviewing twelve women deprived of liberty in the Women's Penitentiary Center of Santiago, which is in the Metropolitan Region of Chile. In this sample, the aim was to include six women in the condition of pretrial detention and six convicted women.

69 See INTER-AM. COMM'N ON HUM. RTS., *Women Deprived of Liberty in the Americas*, H.R. Doc. 91/23, at 46–47 (2023).

70 This Article is part of a broader study being carried out by the Center for Studies on Justice and Society of the Pontifical Catholic University from Chile, "Motherhood in prison. Experiences of women living with their children in mother and child units in Chile (UMI) in a punitive social context." The study investigates how motherhood is experienced in the maternal and child units of prisons, analyzing the adversities and positive aspects of this experience, and unravelling the impact it has on both women and their infants. The aim is to generate knowledge, from the perspective of women, that contributes to improving public and prison policies. This study was approved by the Scientific Ethics Committee in Social Sciences, Arts, and Humanities of the Pontifical Catholic University under ID 241003001.

71 Although this information is not very detailed, we were unable to access more data due to the low levels of systematized information on the prison population. This is due to lack of registration, structural problems in existing recordkeeping, and difficulties in accessing data through restricted transparency laws.

Using the total number of women living with their children in March 31, 2024 (n=115),⁷² we estimated that by interviewing twelve women we were reaching approximately 10% of the population. Given the qualitative purpose of our study, the sample was not chosen with statistical methods to ensure representativeness. To select participants, we requested that the Chilean Penitentiary Services psychology services allow us to interview women in the following conditions: convicted women and women going through pretrial detention, who were living with their children or had lived with them at the unit in the last 2 months, and who had some variation in terms of age, type of charged crime, and time they had been inside.

In Table 1, we describe the sample of women that participated in the study.

Table 1: Sample description (N=12)

<i>Characteristic</i>	<i>Item</i>	<i>Descriptive</i>
Procedural condition	<i>Convicted (%)</i>	58%
	<i>Defendant (%)</i>	42%
Number of children	<i>Mean</i>	3.57
	<i>Range</i>	2–5
Age child inside (months)	<i>Mean</i>	14
	<i>Range</i>	3–24
Repeat offender	<i>%No</i>	42%
Type of crime	<i>Drug offender</i>	75%
	<i>Violent crime</i>	17%
	<i>Another</i>	8%
Time inside (months)	<i>Mean – total</i>	16
	<i>Mean – pretrial</i>	9
	<i>Range</i>	6–36
Pending time (for convicted women, months)	<i>Mean</i>	28
	<i>Range</i>	3–96
Reasons why they have their children inside	<i>Children’s health issues (%)</i>	8%

72 This number does not consider pregnant women living at the units.

	<i>Father in prison</i>	17%
	<i>They had no one outside for childcare</i>	75%

B. The Interviewing Process

The interviews⁷³ were conducted using a semi-structured pattern that guided the conversation through a series of topics relevant to the research, but these questions did not define the limits of this interaction. The analysis of the information recorded was deductive and inductive,⁷⁴ which allowed us to analyze previous categories of information that we had in mind from the bibliographic review and earlier work on the subject but also enabled new avenues of inquiry that were not contemplated at the outset of the project.

Before each interview, the Chilean Penitentiary Services allowed us to enter the respective maternal and child units (one for convicted women and the other for pretrial detainees) and contact the women. There, the interviewer made the invitation to participate in the study based on a pre-established script. All the interviewees participated in the reading and prior signing of an Informed Consent form, which explained the research details, the possible risks and benefits, and provided information on who to contact in case of concerns. In addition, this document emphasized the voluntary nature of the interviewees' participation and the absence of legal repercussions for the decision to do so or not. All the women invited to participate did so willingly.

The interviews were conducted during November and December 2024 during two daytime times. We tried to conduct interview sessions while the babies were in the nursery, but in some cases, it was impossible, and we had to perform them with the baby present (N=3). As a research team, we had an exhaustive protocol of action in contingencies. These contingency plans included the action plan for an emotional overflow with Psychological First Aid techniques for witnessing situations of serious violence against children.

Given the limitations on the authorization from the Chilean Penitentiary Services of Chile, we could not record the interviews. In lieu of recordings, what was discussed in each interview was recorded with paper and pencil. When the interviewers left the establishment,

73 The questionnaire that was used as a guide for the conversation is included in the Appendix.

74 See JAMES W. DRISKO & TINA MASCHI, *CONTENT ANALYSIS* (2015).

they recorded their notes immediately in an Excel spreadsheet containing all the findings that were relevant to record.

The results are described below. An analysis and discussion section are followed by our conclusions and policy recommendations. Finally, we note the limitations of the study and opportunities for future research in this area.

IV. Results

A. A National Perspective on the Subject

The number of women living in the maternal and child sections decreased between 2019 and 2020, mainly due to the pardons granted during the COVID-19 pandemic.⁷⁵ However, from 2020 to date, there have been upward trends in the rates of both conviction and charging.⁷⁶ In 2022, more women were living in these sections as accused detainees than as convicted prisoners (eighty-seven versus seventy-nine).⁷⁷

Figures from the Chilean Penitentiary Services for the year 2024 showed that although the national average of coverage was 61%—that is, there was occupancy of six for every ten places—this was not the case throughout the territory.⁷⁸ In the northern regions, where there is an overrepresentation of migrant women deprived of liberty, coverage was 120% and 140% in the CPF Arica and CCP Iquique, respectively.⁷⁹ This accounts for a finding also discussed with personnel of the Chilean Penitentiary Services and the Undersecretariat for Children about the territorial differences in the conditions in which women and their children live in these sections. Overcrowding is one of the additional inequalities they must face, but there are others, such as the lack of a nursery inside.

