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Drug Policy Reform in Latin America: Discourse and Reality

**The Research Consortium on Drugs and the Law (CEDD)
by Alejandro Corda**

About this publication

The CEDD research consortium brings together researchers from nine Latin American countries with the goal of analyzing the impact of criminal law and legal practice surrounding illicit drugs at the national and regional level. Currently, a fourth research project is being carried out on the situation of people deprived of their liberty for drug offenses in the countries under study. This investigation seeks to give an update on the situation of people incarcerated for drug crimes and also aims to propose alternatives to incarceration. This brief summarizes the main findings of the Consortium's fourth research study.

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This document was translated by Hilary Burke and edited by Coletta Youngers

Coordinators: Coletta Youngers & Catalina Pérez Correa

Design by Ariana Ángeles García & Karen Silva Mora

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CEDD Members

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ACEID

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Acción Andina

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Coletta Youngers | United States
WOLA

Luis Felipe Cruz | Colombia
Dejusticia

Pien Metaal | Netherlands
TNI

Summary: This brief shows how current drug policies have been questioned within Latin America and analyzes the reforms undertaken in recent years; however, these initiatives have not yet changed the strategy of continuing to use criminal law as the main state response to address drug-related issues. The research done by CEDD indicates that the emphasis on a punitive approach keeps sending more and more people to prison for drug offenses, and they tend to represent a significant proportion of the overall penitentiary population.

Introduction

In recent years, Latin America has been pointed to as one of the regions in the world where there has been the greatest questioning of the drug policies designed at the international level. In numerous forums, officials have raised concerns and some countries have carried out reforms. However, these initiatives have not yet changed the strategy of continuing to use criminal law as the main state response to address drug-related problems. This has translated into the incarceration of low-level actors in the drug trade who are interchangeable and in situations of vulnerability. On occasion, this strategy has even ended up affecting drug users.

The information gathered in the nine countries that belong to the Research Consortium on Drugs and the Law (*Colectivo de Estudios Drogas y Derecho, CEDD*) indicates that the punitive approach continues sending more and more people to prison for drug offenses. They tend to represent a significant proportion of all people in prison—in several countries, 1 in

every 5—and in the majority of countries, this group is growing at a faster rate than that of the overall prison population.

Discourses and reforms

National drug laws and their impact in Latin American countries, derived from a strict interpretation of the model to control narcotics and psychotropic substances set forth by the United Nations conventions, have sparked numerous critiques. The initiatives that have posed concerns are described below along with the recent legislative reforms carried out in Latin American countries.

In February 2009, for example, the Latin American Commission on Drugs and Democracy, whose members include three former presidents and other prominent figures, presented the statement “Drugs and Democracy: Toward a Paradigm Shift,” which evaluated the impact of the “drug war” and presented recommendations for safer, more efficient and humane policies.

National drug laws and their impact in Latin American countries have sparked questioning and recently have led to some legislative reforms.

Meanwhile, in May 2013, an analytical report and a scenarios report were presented as part of a process led by the Organization of American States (OAS), which raised concerns about the proportionality of penalties in the case of low-level dealers, many of whom are in situations of vulnerability.



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In June of the same year, and also in the framework of the OAS, the Declaration of Antigua, Guatemala "For a Comprehensive Policy Against the World Drug Problem in the Americas" was adopted. It encouraged member states to strengthen their actions and policies to reduce prison overcrowding, to respect proportionality between penalties and the harm done, and to support alternatives to incarceration. At the OAS Special General Assembly, also held in Guatemala in September 2014, these objectives were reinforced.

In 2015, the Community of Latin American and Caribbean States (CELAC), adopted the Quito Declaration, in which drug policy officials highlighted the need to incorporate the principles of the Universal Declaration of Human Rights into the drug conventions in a comprehensive way, bringing about policies centered on citizens' well-being.

In late 2013, Uruguay modified its legislation establishing a system to regulate the production of and access to cannabis and its derivatives. The same year, Costa Rica modified its drug law to reduce the disproportionate sentences handed down to women for the crime of bringing drugs into prisons. In 2014, Ecuador adopted

a new criminal procedures code, which, although it toughened penalties overall, reduced sentences for drug offenses, which had been some of the harshest in the region. Although the first data available after these reforms has been auspicious, it is too soon to reach conclusions about their results.

Reality: People in prison

Although information is not always uniform and/or available, the statistics on people in prison for drug crimes in the CEDD countries (Argentina, Bolivia, Brazil, Colombia, Costa Rica, Ecuador, Mexico, Peru, and Uruguay) illustrate a reality that goes contrary to the prevailing discourse.

