



Presentation at the 61st Regular Session of CICAD

April 26, 2017

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The Washington Office on Latin America (WOLA) is a member of the Research Consortium on Drugs and the Law (CEDD), a network of drug policy experts from 10 countries in the Americas, which has just published a new report, *Irrational Punishment: Drug Laws and Incarceration in the Americas*. I would like to share with you some highlights of the executive summary of the report.

Executive Summary

Although Latin America has led the global debate on reforming drug policy and has promoted the need to consider alternatives to incarceration with regard to drug offenses, the use of criminal law and sentences that deprive people of their liberty has worsened in recent years. Thus, there is a significant gap between the reformist discourse of governments and their efforts to move toward less repressive responses, with a focus on public health, human rights and human development. Such efforts have been erratic with only a few exceptions. In some countries, such as Ecuador, these efforts have even been rolled back.

In the majority of countries in the region, the percentage increase in the population incarcerated for drug offenses has been much higher than that of the population imprisoned for other offenses, and the data shows that these trends continue to accelerate. In addition, in several of the countries studied, incarceration for these offenses is the main factor explaining growth in the prison population. Through country studies, the CEDD investigations show that there exists a large number of people incarcerated for low-level, non-violent drug offenses who would benefit from alternatives to incarceration, especially those who are disproportionately affected by incarceration.

The information presented in this report shows how disproportionately tough sanctions, the use of mandatory minimum sentences, the obligatory use of pretrial detention for these offenses or its overuse, and the lack of use of alternatives to incarceration, among others, contribute to the rise of people incarcerated for drug offenses. Although Latin America is one of the most violent regions in the world, increased reliance on incarceration does not appear to adequately address this situation, given that it is mainly minor offenders, who are frequently arrested *in flagrante*, upon whom the weight of the criminal justice system falls. In the case of drug offenses, the CEDD studies show that drug users are often arrested, extorted and even incarcerated as small-scale or retail dealers for possessing quantities of drugs that are above what may be considered tolerated levels for personal use. This shows that the discourse on protecting the health of users exists only on paper

while, in practice, drug policies continue to approach the problem of illicit drug use from a criminal law perspective.

Overcrowding, scarce resources and extreme conditions of violence plague prisons in Latin America. The lack of hygiene, of drinking water, basic essentials and sufficient space contribute to a high prevalence of contagious diseases that endanger the health of inmates, their relatives and detention center employees. The use of prisons to address the drug issue undermines health, rather than protecting it. Reducing the use (or abuse) of this criminal justice tool would help to improve prison conditions by freeing up existing resources.

Incarceration and the stigmatization associated with it affects the people who are detained for drug offenses and their families in different ways, depending on criteria such as their gender, sexual identity, ethnicity and socioeconomic situation. Prison has different and disproportionate impacts on women, for example. Although the total number of women in prison is still much lower than that of men, the incarceration of women for drug offenses is rising at an alarming rate. Women generally occupy the lowest rungs in the drug business ladder. The vast majority of these women have low levels of education and live in conditions of poverty; many of them are single mothers. The incarceration of women who are mothers and caretakers in particular can have devastating consequences for their families. In addition, the discrimination that people from traditionally marginalized population groups suffer outside of prison is often replicated and worsened on the inside.

With regard to young people and adolescents involved in drug offenses, although they are processed in different criminal justice systems, the juvenile system tends to have similar characteristics – and problems – as the adult system. One is that neither adolescents nor young people tend to belong to the leadership ranks in drug trafficking mafias, but instead form part of the weakest and most replaceable links in the trade. However, despite this minor participation, they are among the groups that suffer the effects of the punitive impact of drug policies the most. The absence of drug use prevention strategies is combined with the government's failure to provide treatment and rehabilitation services for problematic drug use faced by those young people and adolescents who must engage in criminal conduct to obtain drugs.

This report, based on data acquired by CEDD researchers, points to the existing penitentiary crisis in Latin America and the adverse effects that current drug laws have had on national prison systems. The report also shows that the implementation of drug policies – and its negative effects – are not applied in an equal way in society, but instead hurt certain sectors that often already face situations of social vulnerability. Faced with this reality and taking into account the findings of the individual CEDD country studies, the following public policy recommendations are put forward with the objective of achieving a more just drug policy that is respectful of fundamental rights and focused on protecting public health in societies across the Americas.