75 See INDH, *supra* note 9; see also Graphic 1.

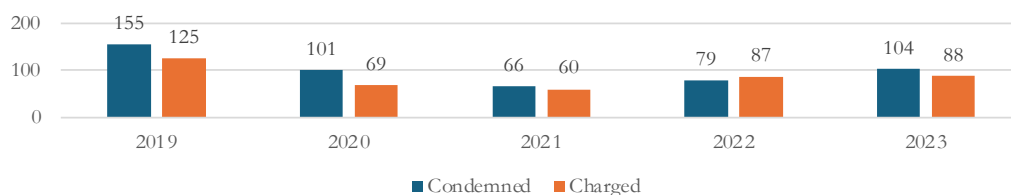
76 See INDH, *supra* note 9.

77 *Id.*

78 See *Comisión de Mujer y Equidad de Género [Women and Gender Equality Committee]* (TV Senado television broadcast May 3, 2024) (Chile), <https://tv.senado.cl/tvsenado/comisiones/permanentes/de-la-mujer-y-la-equidad-de-genero/comision-de-mujer-y-equidad-de-genero/2024-05-03/133839.html> [https://perma.cc/9SXA-3RTJ].

79 See INDH, *supra* note 9.

Graphic 1: Number of breastfeeding women in maternal and child sections according to year and procedural quality



Source: Authors' elaboration based on the 2024 Annual Report: Situation of Human Rights in Chile.

A study commissioned by the Undersecretary of Social Services in 2015 characterized this situation.⁸⁰ The study found that the average age at which children joined their mothers in prison was six months, and it was observed that, on average, they stayed inside for an average of 10.9 month.⁸¹ 68% of the children were born while the mother was in the CPF,⁸² and in 35% of cases, the father was also deprived of liberty.⁸³ Regarding who women perceive as caregivers of their child when they leave, only 9% indicate the father, evidencing a lack of active fatherhood.⁸⁴ This figure is consistent with a patriarchal context where care and domestic responsibilities fall mainly on women.

80 See ClioDinámica, *Estudio de Sistematización del Diseño e Implementación del Piloto Línea Materno Infantil – Programa Abriendo Caminos* [Study on the Systematization of the Design and Implementation of the Maternal-Infant Pilot Program – Abriendo Caminos Program] (2015) (Chile), https://www.desarrollosocialyfamilia.gob.cl/btca/txtcompleto/Final_Piloto_Materno_Infantil.pdf [https://perma.cc/XQ5R-6QVT].

81 *Id.* at 49.

82 *Id.* at 48.

83 *Id.* at 54.

84 *Id.* at 55.

B. Perspectives of Women Deprived of Liberty in CPF Santiago⁸⁵

1. Life Experience Before Admission to the UNIT

In line with extant literature, the reports of the women interviewed in the maternal and child sections show life experiences marked mainly by barriers associated with class and gender. Recurring themes that emerged across the interviews included social exclusion, material shortages, economic difficulties, and precarious access to jobs. Additionally, many interviewees reported that they had few support networks and little parental co-responsibility in raising children and in domestic chores, a close environment dedicated to criminal activities, and a history of substance use or domestic violence. This gives an account of trajectories of profound marginality and exclusion, which mark the lives of the women accused and detained pre-conviction, even though most of the women indicated that before their arrest, they had not been involved in criminal activities, and only some had been previously deprived of liberty.

In qualitative terms, no significant differences were detected in the trajectories of those who are accused and that of the women who were interviewed by the study who were serving sentences postconviction. Previous studies have shown that the most significant differences in the trajectories of women deprived of liberty are predicted by the type of crime for which they serve a sentence, not necessarily by procedural quality.⁸⁶ The most significant differences, we will show in this analysis, lie in the conditions in which women live while in prison.

A substantial portion of the women we interviewed mentioned that the situation that led to their arrest and subsequent imprisonment was a crime, usually drug-related, committed by another person close to them in their presence, at their home, or in some context that directly involved them. In this context, the first glimpses of an anticipated punishment framework in the face of ambiguous events take shape, revealing the criminal justice

85 The CPF Santiago is the mother-child section with the best conditions in the country, although there are still differences in the quality of care between the section of convicted women and those in pretrial detention. Therefore, the findings described here represent the conditions in the metropolitan region and are not necessarily representative of other regions that probably have more profound opportunities for improvement. In the future, it would be important to obtain funding to visit and replicate this study in the other maternal and child units in the country to contrast the experiences and delve into new aspects of analysis.

86 See RODRÍGUEZ ET AL., *supra* note 8, at 8.

system's lack of recognition of detainees' motivations and the questionable justification underlying the "well" applied measure of deprivation of liberty.

Most women interviewed were deprived of liberty for crimes committed concerning Law 20,000. As discussed in the literature review, given that the penalties imposed by this regulatory framework are high, it is more likely that preventive detention will be decreed for this type of crime. Most of the women charged do not describe deep, constant criminal trajectories or association with a high level of involvement in illicit activities. Several of them mentioned that the punishment they were receiving felt disproportionate, also alluding to the fact that several of them had left small children out of prison.

When women are asked why they decided to enter prison with their children under two years of age, dissimilar reasoning was offered for why it could improve the well-being of their children. While some pointed out that "no one is going to take care of a child better than his mother," others highlighted that the absence of support networks, and more specifically, the absence of other women in their environment who could take care of their children, were factors that led them to make their decision. One example of this was that even some women with adult children decided not to leave their baby in their other child's care because they were male, pointing out that "if they were female daughters," they would undoubtedly choose them to take care of their babies, and they would be free. A father figure was rarely present, and when he was, he is not identified as someone trustworthy who could take charge of the child's upbringing and care. In this sense, the gendered expectation of caregiving was present throughout the interviews. Those with support networks pointed out that they did not want to continue adding responsibility or "bothering"—as they put it—the families or friends who cared for their other children.

