



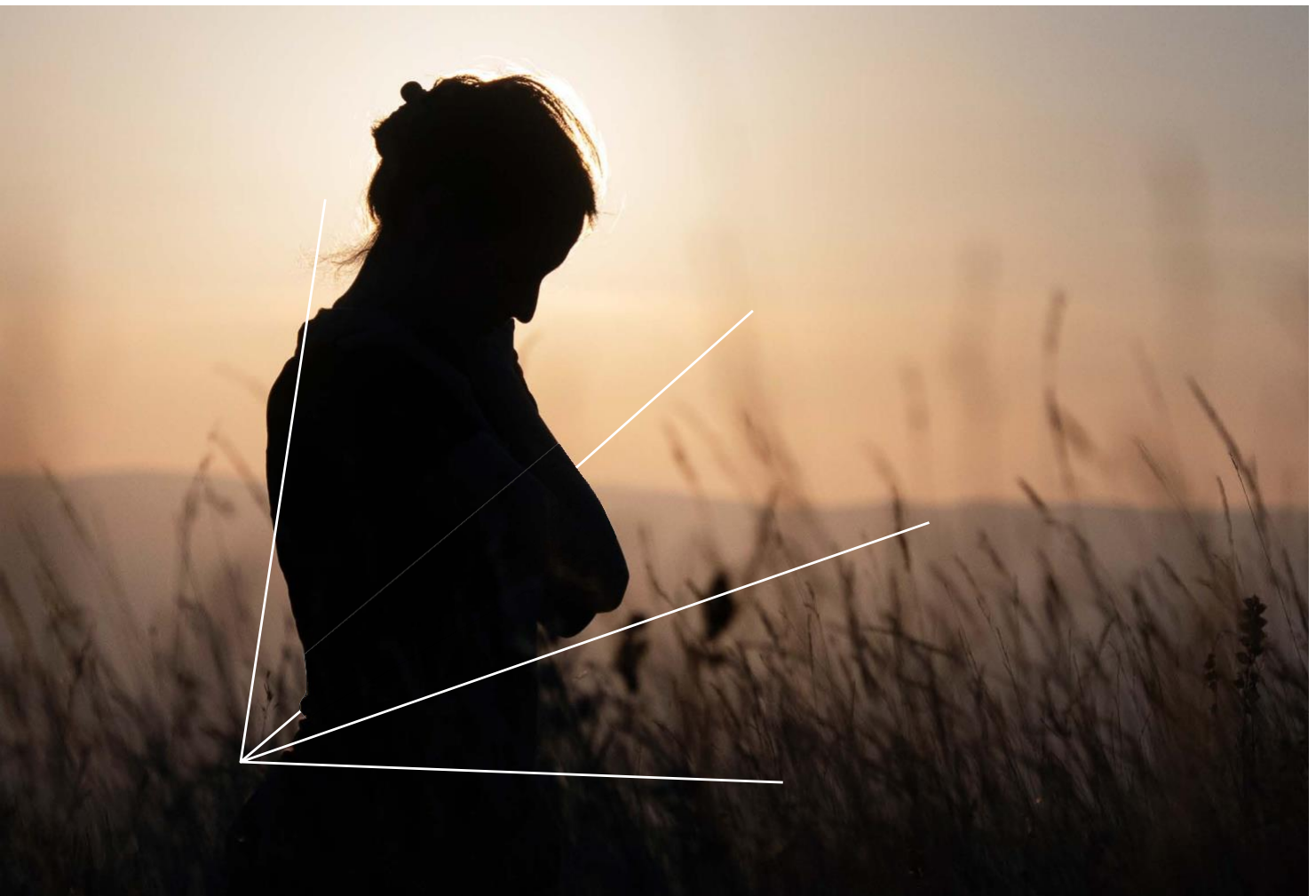
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Toward a non-penal human rights framework for  
violence against women