Both the studies already published by the Consortium and the research that is currently underway shows the following.

The incarceration rates in these countries, in general, are above the worldwide average. Almost all of them, except Bolivia, surpass the average global rate of imprisoned people per 100,000 inhabitants, which is 144 (International Centre for Prison Studies, ICPS). This ranges from Costa Rica with a rate of 291, to Argentina with 152 people in prison per 100,000 inhabitants. Several of these countries have a total of more than 70,000 people in prison, or are near that number.

The following table shows this trend:

People in Prison in CEDD Countries, Rate and Increase

	Prison population	Rate per 100,000	Increase %
CR	13,903 (2014)	291 (2014)	58 (2000-2014)
URU	9,771 (2013)	278 (2012)	42 (2003-2013)
BRA	548,003 (2012)	274 (2012)	135 (2000-2012)
COL	118,245 (2014)	245 (2014)	300 (1991-2014)
PER	71,596 (2014)	212 (2014)	195 (1997-2014)
MEX	257,017 (2015)	212 (2015)	25 (2005-2015)
ECU	26,591 (2014)	165 (2014)	110 (1990-2014)
ARG	64,288 (2013)	152 (2013)	155 (1996-2013)
BOL	14,415 (2013)	134 (2013)	158 (2001-2013)

Source: Compiled by the author, based on data obtained by CEDD researchers

The table also shows that in all the countries studied there was an increase in the number of people in prison. Although the statistics in the table correspond to different time periods, they can be combined with those gathered in a previous study (Metaal and Youngers, 2010), which shows the temporal

overlap of the increase in these countries' prison populations with the "war on drugs" strategy, which was first consolidated—and continues to persist—in the years around the time of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna, 1988).

Its strict interpretation led to very harsh criminal laws being passed in almost all of the countries under study, and these contributed significantly to the increase in their incarceration rates (Metaal and Youngers, 2010: 5).

People in prison for drug crimes

The information obtained in the countries studied by CEDD shows that despite the strong critique of present policies being

employed, in nearly all of these countries the number of people imprisoned for drug crimes has increased. The exception is Ecuador, which, after the pardon issued in 2008 for low-level drug couriers (or "mules"), initially reduced the number of people incarcerated for these crimes; but in subsequent years that prison population began to grow again.

Evolution of People in Prison for Drug Crimes (2008-2014)

	2008	2009	2010	2011	2012	2013	2014
CR	2,283	2,503	3,805	4,745	N/A	N/A	N/A
ECU	7,679	N/A	3,975	N/A	N/A	N/A	6,467
BOL	2,794	2,522	2,741	3,205	3,787	3,939	N/A
PER	11,304	11,305	11,899	13,057	15,603	16,526	N/A
BRA	77,371	91,037	106,491	125,744	138,198	N/A	N/A
COL	11,808	12,616	15,872	19,534	23,004	25,258	23,141
URU	N/A	911	1,051	1,147	1,192	1,265	N/A
ARG	5,297	5,256	5,846	6,844	6,498	6,979	N/A
MEX ¹	N/A	N/A	N/A	22,015	23,613	26,098	N/A

Source: Compiled by the author, based on data obtained by CEDD researchers

¹ Data corresponding to federal prisons

The information obtained also demonstrates that a significant proportion of the people who are in prison in the countries under study are there because of drug crimes. In six of the nine countries, those incarcerated

for drug offenses represent 20 percent or more of the total prison population, and in three of them that figure equals 25 percent or more.

In addition, in five of the nine countries, the population incarcerated for drug crimes has grown at a faster pace than that of the overall prison population. The exceptions are Peru, Bolivia, Costa Rica, and Ecuador.

The following table supports the prior two statements:



**People imprisoned for drug crimes as a percentage of the total prison population
Comparison of increases: people imprisoned for drug crimes and the overall population**

	Population in prison for drugs	Drug crimes (%)	Increase in drug population (%)	< >	Increase in overall prison population (%)
ECU	6,467 (2014)	24 (2014)	63 (2010-2014)	<	98 (2010-2014)
BOL	3,939 (2013)	27 (2013)	32 (2001-2013)	<	158 (2001-2013)
PER	16,526 (2013)	24 (2013)	46 (2008-2013)	<	56 (2008-2013)
CR	4,745 (2011)	26 (2011)	126 (2006-2011)	<	131 (2006-2011)
BRA	138,198 (2012)	25 (2012)	320 (2005-2012)	>	51 (2005-2012)
COL	23,141 (2014)	20 (2014)	269 (2000-2014)	>	136 (2000-2014)
URU	1,265 (2013)	13 (2013)	39 (2009-2013)	>	15 (2009-2013)
ARG	6,979 (2013)	11 (2013)	113 (2002-2013)	>	39 (2002-2013)
MEX	26,098 (2013)	10 (2013)	19 (2011-2013)	>	7 (2011-2013)