However, the most significant concerns described by the interviewees were attachment to the child, breastfeeding, and the fear of losing their bond with their child. As they shared more throughout the interviews, some interviewees pointed out that having their children there for them had been a salvation and a motivation to resist. However, they also mentioned that a detainment center was not a suitable place for any child.

2. Structural Differences of the Maternal and Child Unit: Differences Between Convicted Women and Pretrial Detainees

To fully understand the incarcerated experience of accused mothers and their children suffering anticipatory punishment, it is necessary to describe some elements that characterize the prison system, in contrast to the conditions in the maternal and child units

of accused women. It is pertinent to note that the characteristics of the maternal and child sections in Chilean prisons vary significantly between the different regions of the country, especially in terms of infrastructure, programmatic offer, and capacity. In this case study, as established in methodology, reference is made to the Women's Penitentiary Center of San Joaquín, located in the Metropolitan Region.

During the visits and the conduct of the interviews, structural and cultural elements that characterize the organization of the mother-child unit were identified. There are marked differences between the mother-child section for convicted women and that for sentenced women. Despite having a similar number of women and children in both sections, the spaces for children present discrepancies in infrastructure and the activities offered to them, in addition to lacking adequate areas for free play. Below, we highlight four key findings about the heightened stress women held in pretrial detention undergo due to these disparate conditions.

a. Infrastructure

The prison is a space that has historically been configured in terms of housing the male population—with little respect for human rights—making it even less well-adjusted to the habitability needs of the female population.⁸⁷ Similarly, the unit's infrastructure is not designed and organized for mothers to live with their children. Although the section for convicted women has better structure, women accused with their children were transferred in recent years from another detention center in the Metropolitan Region because of the increase of people deprived of liberty in the country and because their living space is not friendly to parenting. The kindergarten does not have direct access to the outdoors, and everything is organized around a long corridor of a dark building where it is difficult to meet. For example, in the convicts' section, the inmates can gather around a playground to talk and care for their children while they play—which simulates a square—but that does not happen in the defendants' section.

Thus, according to the accounts of the interviewees in pretrial detention, the building is characterized by its smallness, where the rooms concentrate the heat in summer and where the patio, remodeled with synthetic grass and awnings, is not used due to the high temperatures that have already caused several accidents and burns. In the winter, the rooms'

87 See, e.g., Subin Abraham et al., *Gender Specific Needs and Human Rights in Prisons*, 44 LIBR. PROGRESS INT'L 8986 (2024).

high ceilings generate extreme cold that cannot be compensated for by the few blankets delivered.

b. Access to Vital Resources

The interviewees also reported a scarcity of resources to meet basic needs, an essential problem of the Chilean prison system. This resource shortage manifests in limited food, diapers, and other supplies necessary to ensure the well-being of children. Although women can receive parcels from specific people who are duly authorized to do so, the internal regulations of the Chilean Penitentiary Services and the discretionary use of authority mean that these resources often do not reach the women for whom they are intended. Children who require special food or care must try to bring the products in through visits, and obtaining them is particularly difficult due to the bureaucracy of the Penitentiary Services.

These accounts reveal institutional barriers to ensuring the well-being of these women's children. Detained women face impediments to bringing in bottles, diapers, fruits, vegetables, or other foods, and even face a lack of response to their children's health emergencies because their reports are often dismissed or doubted. These barriers are more evident in women who have been charged compared to those who have been convicted. For example, in the unit for sentenced women, the preschool operates from Monday to Friday from 9 a.m. to 4 p.m. In contrast, the unit for defendants operates in a shift system where children attend for approximately one hour a day.

c. Bureaucratization of Care, Processes, and Access to Activities

Another problem associated with structural factors in the prison system is insufficient staffing, which is an obstacle to the proper functioning of the unit and, therefore, to the well-being of mothers and children. This problem means that at night, the courtyard of the accused—which logistically is far from the technical spaces and meeting spaces—is left without custody. When emergencies occur, the women have no one to whom they can turn, and so they are not given an immediate response. Another direct consequence of the lack of equipment is the difficulty in managing outings, such as appointments at health facilities when children are sick. In many cases, women comment that their children have not received timely medical attention because there are no officials to guard their transfer to the corresponding care facility. This is one of the significant stressors they suffer while there.

A characteristic commonly identified by the women interviewed was the bureaucratization of the prison's processes, which generates various difficulties and stressors for both women and their children. No matter how urgent, any request must be expressed in writing, received by the unit's officials, and forwarded to the prison authority. Women point out that their requests are often poorly answered or are rejected without any justification, which occurs even more often for accused women because they are in an intermediate space. In this way, according to the interviewees, there is a lot of discretion in the treatment and decisions made by the staff which makes it difficult to guarantee decent living conditions for their children. Several interviewees mentioned that the conditions of incarceration depend largely on the person in charge of managing the units. When a specific professional with the capacity and willingness to promote improvements in the spaces and who even specialized medical care within the unit left her post, many women noted that their quality of life was diminished.