# Ecuador

Field work report



**Principal investigator:**  
Dr Silvana Tapia Tapia  
Birmingham Law School

**Research assistance:**  
Tatiana Padrón Palacios  
Genaro Tapia Tapia

October 2024

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## Synopsis

International human rights (IHRs) instruments, case law, and other materials typically foreground criminalisation, prosecution and punishment as primary responses to serious human rights violations, which includes violence against women (VAW). However, criminal trials are often re-victimising, burdensome, and costly for victim-survivors whilst offering almost no protections (Tapia Tapia 2021; Neumann 2023; De Aquino 2013). They can also divert political attention from the socioeconomic inequalities and structural roots of VAW (Tapia Tapia and Bedford 2021; True 2012), while displacing and delegitimising anti-carceral social movements (Mavronicola 2024). Moreover, the penal apparatus tends to disproportionately target impoverished, racialised and stigmatised people (Coba Mejía 2015; Aguirre Salas 2019). In that context, by consistently encouraging penal responses, IHRs bodies and advocates may legitimise penalty and incarceration as universal signifiers of justice whilst delegitimising counter-carceral projects. Such a paradox invites us to investigate the phenomenon of 'human rights penalty'.

One way to map the ramifications of human rights penalty is to explore how anti-carceral feminists engage with IHRs. In Ecuador, grassroots organisations, activists and practitioners denounce and resist both carceral violence and VAW. These movements account for a 'penal violence against women' that operates, for example, through the criminalisation of women's survival strategies (such as irregular migration, informal trade, drug micro-trafficking, sex work, etc.), abuses in women's prisons, and the revictimisation of victim-survivors in criminal processes. Furthermore, and less evidently, women who perform care work for incarcerated people often endure police, judicial and bureaucratic violence. They are often the ones who cover prison costs and, in settings like Ecuador, where organised crime gangs largely control prisons, they are also exposed to threats and extortion.

This report includes some key insights, which were collected through in-depth interviews, focus groups, participant observation, and fieldnotes compiled during long-term engagement with the participating individuals and collectives.

## Methods

- Participants: 40
  - ✓ 34 women (85%) and 6 men, between 20 and 50 years of age.
  - ✓ 16 in-depth, semi-structured interviews.
  - ✓ 5 focus groups.
- Participant observation through November 2023.
- Long-term interactions with various participants, since 2021.
- Sample selection: pre-established networks and 'snowballing'.

Note: not all participants or collectives have been anonymised. Participants were given the option of using their real names and/or that of their organisations, to recognise their authorship.



*Figure 1 Focus group with Mujeres de Frente, Quito, Ecuador.*

## Main findings

### ***1. The limits and contradictions of human rights***

There is widespread scepticism among participants regarding the relevance and usefulness of mainstream human rights. Most participants perceive law and rights as elite concepts with onerous mechanisms, holding mainly a declarative, non-transformative value. For this reason, they do not often use IHR language in their mobilisation strategies and political militancy. This situation can be explained by the following factors:

- a. **The juridification of social life entails that, to demand human rights, subalternised people, such as migrant, impoverished, racialised, or criminalised (cis and trans) women, must undergo burdensome and costly legal and administrative processes.**

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*[...] When you think you can go to the courts, what you get is the bureaucratisation of your life. So, to ask for a right, to demand something, you must have an ID card. To have a right, there are people who still say: "you have to be legal", they don't even tell you that you must be "regular". So, it is as if they treat you as a person who has less value.*

*- Cristina Burneo, **Corredores Migratorios**, focus group, November 8, 2023.*

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- b. When demanding their human rights, participants have experienced **delayed responses, indifference, or even institutional violence.**

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*In my opinion, human rights are just a word that is said. Because everywhere human rights are violated, because there are no human rights either for a prisoner or for the people who are out here. Human rights do not really exist.*

*- Mariana, **Mujeres de Frente**, focus group, November 6, 2023.*

*[Human rights] also serve power very well, because without that, without those crumbs that are thrown to us along the way and they tell us 'very well, yes, human rights are here; here it is so that you can have justice'... And we have 20 years, 20 years of struggle in the Inter-American Court of Human Rights for one case. So it is a lie.*

*- Vivian, **Alianza de Organizaciones por los DDHH Ecuador**, interview, April 19, 2024.*

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- c. Participants notice a significant **gap between human rights declarations and their materialisation**, which discourages them from employing this language.