Source: Compiled by the author, based on data obtained by CEDD researchers

The information demonstrates how the criminal response has intensified and confirms what previous research has indicated regarding the use of criminal law as the main state response to address drug-related issues. The CEDD country studies confirm the assessment made in the previous research on prisons regarding the profile of people who are imprisoned for these crimes (Metaal and Youngers, 2010:

97-98). Once again, those who are sent to prison tend to be low-level actors in the drug trade who are easily replaced and associated with subsistence economies or other vulnerable conditions. The percentage of women imprisoned for these crimes usually surpasses that of the general population, along with foreigners. And the rates are even higher when both factors are combined (i.e. foreign-born women).

According to the table, in several countries the percentage of these crimes as a proportion of the total prison population has risen. In Brazil, coinciding with the last reform that increased penalties for trafficking crimes, this figure went from 9% in 2005 to 26% in 2009, which is equivalent to an increase of more than 100,000 people. In Colombia, the population imprisoned for these crimes nearly quadrupled in the last fourteen years, rising from 6,263 people in 2000 to 23,141 in 2014. Thus, it went from representing 12% of the overall prison population to 20% during the same period.

Even in countries with lower percentages, such as Argentina, Uruguay and Mexico, there has been an increase in recent years. Uruguay went from 2% in 1999 to 12% in 2012. Argentina and Mexico appear to have increased their prison populations after the federal government delegated to state governments the obligation to pursue lower-level drug traffickers, strategies known as “de-federalization” or “*narcomenudeo*.” These strategies not only accentuate the criminal response toward small-scale dealers but do so with drug users as well, to a greater or lesser extent.

In the countries in which the population imprisoned for these crimes grows at a slower pace than the overall prison population, this seems to coincide with

criminal reform processes that tend to increase penalties for other crimes, or restrict benefits related to release during the judicial process or during the serving of sentences.

Conclusions and recommendations

Although Latin America is a region that has questioned the current international drug control model, information from the countries under study shows that the **population imprisoned for drug crimes continues to rise**. The punitive approach persists as one of the main state responses when it comes to addressing drug-related issues.

The people in prison for drug offenses continue to represent a significant percentage of all incarcerated persons. **In many of the countries studied, 1 in every 5 inmates is in prison for these crimes**. In the majority of these countries, the population of people imprisoned for drug crimes is growing at a faster pace than the overall population; in other words, the percentage of people in prison for these crimes as a proportion of the total has been growing.

The profile of people incarcerated for these crimes continues to show that they are low-level actors in the drug trade who are easily replaced and associated with subsistence

economies or other vulnerable conditions; in addition, there is greater representation among them of women and foreign nationals. The imprisonment of these actors in the drug trade does not appear to have an impact on illicit drug flows and takes a high social toll by aggravating the situation of vulnerability of these people and their families. The situation of women with children deserves special attention.

Given these findings, CEDD recommends that policymakers take the following actions:

- a) Rethink the current drug strategy, which is based on a punitive response, in order to guarantee respect for the human rights of all people affected.
- b) Ensure that drug laws include penalties that are proportional to the harm caused and take into account the role of the actors within drug trafficking networks.
- c) Reduce the penalties for drug crimes and establish alternatives to incarceration.
- d) Pay special attention to the situation of vulnerable populations linked to these crimes and whose contact with the criminal justice system aggravates their situation and that of their communities.
- e) Explore regulation models (such as those being tested with cannabis) as a way of moderating the criminal response and its consequences.

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About CEDD

The Research Consortium on Drugs and the Law (*Colectivo de Estudios Drogas y Derecho, CEDD*) brings together researchers —most of them lawyers— from nine Latin American countries: Argentina, Bolivia, Brazil, Colombia, Costa Rica, Ecuador, Mexico, Peru and Uruguay. Launched as an initiative of WOLA and TNI, CEDD's main objective is to analyze the impact of criminal law and legal practice related to drugs, seeking to provide information on the characteristics and social and economic costs of drug policies in Latin America and thereby foster an informed debate about the effectiveness of current policies and recommend alternative approaches that are fairer and more effective.

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