The procedural quality also limits the possibilities of access to various benefits during the deprivation of liberty. Although access to educational, work, or other activities is not widely available in the prison system, convicted women have the possibility of accessing them to the extent that they meet the entry requirements according to each program's quotas. On the other hand, pretrial detention restricts access to any of these benefits, and there are no specialized programmatic offerings for these women, who must spend their time in prison practically without access to any of these activities, which deepens their mental discomfort. The few interventions or workshops in which they have participated come from the management of programs outside the Penitentiary Services.

d. Prison Staff's Treatment

Another differentiating factor of the experience of incarceration identified through the study was the difference in treatment from prison staff according to the procedural quality of the woman's case. The women accused, compared to those who have already received their sentences, more frequently described situations in which they received undignified treatment by Chilean Penitentiary Services personnel, arbitrariness in the decisions made regarding the unit, and lack of concern regarding the problems they raise about the low quality of life in the maternal unit. An example of this is the language used by prison staff, who describe the women accused as "more complicated," "screaming," "complainer-alegonas," and "rumormonger or troublemaker-cahuineras," reflecting greater institutional violence compared to that faced by the convicted. Likewise, the interviewees commented that because convicted women are "of the house"—in contrast to the accused who can leave at any time by order of the competent court—they maintain a closer link to the

institution and enjoy greater access to facilities and resources that, although tremendously insufficient, are notably better than those offered to women in pretrial detention.

Although the interviewed women greatly valued the ability to stay with their children in their first years of life to strengthen their maternal bond, this gratitude was in tension with guilt they reported feeling for having to enter prison with their children. They made it very clear that they were aware that this was not a space conducive to the proper development of their children. This argument, in many cases, is used by the Chilean Penitentiary Services to blame the women themselves for being “bad mothers” or suggesting that their children are there for what they did, which causes a lot of emotional exhaustion.

Additionally, in the case of both convicted and accused women, interviewees described the use of children as a control mechanism and manipulation tactic by the Chilean Penitentiary. On several occasions, Penitentiary Services threatened to take their children away; these stories appeared throughout the interviews as a recurring fear. One woman described that “you could be hitting your head against the wall at night, but during the day you have to show yourself well” so that you are not disqualified from care and your child is taken outside. If women present mental health problems, fight with another inmate or express a combative attitude, the Penitentiary Services can inform the authorities and take the child out of the compound. These children may be removed to relatives, or if relatives are unavailable, to state protection homes. This would partly explain why this type of module remains calmer. In one remarkable story, according to two interviewees, one woman was punished and taken to solitary confinement with her son for two weeks. She asked to be taken out of there because of the humidity that her son was exposed to, and then she began to hit the walls harder and scream out of desperation. At that time, the institution decided that the woman was “disabled” to take care of her son, and he was removed from the unit and her care.

Although this form of control is evident in the testimonies of convicted men and women, the additional uncertainty felt by the accused can aggravate the emotional repercussions of this immense anxiety and stress.

3. Conditions of Imprisonment of Mothers and Their Children

The living conditions of mothers and children in pretrial detention are marked by vulnerability, uncertainty, and unmet basic needs. An extremely common sentiment in the interviewees’ accounts is that “I am the one who is imprisoned here, not my son,”

alluding to the fact that they can deal with the precariousness of incarceration, but that it is unjustified for their children.

The de facto imprisonment of children, according to the accounts of the women interviewed, reveals a deficient quality of life that violates the rights of their children. Basic subsistence conditions are well below a standard that guarantees well-being in the areas of food, health, education, and recreation. The food provided by the Chilean Penitentiary Services is perceived as insufficient, with little variety, and often of low quality. Health is the area that generates the greatest concern for these mothers, considering the consistent barriers to timely access to healthcare that place the lives of their children at risk. In this sense, the conditions of incarceration mean that outbreaks of viruses and other diseases are concentrated in the child population and generate contagion for all those who live in the unit. As with other challenging conditions, this situation is exacerbated in the case of the women held in pretrial detention, as they are in a space that receives less attention and care from the institution.

Children also have few spaces that allow them developmental opportunities. They have limited access to toys or other objects that encourage their stimulation during growth. The kindergarten, according to the women interviewed, is far from being an interactive learning space and instead operates as a nursery that reduces the cognitive development of their children. There are great differences between the space available in the kindergarten of convicted women in contrast to that of accused women, the former being comparable those offered outside and the latter simply being an indoor holding room. Several of the accused women expressed their concern about their children difficulty developing skills appropriate to their life cycle.

Regarding the children's connection with the outside world, the interviewees state that there are barriers to their children interacting with their grandparents, siblings, or other relatives, due to the habits developed while being in the restricted, monotonous environment of the unit. Similarly, when addressing issues related to children's outings or "bonds," it is observed that the interviewees, due to the young age of their children, prefer to limit the frequency of these outings. In some cases, this is because the children are breastfed; in others, because the children do not know any of their relatives outside. When asked about visits in prison, the interviewees pointed out that the spaces intended for these interactions are not suitable for children, since they present extreme conditions, such as excessive cold in winter and intense heat in summer.

When the interviewees were asked how they perceived the well-being of their children in the unit, the immediate answer was typically that it was the worst possible environment for a child's growth because their rights are constantly violated. However, as the interviews progressed, some positive aspects emerged, such as the possibility of exercising motherhood even when they are deprived of liberty, or the care and affection of some officials towards their children. However, the exercise of motherhood in the context of confinement is marked by concern, especially considering that the uncertainty of their future—the outcome of the investigation and the possibility of being convicted after a trial at any time is always present—and the long duration of preventive detention ranging from six to eighteen months for the women interviewed.

The sense of motherhood of the accused in the unit generates deep pains of imprisonment, as they do not have any clarity about how much longer they will have to spend deprived of liberty, and do not know if after two years their children will have to leave without them. When asked about what would happen if they had to remain incarcerated after their children were released, none of the women consulted could imagine a scenario in which they would have to be separated from their children, which shows a deep emotional and mental discomfort that is left unaddressed. In the same way, women still expressed deep concern for the well-being of their older children who remained in a free environment under the care of other people, but who they found it difficult to maintain a bond with.

Support networks in this regard are key, but many of the women reported feeling discomfort receiving visits from their children in this environment because they did not want their children to see them in prison. Visitors also must face long waits or go through arduous review procedures to enter the penitentiary, trials that the interviewees did not want to impose on their children. In this way, the exercise of motherhood of accused women deprived of liberty is marked by stress and constant concern for the well-being of their children both inside and outside prison, constituting a profoundly lonely and painful experience.