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*In my [...] when we listen to each other in the school and in our processes, we do not talk about human rights. I was trying to remember... We don't say "human rights". It is as if the scepticism towards human rights is already so great... But I hear us sometimes talking about justice, for example, but we do not talk about human rights.*

*- Cristina Burneo, **Corridores Migratorios**, November 8, 2023.*

*[...] we do not use the language of human rights that much, although of course it is the basic language of equality, of recognition, of being of the same species, which is obviously not common sense, because according to racist common sense we are biologically unequal, hierarchically different and so on. [...] we have many doubts about homogenisation as the erasure of differences and inequalities implied by [human rights] language. Because we see that [...] it clouds the possibility of looking at the fact that we are in a hierarchical world and that we have no idea what form equality takes in the real life.*

*- Andrea Aguirre, **Mujeres de Frente**, December 5, 2022.*

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- d. IHRs discourse is identified as useful for the elites. It does **not respond to the reality of marginalised women or incarcerated people**. Benefitting from IHR requires economic and social capital.

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*My friend at that time had neither the time, nor the money, nor the life to be in court all the time. [...] she had to live, she had to eat, she had to study, she had to pay for her own studies. [...] I say this because I imagine that a person who has privileges could pay for a lawyer, could go more often to the Prosecutor's Office, right? [My friend] could not use the public attorney of the Prosecutor's Office who is tired of taking a lot of cases. I thought that also happened with the social worker, for example.*

*- "Amelie," **Corredores Migratorios**, interview, November 8, 2023.*

*[...] I was part of a group of, quote unquote, rights defenders at that time and what they did was to throw me out, because they said that prisoners had nothing to do with the issue of rights. And they threw me out because for them I was not an*

*activist, because for them I did not promote rights. What I was doing was promoting delinquents, as they do now when they say that I promote sex work.*

*- Odalys Cayambe, **Vivir Libre**, interview, November 28, 2022.*

*[...] there is not much openness at times to be critical of this penal expansion, precisely within the discourse of human rights. Because today constitutionalism or human rights are understood as perhaps the most progressive wing of law; however, it is a progressive wing that continues to live in a bubble of privileges as well.*

*- Pedro Gutiérrez, **Kuska**, interview, November 22, 2022.*

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- e. IHRs discourse on VAW atomises collective **struggles, overlooks structural issues by focusing on interpersonal violence**, strengthens the 'carceral common sense' and does not contribute to dismantling oppressive systems.

*We can open ourselves to other possibilities, to memory, to truth, and above all to prevention [...] understanding that sometimes criminal proceedings are so exhausting... Obviously, one individualises them; as much as the responsibility of the perpetrator is individualised, the pain is also individualised, and we do not rethink the structural [violence] that may exist.*

*-Pedro Gutiérrez, **Kuska**, interview, November 22, 2022.*

*[...] the subject of human rights also has its limitations, and there are many questions. [...] From a Marxist perspective, [...] human rights are often questioned as limited for the profound transformations of the system. Having achieved the recognition of human rights... it is something that is fine, that is necessary and anything you like, but it makes impossible a real and deep questioning of the system.*

*- David Fajardo, **Kuska**, focus group, November 17, 2023.*

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Figure 2 Corredores Migratorios memorial altar offered to loved ones who have passed away.

## 2. Penal violence against women

Participants questioned the role of the penal system in tackling VAW and considered its legacies patriarchal and colonial. Their experiences also made it possible to identify a cross-cutting 'penal violence against women' in diverse encounters between women and the penal system.

- a. Carceral punishment does **not effectively prevent, protect or redress survivors**; instead, various forms of VAW are perpetuated *through* criminal trials and prisons.

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*I saw, when I was working with victims of violence, that the penal system did not produce any kind of satisfaction or sense of justice, and no sense protection either. It was a very revictimising, very long process. It was an equally costly process, in which the victim had to pay even for the mobilisation of the police, of the agents [...].*

*So, we have a whole system that is very bad, right?*

*- Vianca Gavilanez, **Fundación Dignidad**, interview, December 13, 2022.*

*I worked in prison at the Centro de Privación de Libertad de Riobamba. The conditions were terrible, the treatment was inhumane... That is, you cannot be rehabilitated there. Basically, that was my conclusion. [...] you have no possibility of anything, but it is a system of punishment, nothing more, and of isolation and revenge.*

*-Cinthya Carrazco, **legal practitioner**, interview, November 14, 2023.*

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- b. **Carcerality reproduces exclusion, dispossession and stigmatisation**, affecting incarcerated people as well as their relatives and friends, with a distinctive **impact on the care work performed by women.**

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*[in prison] everything is about money. If you want to enter a workshop, you have to pay. If you want to enrol in a course, you have to pay; I have done it. My son used to tell me: "Mommy, there is a course for such and such, you have to pay 10 dollars. You never end up paying ten, you end up paying 13, because 3 goes to the owner of the bank account and the 10 goes to another person.*

- Ana Morales, **Comité de Familiares por Justicia en Cárceles**, interview, June 19, 2023.