Recommendations

Legal reforms:

Ensure that the criminal justice response is proportional to the harm caused and reform drug laws to distinguish between low-, medium- and high-level offenses, between degrees of leadership in criminal networks, and between violent and non-violent offenses.

Eliminate mandatory minimum sentences, avoid pretrial detention in the case of minor drug offenses, and allow access to procedural benefits and opportunities for alternatives to incarceration.

Consider granting special amnesties (pardons) to people convicted for minor, non-violent drug offenses, as well as to first-time offenders.

Promote the establishment of legal and regulated cannabis markets, and explore options for regulated access to other substances that have been declared illicit.

Drug use and the law:

Decriminalize drug use and put a stop to all prosecution of users, including with regard to possession, cultivating and purchasing. This means removing from criminal law all of the behaviors associated with consumption.

Use thresholds to set minimum quantities of drugs, based on user practices, below which no one can be considered to be a dealer, without allowing people who possess amounts above these thresholds to be punished for distribution and trafficking. In all cases, in order to sanction that behavior, the State must prove that the intent of the possession was to sell or distribute.

Offer voluntary and free treatment services to people with problematic drug use, both when they commit other offenses and when they do not. This treatment should not be subject to the threat of a criminal sanction or compulsory rehabilitation. Treatment must be based on scientific evidence, have a harm reduction approach, and be carried out by doctors – not judges.

Women and incarceration:

Reduce significantly women's incarceration levels, whether through the application of the principle of proportionality or by adopting alternatives to incarceration. This should include addressing the inappropriate use of pretrial detention and the execution of sentences.

Do not incarcerate pregnant women or mothers of minors convicted for non-violent drug offenses. In the case of these women, the application of alternatives to incarceration must be considered.

Ensure that judges have flexibility to take into account factors of vulnerability and whether the accused (male or female) has dependents, both during the criminal proceedings and when determining the sentence.

Young people and adolescents:

Implement comprehensive public policies aimed at young people and adolescents, and move away from the current stigmatization and criminalization of this population.

Apply the benefits and alternative sentencing policies established for this age group in different countries.

Comply with laws that establish juvenile justice systems for adolescents, which regulate the State response for offenses committed by people under 18, and which stipulate that the deprivation of liberty of adolescents should be an exception and that the best sanctions are those that do not entail confinement (such as supervised release or doing community service), in addition to the various resources that the laws establish to be able to resolve

cases outside the court system through restorative justice. In addition, the maximum sentences for crimes committed by minors should be reduced so they do not exceed what is established in international instruments.

Provide sufficient resources to the juvenile justice systems for adolescents, so they can operate in a specialized, fair and efficient manner, in accordance with what is established by the Convention on the Rights of the Child and other relevant international standards.

Alternatives to incarceration:

Carry out the reforms needed to implement alternatives to incarceration with strict respect for the rights of the people engaged in drug-related behavior, based on an adequate assessment of which measures would allow for optimizing the available resources in each country to reduce prison overcrowding and recidivism in the commission of offenses.

Ensure, insofar as possible, the diversion of cases before they enter the criminal justice system, which can allow for a better use of government resources and better opportunities for the well-being and employment of people in these situations.

Promote the reforms needed to allow those who have committed minor, non-violent drug offenses to be sent, instead of to prison, to a public support network aimed at providing services to prevent recidivism and address the socioeconomic factors that led the individual to commit the crime.

Design and evaluation of drug policy:

Guarantee and broaden participation in the design, implementation and evaluation of drug policies by civil society actors and especially by drug users, people who are incarcerated, women, the LGBTI community, indigenous, Afro-descendant and other sectors of the population who are in situations of vulnerability and have been disproportionately affected by drug policies.

Carry out a serious assessment in each country to understand and be able to analyze the impact and effectiveness of current drug policies. This should have the aim of developing and implementing more effective, humane and just policies.

Improve and expand systems for collecting, systematizing and evaluating criminal justice data and ensure that government officials and the public have timely access to this information. This will allow for the effective evaluation of drug policies and the impacts of those policies, and will lead to better policy making through correct diagnoses about the public policy problem that is to be addressed.

To read the full report and other CEDD investigations, see www.drogasyderecho.org.