However, when the women detained in the accused units assess their living conditions, they focus on the conditions of their children. In other words, they do not problematize the precarious conditions of incarceration on themselves but rather shift their attention to the well-being of their children. Scarcely do the women refer to institutional neglect of their own physical and mental health care, or the lack of supplies and coverage of their basic needs. This is underscored by an idea repeated in the interviews: "I can adapt to anything. Here the mistake was made by me, not my son." In sum, there is an established discourse on the rights that must be guaranteed to children, but not to mothers.

V. Analysis and Discussion

These results clearly illustrate how women in pretrial detention with their children suffer at the intersection of the “maternal” pains of incarceration⁸⁸ and those pains that seem to be exacerbated in pretrial detention contexts.⁸⁹ We conclude that the anticipatory punishment that women held in pretrial detention suffer is in fact more acute than the pains suffered by women imprisoned postconviction.

One of the major differences of discomfort felt by the accused women in contrast to the convicted women is how their period of detainment is marked by uncertainty in different aspects of their lives.⁹⁰ The accused women experience this time as a double punishment: in addition to being deprived of liberty during the investigation of the crimes with which they are charged, their inability to know the duration of this procedural situation generates additional psychological stress. Uncertainty about their future prevents them from planning their lives, and they suffer by not knowing what will happen to their children who are imprisoned with them. Added to this uncertainty is the pain of being unable to ensure the well-being of those children who have been left out of prison, which is a common experience.⁹¹

This punishment also has more concrete repercussions. In general, the conditions of the sections for pretrial detainees are more precarious, with worse infrastructure and a scarce programmatic offerings, since, due to their procedural condition, they do not have to comply with an intervention plan, which is replicated in other contexts around the world.⁹² This deepens the discomfort derived from the pains of incarceration associated with living with their children inside because it is not a suitable place for their development, which affects the children’s well-being and causes the mothers to feel guilt, shame, and frustration.⁹³ This discomfort would deepen given the already-discussed material conditions in the units.

Motherhood and the first two years of life are critical developmental periods in the life of a woman and a child. This period is taking place in a small space that is very unfriendly

88 See Nuytiens & Jhaes, *supra* note 32, at 145–46.

89 See Rabinowitz, *supra* note 56, at 2–8.

90 See Oleski, *supra* note 53, at 1007–08.

91 Nuytiens & Jhaes, *supra* note 32, at 134.

92 Toman et al., *supra* note 49.

93 See Nuytiens & Jhaes, *supra* note 32, at 134; Boza et al., *supra* note 32, at 53.

and uncondusive to women and their children's needs, in which they are practically without activities, with few social ties or support networks, and suffering in uncertainty for periods as extended as two years. For children, this means living their first years of life in the context of confinement, in cramped spaces, with no or little stimulation and high levels of stress and conflict.

The first years of life are essential for the proper development of children because of the importance of forming attachment and secure bonds and developing neural plasticity.⁹⁴ It is precisely this significance that generates conflicting priorities for mothers, since they value strengthening that bond and attachment so necessary in the first years of life, but it is at odds with the guilt they feel knowing that their children are not growing up in dignified and conducive spaces for their development. All of these stressors cause significant deterioration in the mental and physical health of these women.

While these inadequate conditions have been recognized before, our study also reveals the pain associated with the bureaucratization of these children's care. In order to take care of their children, incarcerated mothers must go through a system that limits, restricts, reviews, controls and even prohibits the elements that they consider necessary to that care. Given the structural differences between the conditions in which the accused and convicted women are held, the discomfort associated with this bureaucratization of care is greater for the former, as they face additional barriers in the process and less institutional disposition to help.

It is an international agreement that, although children live in prisons, they are not deprived of liberty and can go to the outside environment if this can be coordinated.⁹⁵ In practice, due to lack of personnel, lack of networks, or the well-founded apprehensions of incarcerated women, this does not happen so expeditiously or recurrently, and children are *de facto* prisoners of the system. This has a direct impact on the fact that when we talk about the pains of incarceration, we are not only referring to those that women experience there, but also that the pains suffered by children are deepened in pretrial detention.

In this way, the accumulated pains suffered by women who enter the mother-child units as defendants constitute an anticipated punishment, with clear class and gender inequalities. Women held in pretrial detention suffer similar harms, or are even more harshly punished,

94 See generally BOWLBY, *supra* note 22.

95 SEE MANFRED NOWAK, UNITED NATIONS GLOBAL STUDY ON CHILDREN DEPRIVED OF LIBERTY (2019); G.A. 44/25, art. 37(b), Convention on the Rights of the Child (Nov. 20, 1989).

than those serving time post-conviction,⁹⁶ a situation with severe consequences for these mothers, their children, and the social order.

VI. Recommendations

Reports by international bodies like CEDAW⁹⁷ point to the need for robust reform of the prison system. The findings of our study and others focusing on a female prison population⁹⁸ provide clarity regarding the measures that should be taken to develop gender-sensitive prison policies that consider the welfare and rights of children incarcerated with their mothers. Our study also allows for a more in-depth analysis of pretrial detention and reinsertion program recommendations.

In light of our findings, we argue that the following measures must be considered when setting public policy to strengthen protections for this population. Only by implementing these reforms can the Chilean justice system reduce the societal toll of the anticipatory punishment of women accused of crimes.

A. Legal and Justice System Reforms

Given the high rates of pretrial detention in the female population, the first and perhaps central reform should be the rational use of pretrial detention as an exceptional measure, not a default punishment. Pretrial detention should be even more limited in the case of women who are the primary caretakers of children. To this end, the prosecutor's office should develop clear guidelines that explicitly consider gender and that authorize pretrial detention only for truly qualified and serious cases.