*I heard that grandmother telling her testimony, and she was aware that her grandson committed a crime and that he was paying for it. But to hear her say that every month she has to travel 17 hours from Lago Agrio to the regional prison, being a senior citizen with all its complexities. She is in a context of poverty, and she had to raise money, she had to pay lawyers, she had sold everything. It was the first time that I was broken, that I was broken inside.*

- Fernando Bastias, **CDH Guayaquil**, personal interview, November 18, 2022.

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- c. The penal apparatus **is patriarchal, racist, classist and broadly discriminatory**. Participants rarely benefit from effective preventive, protective, and transformative mechanisms within the criminal legal system.

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*[...] when I entered the public university here, a friend of mine was raped, and I remember that I accompanied her in that process so that she could denounce her rapists. And she was a woman, like me, of African descent [...]. So, instead of feeling protected, she felt excluded because it was like: "you don't have the right to a psychologist; why did she wear a skirt? Why was she there at that hour?" We would go to the lawyer: "but why did you go out?". Always. In other words, this process was not to protect, not to liberate, but to judge. And in the end, she ended up being judged and not her aggressors.*

- "Amelie," **Corredores Migratorios**, interview, November 8, 2023.

*[...] I believe that the penal apparatus in general is a very violent apparatus and that this violence, of course, is distributed in a way.... Clearly impoverished, racialised people are the ones who suffer the most from the penal system, not people who break the norm in general. Let's say, a trans woman, a sex worker is going to be much more suspicious than, let's say, a cis woman.*

- Ana Vera, **Surkuna**, interview, November 15, 2023.

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Figure 3 Focus group with Corredores Migratorios, Quito, Ecuador.

### **3. Counter-carceral uses of human rights**

Although the participants generally have misgivings about IHRs, they recognise the possible benefits of using its language and tools strategically in concrete cases.

- a. Human rights can be appropriated from below **to reclaim the humanity of subalternised people.**

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*[...] people begin to understand human rights, they begin to take ownership of human rights, they begin to make a non-legal use of the law, perhaps to defend themselves, to be able to generate actions that protect them. And I think that is a little bit the idea, to make the little holes and to do it from the inside as well.*

- Ana Vera, **Surkuna**, interview, November 15, 2023.

*I see that the mothers [of people in prison] told the Committee: "our children are also human, we are going to fight for their humanity". And there I see that [the language*

*of human rights] is useful.*

*- Andrea, **Mujeres de Frente**, focus group, November 6, 2023.*

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- b. Appropriating human rights from below, with counter-carceral objectives, can **enable dialogues with governance agencies and, through incidence in public opinion**, may allow for a **questioning of the carceral common sense** established in the dominant legal imaginary.
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*[...] you and I have talked a lot about the neoliberal conversion of human rights and, for example, carceral feminism. [...] It is always necessary to produce stories, concepts, notions, words that dispute the naturalization of neoliberal human rights.*

*- Cristina Burneo, **Corredores Migratorios**, interview, November 28, 2022.*

*[...] the law does indeed help us to generate new social meanings. We have become very aware of this because we come from many places. That is to say, [there were] more anarchist times. Now we are, as it were, making all these alternative uses of the law, not only alternative uses, but also those possibilities of using it for social transformation.*

*- Ana Vera, **Surkuna**, interview, November 15, 2023.*

*We have a process that we call feminist legal co-defence. So, what we do is, together with our colleagues from the organisation, when they are in criminal trials [as defendants], we accompany the criminal trial. We are not lawyers, but we advise and accompany the lawyer, and we generate a whole defence that is like an argument that tries to question the reasoning of the judges, that appeals to the sensitivity of the judges and prosecutors, it is almost like lobbying.*

*- Andrea Aguirre, **Mujeres de Frente**, focus group, December 5, 2022.*

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- c. Human rights 'from below' **are used pedagogically and in strategic litigation.**

This may include remedies for incarcerated people whose **basic rights are at risk**, reduction of sentences, access to social reintegration programs, access to medical care, or early release from prison.