In addition, alternatives to prison must be strengthened, including promotion of parole processes and community reintegration programs that offer comprehensive support to women. Such programs should offer with resources like housing, employment, medical and psychological care, and childcare assistance. These programs can be based on the restorative justice paradigm, focusing on rehabilitation, trauma repair, and social

96 See Anderson et al., *supra* note 48, at 806.

97 See, e.g., U.N. Doc. CEDAW/C/CHL/CO/7, *supra* note 29.

98 See, e.g., Abraham et al., *supra* note 87; COMITÉ PARA LA PREVENCIÓN DE LA TORTURA [COMM. FOR THE PREVENTION OF TORTURE], INFORME DE VISITA A LA SECCIÓN MATERNO INFANTIL DEL CENTRO PENITENCIARIO FEMENINO SAN JOAQUÍN [REPORT ON THE VISIT TO THE MOTHER AND CHILD SECTION OF THE JOAQUÍN WOMEN'S PENITENTIARY CENTER] (2022), [<https://perma.cc/CE4Z-JYRB>].

reintegration, rather than solely punishment. Rather than carrying out a punitive mission, the state can safeguard the community while treating the root causes of criminal conduct by offering intensive supervision, participation in addiction treatment programs, community work, and vocational training. The literature shows that these programs are most effective when they are tailored to the specific needs of each woman and her family.⁹⁹ To achieve this, it is necessary to seek collaboration with community organizations, faith-based groups, and volunteers who can provide support to women and their families. Community participation also helps reduce the stigma associated with incarceration and facilitates social reintegration.

A comprehensive response to prison reform is necessary in light of this study's findings: the commission of crimes occurs in the context of trajectories of profound material and social adversity, which in the case of women is accentuated by the single-parent responsibility of raising and supporting their children in a gender inequitable structure. Any reintegration program must consider the comprehensiveness of these women's needs in both material terms and trauma reparation.

Finally, Law 20,000, which regulates punishable conduct in relation to drug trafficking and production, should be reviewed to reduce excessive penalties, especially for women who commit crimes related to drug consumption or trafficking in situations of economic or social vulnerability (which is the reality of the women that participated in this study and others we have done with incarcerated women).¹⁰⁰ Considering that drug consumption is a common issue among this population, instead of custodial measures and sentences, addiction treatment should be prioritized in the revised law, authorizing detoxification, therapy and social support programs as an alternative to incarceration. Other alternatives such as community service or fines should also be considered, reserving prison for cases addressing serious crimes or recidivism. There are successful international models of statutes regulating drug crimes focus on public health, such as Portugal's, where possession of drugs for personal use is considered a public health concern, not a criminal offense.

99 See generally INT'L CORR. & PRISONS ASS'N, ALTERNATIVES TO INCARCERATION AND COMMUNITY-BASED PROGRAMS FOR JUSTICE-INVOLVED WOMEN: KEY PROGRAM INDICATORS AND COST-BENEFIT ANALYSIS CONSIDERATIONS FOR DECISION MAKERS (2020); Renée Gobeil, Kelley Blanchette & Lynn Stewart, *A Meta-Analytic Review of Correctional Interventions for Women Offenders: Gender-Neutral Versus Gender-Informed Approaches*, 43 CRIM. JUST. & BEHAV. 301 (2016); Richard Summers, Simon Pemberton & Joanna Long, *Examining the Effectiveness of Interventions for Criminal Justice-Involved Women: A Meta-Analytic Review*, 52 CRIM. JUST. & BEHAV. 690 (2025) (summarizing seventy-one interventions and finding gender-responsive programs up to 42% more effective).

100 See RODRÍGUEZ ET AL., *supra* note 8, at 26.

B. Social Support and Gender-Responsive Programs

While high level legal reform of the prison system takes place, it is essential to develop programs to support mothers who are currently incarcerated. These programs must be designed with a multidisciplinary approach. Psychological support should include individual and group therapy, aimed at addressing trauma, anxiety, and depression. Social support should involve the provision of resources for women such as financial aid, housing opportunities, legal assistance, and guidance in accessing social services. For mothers with infants in prison, breastfeeding support is necessary, as well as access to childcare or childcare programs within the prison or in the community.

Access to education should include literacy, vocational training, and job training programs. Courses tailored to women's needs and interests should be offered, with flexible timetables and childcare support. In relation to the right to healthcare, medical care must be comprehensive, including reproductive health (prenatal control, family planning, postpartum care) and mental health. Child health services must be comprehensive, including regular checkups, immunizations, and treatment of illnesses. Early stimulation for children should be provided by trained professionals, using educational methods appropriate to their age.

C. Prison Staff

The training and sensitization of prison staff must go beyond theoretical courses. Training should include simulations, role-playing, and hands-on workshops that help new staff understand the experiences of incarcerated women, the consequences of incarceration on families, and the importance of humane and respectful treatment. The importance of non-discrimination and the need to create a safe and supportive environment for mothers and their children should be emphasized.

Prison staff's treatment of detainees in the mother-child unit should be aimed at maintaining the family bond. In this context, visitation policies must be flexible and accessible, respectful of the children's rights, and cognizant of the needs of mothers and their families. This includes allowing regular visits, with longer durations and fewer restrictions. Visits from children, including newborns, should be allowed with the possibility of breastfeeding during visits. Phone calls and videoconferences should be facilitated so that the mothers can maintain regular contact with their children who remain outside of prison.