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*[...] people who are deprived of their liberty are the ones who use this vocabulary [of human rights] the most. And it seems to me that many persons deprived of liberty go to the libraries of the centres of deprivation of liberty, especially to the shelf where the legal books are, because what they are trying to understand is their situation and laws become coordinates to understand at what moment they are or in what situation they are in.*

- "Marco," **psychotherapist**, interview, October 21, 2022.

*One of my positions was to determine and make an interpretation, if you will, from human rights, from constitutionalism, because applying the sentence, in this specific case, of 18 years as such, was a matter that violated constitutional mandates. [We use] the conception of human rights as constitutional rights, with the possibility of reduction of a sentence, for a potentially fairer state of affairs.*

- Francisco Machado, **Kuska**, focus group, November 17, 2023.

*In reality the link has been through the relatives [of people in prison] when they come to say that something is happening to them inside the prison, and you say, "here there is a clear violation of human rights". [...] Every time a family member comes, a letter is sent to the director of the prison, notifying that there is a case of a person who [for instance] needs medical attention and does not have it. We wait seven days and if in seven days the person in prison is not attended, the habeas corpus is activated.*

- Fernando Bastias, **CDH Guayaquil**, interview, November 18, 2022.

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Figure 4 Mujeres de Frente (Women Upfront) taking part in a demonstration in Quito, Ecuador. The banner reads: 'for a world without prisons for women and children'. Courtesy of the collective.

## In short...

### Counter-carceral human rights from below

- ❖ Do not expand but contain the penal apparatus and/or aim at mitigating the damages caused by imprisonment.
- ❖ Tend to have an anti-racist component and consider economic inequality and other structural forms of discrimination.
- ❖ Imply a challenge to the hegemonic narratives and practices of both the penal apparatus and IHRs discourse.
- ❖ Can be part of a strategy of resistance and protection in the face of penal violence.
- ❖ Are aimed at reaching concrete objectives rather than vindicate IHRs as a project.

#### 4. Toward non-carceral justicia

For protection from violence, participants prioritise community-building, grassroots political education and community projects including soup kitchens, collective savings accounts, *acompañamiento* (material, emotional and logistic support) for VAW survivors, training workshops, community childcare spaces, and political and cultural activities. Justice is perceived as a material, embodied and transformative set of actions that allows for life to be sustained with dignity. Alternatives to the penal paradigm also promote prevention, protection, listening to victim-survivors, reparation and healing.

- a. **Creating and strengthening of community support networks** is necessary to address VAW. The community must aim to have the **capacity to provide a safe and supportive environment** where victim-survivors and their families **can access resources and services** (psychological counselling, legal assistance, medical care, temporary and permanent housing, childcare, financial assistance, decent employment, etc.).
- 

*I realise that the organisation, what we do, has sustained me. I didn't need to send someone who abused me to jail. I did not need to go to the police, which is ugly.*

*That is why I believe that this is a form of justice, of not going unpunished.*

*- Elizabeth Pino, **Mujeres de Frente**, focus group, November 6, 2023.*

*[...] we have accompanied cases of denunciation, of *escrache*,<sup>2</sup> which have been like para-statal forms of justice [...] that do not seek so much to be a punishment of the person who committed the rape or aggression, etc., but rather a way to raise awareness, to say that there are people who do not necessarily have to be sick or sick in the head, they are healthy children of patriarchy; and, secondly, there is a process of very deep accompaniment with the survivor, with the victim.*

*- "Rata," **Aktitú**, interview, November 24, 2022.*

*We have social services related to women's issues, but they are not funded. So, we do not have a system of services of any kind. In other words, we have hospitals that are empty [of basic resources], where obstetric violence is practiced, there is problem after problem that is not being solved with prison, because these problems exist regardless of whether the aggressor is in prison.*

*- Vianca Gavilanez, **Fundación Dignidad**, interview, December 13, 2022.*

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- b. Grassroots political education stands out as a **tool for obtaining skills to manage violence without triggering the penal system**. Many participants have been part of *acompañamiento* processes based on what they learned in their political schools.

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*One thing that helps us is the organisations, where they let us know, they make us understand what value we have as women. Because when you are alone in the world, walking in the world, you don't really know [...]. They never told us that we have rights, that we are women, that we can defend ourselves as women, that we must seek equality between men and women [...]. They never talked to us about this. So, once you come to an organisation, the organisation takes charge and has made us see, and has made us open our minds, our eyes, to more expectations of why we are here and what we want as women.*

*- Martha Collaguazo, **Mujeres de Frente**, focus group, November 6, 2023.*

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- c. **Materialising economic and social rights is a pathway to transform the power structures** that perpetuate inequality and violence. The participants consider it a **duty of the state to guarantee dignified living conditions** through the provision of services and economic redistribution.