In terms of the necessary infrastructure, facilities should be designed with the specific needs of women and their children in mind, creating a safe, natural, clean, and stimulating environment. Visiting areas should be private and comfortable spaces, with games and toys for children. Adequate childcare spaces should be provided, including nurseries and playrooms. Sanitary facilities should be clean and accessible, considering the needs of breastfeeding women and young children. Efforts should be made to create an environment that facilitates the mother-child bond, promoting interaction and the early development of children.

D. Monitoring, Evaluation, and Interinstitutional Coordination

Lastly, it is important to further assess the long-term impacts of the deprivation of liberty on mothers and their children. Future studies should employ qualitative and quantitative methodologies, including surveys, interviews, and statistical analysis. The well-being of women and their children should be monitored before, during, and after incarceration. The results should be used to inform policies, improve programs, and evaluate their effectiveness.

Human rights organizations—in particular, the Human Rights Institute and the Office of the Ombudsman for Children—should play a primary role in monitoring compliance with the human rights of incarcerated women and their children. This involves investigating allegations of rights violations, making recommendations to improve prison conditions, and representing women before the authorities. These institutions can also educate the public about the rights of incarcerated women and promote legislative changes.

Finally, for all of these reforms to be possible, it is essential to strengthen inter-institutional and inter-agency collaboration. This collaboration requires coordinated work between the justice system, social services, the education system, healthcare providers, and other relevant agencies. An effective referral system, with clear and fluid communication between institutions, could ensure that women and their families receive the help they need. It will be necessary to create stable and mandatory inter-institutional working groups to plan and coordinate these efforts.

VII. Limitations and Projections of Our Study

One of the main limitations of this Article is the fact that voice recorders were not allowed in the mother-child units, even though we repeatedly requested authorization at different institution levels. Therefore, our interviews were not recorded, and so it was not

possible to report verbatim excerpts from the women's accounts. In spite of this limitation, we decided to continue with the study because of the importance of making visible these women's conditions in order to make informed public policies recommendations and contribute to the academic debate on the use of deprivation of liberty and, specifically, pretrial detention.

We are aware that this limitation reduces compliance with the Article's ethical principles of reproducibility and transparency. However, having decided that the benefit of going ahead without recordings was greater than the costs of foregoing the opportunity to shed any light on this issue, we took the following precautions. First, we handwrote notes of the main points of the interview, as long as this did not interfere with the flow of conversation, after receiving consent from the women to leave a written record of their speech. In addition, immediately upon leaving the interview room, we recorded a personal audio note with everything we remembered from the conversation. Finally, we filled out a form with information about the interview's content and the characteristics of the women who participated to keep the results registered.

We were also limited by the conditions of the environment where the interviews were held: the spaces we were provided did not always ensure the privacy of the women, and sometimes the interviews took place in the presence of a prison officer. This limitation could not be solved during the interviews due to the institutional dynamics of the maternal and child units and their infrastructure. To reduce its possible impact, we prioritized being in spaces where the women felt comfortable (they could choose where to take the interviews, with some of them done in the yard, others in the bedrooms, and others further down the hall). Also, we spoke very close to the women and in a low tone of voice to reduce the likelihood that third parties could overhear their speech.

Another limitation of the study, given its qualitative nature and small sample, is that the interviewers' biases may have affected the guidance of the conversation and the interpretation of the women's narratives. In order to reduce these biases, we made the following decisions: (1) We diversified the interviewers' backgrounds by employing researchers who had entered and done studies in prison before and others who had not, as well as researchers who were mothers and others who were not. (2) After the first entry, we met to discuss and calibrate our assessments. We also discussed them with other team members with experience in the subject, which allowed us to adjust specific interpretations, questions, and protocols for future interviews. (3) We tried to focus the interviews on the issues the interviewees believed to be relevant, not on what the interviewers were looking for (beyond using the questions as a thematic guide). (4) We jointly decided on the thread

of the study's findings and the argument, trying to make them more descriptive of what we found rather than interpretative from our position.

The study lacks detailed statistical information that would have allowed for a larger sample size. With access only to the number of people living in the units and their procedural quality due to low levels of registration, systematization, and transparency in the administrative records and national data in this regard, it was not possible to elaborate further analysis that would account for the bigger picture of incarcerated mothers in Chile.

Finally, our findings are based on visits and interviews carried out in a penitentiary facility that has been evaluated as having the best conditions in the country, according to prison staff and government officials. This means we still have little to no knowledge of what happens in other maternal and child units, especially in those in northern Chile, which are known to have worse living conditions. In addition to gathering data on these other regions, it is hoped that future studies will discover more about the unique experience of migrant women deprived of liberty with their children. In this study, only one foreign woman was interviewed, from whose singular account it is still possible to observe that she experienced acute problems and unique challenges. These limitations suggest the need to strengthen registration systems to enable future studies to utilize more robust and representative information on the Chilean prison population.

Despite these restrictions, the main contribution of this article is of a qualitative and exploratory nature, shedding light on a topic that is scarcely visible in the extant literature or public policies. We see this study as a beginning that illustrates the need to explore these issues with greater precision and robustness in the future.

APPENDIX

Interview Guideline (translated from Spanish to English)

INTRODUCTION

Thank you for your time. Let me tell you about the study.

My name is XXX, thank you very much for being here. I work as a researcher at the Catholic University, where we are doing a study on motherhood in prison to learn about the experience of women who are living or have lived in the mother and child units. Our goal is to get to know you, to know about your life, and to understand how motherhood is lived in this space, to know the negative and positive aspects of the experience and the impact it has had on your life. We are going to interview several women here, and then we are going to tell those who make decisions about the prison about the study, and with that we hope that they can take measures so that in the future other women and children will have a better quality of life.