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*[...] I believe that carceral punishment in certain cases against men is also absolutely dehumanising. I am thinking of these street children, of all these people who have, above all, the crimes of poverty, who are highly criminalised, persecuted, beaten and for whom the State has a responsibility [...]. If the State does not provide the minimum of housing, education, health, it cannot ask people not to get involved in these kinds of things.*

*- Ana Vera, **Surkuna**, interview, November 15, 2023.*

*[...] since there is an absence of welfare provision by the State, then all that welfare provision becomes part of the market and it will cost, it will cost you money. And then we are not talking about minimum conditions or dignified equality or anything else. [...] because we are talking about the absence of the State, the market is imposed and even the service of justice [could be] delegated to a private party. That would be terrible because this is costly and that has nothing to do with redistributing wealth and rather has to do with deepening the existing inequality gaps. So, for me, the role of the State is key in the provision of services, in its organising role, in its role of building the*

*minimum conditions from an institutional framework.*

*-Cinthya Carrazco, **legal practitioner**, interview, November 14, 2023.*

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- d. The participants emphasise **avoiding indifference and victim-blaming in the face of VAW**. Impunity is not necessarily perceived as a lack of carceral punishment but rather as **a lack of response and support from society and the state**.
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*When we talk about impunity, I feel that in general in the women's movement, I don't know... we are confusing terms. Sometimes what we want [...] is rather that there should be no indifference, that is, that it should be talked about, that it should not be made as if it did not exist, because that is where the blame goes [towards the victims].*

*- Mayra, **Mujeres de Frente**, personal communication, November 6, 2023.*

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*Figure 5 Children having lunch at the community house of Mujeres de Frente.*

## In short...

### *What could an abolitionist, feminist and anti-colonial justice look like?*

- ❖ Do not The basic material needs for a dignified life are met.
- ❖ There is no accumulation of low-paid and unpaid jobs on women's shoulders that make their lives precarious.
- ❖ Women's care work is not exploited; it is protected and compensated.
- ❖ Women have skills and resources to identify and address VAW.
- ❖ Violence is prevented and recognised at the community level.
- ❖ There are reliable community support and acompañamiento networks.
- ❖ The community is not indifferent to VAW.
- ❖ The community does not blame victim-survivors for VAW.
- ❖ The search for justice does not lead to the bureaucratisation of life.
- ❖ There are non-penal alternatives to seek justice, including transformative ones.
- ❖ There are options for physical and spiritual healing beyond legal mechanisms, regardless of the individual's financial resources.
- ❖ Mechanisms and spaces exist to make women and their children safe from ongoing violence.
- ❖ Non-repetition is prioritised.

## Recommendations

1. Fund capacity building programmes in local communities, using the knowledge of activists and grassroots organisations, to identify and manage VAW, including strategies to build and strengthen support networks.
2. Promote responses to VAW that prioritise prevention, protection, and access to the resources needed to save women's lives.
3. Encourage social mobilisation strategies to demand the enforcement of socioeconomic rights and the availability of legal and financial resources for victim-survivors.
4. In human rights training programs, include elements that identify the perils of carcerality as well as the racist and classist implications of penal expansion.
5. Encourage counter-hegemonic and anti-colonial appropriations of human rights to question the meanings established in the dominant political imaginary, interrogating the 'carceral common sense'.
6. Keep in mind the limits of IHRs discourse and criminal law, in line with an anti-

carceral perspective.

7. Demand that the state enforces economic and social human rights guarantees.
8. Allocate resources to grassroots and collective organisations that defend the dignity of people in prison, in irregular mobility situations, and in other situations of high vulnerability.
9. Widely disseminate the notions of justice and reparation proposed by grassroots community organisations.
10. Strengthen and allocate resources to community networks to accompany and support victims-survivors of violence.

## Finally...

The penal system reproduces racist, misogynist and classist forms of discrimination; that is, it is a vehicle of coloniality.

Resisting the universality of the penal paradigm and the carceral dimension of human rights is thus central in anti-colonial feminist projects.

Reimagining human rights from below by centring the materiality of life, access to resources and services, social reproduction, care work and community building can be part of an anti-colonial feminist strategy.

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