Your participation would be with an interview that would take between one hour and one hour and a half, and there are no good or bad answers. I just want to know your life story and your vision about living here with your child. Also, at the end of the interview, I will ask you some quick questions with a questionnaire in order to record the characteristics of those who participated. Participating in the study is completely voluntary, and if you decide to leave, we can end the interview at any time you want to stop. Also, everything you tell me here is confidential, and nothing will ever be published where your name or your child's name is identified, nor will any information be exposed that would put you at risk. Only I will know that you participated, and then the results of all the women who participated without names will be analyzed. There are no benefits to participating, but I would like to give you this snack as a thank you for your time. To confirm that you want to participate, I need you to sign this informed consent form detailing everything I have told you in more detail. Look, let's read it together.

[Informed consent form is read together, explained, and signed.]

INTERVIEW

The goal is to make interviews as conversational as possible.

1. Before the Conviction

To begin with, I would like you to tell me a little bit about yourself and your story, thinking about your life just before you entered the CPF:

- What was your life like? What did you do? Who did you live with and where did you live? (Did you always live in that place? What was the neighborhood you lived in?)

- How many children do you have? How would you describe your relationship with your children? What was your children's relationship with their father? Who were your main support networks in motherhood before you came here? (What was your relationship with the father of your children? Did you have other important relationships? What was your relationship with your family before you came here? What was it like in your childhood and youth?)

- [Only if the interviewee is a foreigner with a migration project] How did you arrive in Chile? How was the process of migrating here? With whom did you come? Who stayed in your country of origin? How was the treatment you received when you arrived here? What was it like for you and your children (if applicable) to adapt to this new life?

- [Only if the interviewee is a foreigner detained at the border] What was it like to enter Chile? How were you treated? What information did you have about what was going to happen after your detention?

2. Entry to CPF and IMU

Now I would like to talk to you about your admission to the CPF and to the IMU in particular.

- Could you tell me how long ago you entered the prison and why? What module did you enter? (Had you been deprived of liberty before? When and for how long? For what crime?)

- [if convicted] For how long were you sentenced? How long have you been in prison?

- [if charged] How long have you been in pretrial detention?

- [only if the interviewee has more children] What happened to your children when you came here? Who was left in charge of their care?

- How was the process to enter the Mother and Child Unit? What information did you have about your rights and those of your child? Who made the decision? Did someone or some institution support you in the process? Why did you decide to enter with your child? How long were you in another module until you were transferred to the IMU?

- [only if the interviewee had their child while incarcerated] How was your pregnancy in the unit? How was the delivery process? Who helped you? What was the best and worst thing about the process?

3. Experience in the IMU

Now I would like to talk about your life and your child's life in the Mother and Child Unit:

Routine and Bonding with Child

- How old was your child when he/she was admitted? How did he/she adapt to this place? What was the best and the most complex part of this process?

- What is your daily routine like, and that of your child?

- How has life been here? What is it like to live here compared to a regular population module? What differences and similarities do you have with the women who live outside the IMU? For example, I imagine that in the modules you see more drug use than here in the IMU. What is drug use like here in the IMU? Have you ever used drugs in your childhood or youth? Have you received treatment?

- What do you think is the best thing about living here with your child? What has been the worst thing? What impact do you think it has for your child to go through the IMU?

- What benefits do you think it has for you and your child to be in the IMU compared to him/her being outside? How much care is taken at the IMU to guarantee the rights of the children?

- How do you think your child is doing here in terms of the care he/she receives? How do you feel he/she is doing here? How have you felt living with him/her here? How would you describe the relationship you have been able to form with your child?

- How do you evaluate the conditions of the place? What could be changed to improve his/her daily life here?

Link to the Outside World

- [if applicable] How many children were left outside and in whose care? How is your relationship with them?

- How is your relationship with the father of your children? Does your child have contact with him/her? And with other people in the family?

- What are your main support networks? How is your contact with people outside the country? Do you receive visits or parcels?

- Are there other people or organizations - other than your family or the Gendarmerie - who support you or your child in the IMU? What kind of support do they receive? How does this support differ from the support you receive from the staff working in the IMU?

Access to Benefits and Link with Gendarmerie

- How does access to resources for your and your child's physical health and mental health work? How is your access to recreational activities?

- How is your access to education or work in the unit? (Tell me a little about your education, up to what grade did you attend? If you left, for what reason? Which grades did you complete here? Have you ever worked in your life? What were those jobs like? Have you worked during your detainment?)

- How is your access to workshops or other activities?

- How is your relationship with the Gendarmerie in the UMI? How is your relationship with your fellow inmates?

- How is your child's relationship with the prison staff? And with the other women and their children?

- How is your child's relationship with the people from the institution and how do you evaluate the quality of the place and the treatment of you and your child?

4. Transition to the Outdoors

And about your child's transition to the outdoors.

- When should your child leave the prison? If you don't leave with your child, how much longer should you stay? Until what age do you think the children should be here?
- Who will your child go to live with once he/she leaves? What do you think his/her life will be like when he/she leaves? What are the positives and negatives of your child leaving, for you and for him/her?
- What do you think the discharge process is like for you and for him/her? What would you change in that process to make the transition out of the CPF better for you and for him/her?

5. Areas for Improvement

- What is needed to improve the quality of life of the children in the IMU? And to improve the quality of life of the women?
- What could be improved in terms of the activities and services the children access?
- How could the place/space be improved? What other things would make the passage through the IMU better?
- Can you imagine a better alternative for women who have young children to serve their sentence, without the children having to be in a unit like this?

6. Future Projections

- What would you like to do when you get out of here? Where would you like to live? What would you like to do when you get out? What do you think you need to do to get out?
- What do you imagine your relationship with your children will be like once you leave?
- What challenges do you think you will face when you leave the prison? What goals do you want to accomplish?
- Is there anything about your history, your life here, your hopes for the future, or any opinions that you think you haven't told me, but you think are important to you?

- What are the three things you value most in your life, and the three things you like most about yourself?