



Photo Credit: Catalina Pérez Correa

Latin American youth deprived of their liberty due to drugs

The Research Consortium on Drugs and the Law (CEDD)

By Gloria Rose Marie de Achá

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.

The Research Consortium on Drugs and the Law (CEDD), 2015

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

Design by Ariana Ángeles García and Karen Silva Mora

D.R. © 2015

CEDD Members

Raúl Alejandro Corda | Argentina
Intercambios A.C.

Gloria Rose Marie de Achá | Bolivia
Acción Andina

Luciana Boiteux de Figueiredo | Brazil
Federal University of Rio de Janeiro

João Pedro Padua | Brazil
Federal University of Niteroi

Rodrigo Uprimny Yepes | Colombia
Dejusticia

Diana Guzmán | Colombia
Dejusticia - Stanford Law School

Sergio Chaparro | Colombia
Dejusticia

Luis Felipe Cruz | Colombia
Dejusticia

Ernesto Cortés | Costa Rica
ACEID

Jorge Vicente Paladines | Ecuador
Office of the Public Defender

Catalina Pérez Correa | Mexico
CIDE

Jérôme Mangelinckx | Peru
CIDDH

Ricardo Soberón Garrido | Peru
CIDDH

Gianella Bardazano | Uruguay
IELSUR

Coletta A. Youngers | United States
WOLA

Pien Metaal | Netherlands
TNI

Summary: This brief provides information and analysis on the situation of young people and adolescents deprived of their liberty due to drugs in Latin America. The text shows how this particular population bears the brunt of repressive policies through police persecution, rights violations and deprivation of liberty. As explained in the brief, the marginal participation that young people have in drug-related crime means that they are easily replaced within the drug economy and hence their incarceration has little impact on the supply of illicit substances.

Introduction

The situation of young people and adolescents deprived of their liberty for drug-related cases represents one of the social costs of drug policies. According to studies carried out at a regional level, two relevant elements must be taken into account with regard to this population. The first is the existence of a negative and discriminatory social perception of these youth and adolescents, who are stigmatized as being inclined toward crime and violence. In that context, the repressive impact of drug policies tends to sharply affect this population through police persecution, the violation of rights and the deprivation of liberty. Second, young people and adolescents generally participate marginally or at subordinate levels in drug offenses; they

are usually involved in transporting drugs as couriers (or “mules”) or in small-scale trafficking or retail sales and, as a result, they are easily replaced within the illicit drug economy and largely do not benefit from its profits.

This report, which is part of the research carried out by CEDD on persons detained and incarcerated for drug offenses, addresses two realities: first, the situation of young people in the regular criminal justice system; and second, the situation of adolescents in the special juvenile justice system.¹

Young people deprived of their liberty due to drugs

In Colombia, data provided by the National Police allow for age to be singled out as a characteristic trait of the arrests for drug

¹ In Latin America, the term “adolescents” refers to persons between 12 and 17 years of age. The Convention on the Rights of the Child, in its first article, indicates that it “defines a ‘child’ as a person below the age of 18.” That is the general rule. However, in legal and colloquial language in

Latin America, “children” is used to refer to persons from birth through 11 years of age, and “adolescents” to persons between 12 and 17 years of age. This is also reflected in Latin American laws. Therefore, the reference to young people applies to people 18 and older.

trafficking, possession or production, in comparison with other crimes: 31.9 percent of people arrested for these drug-related offenses are between the ages of 18 and 25, compared with 28.4 percent of those apprehended for other crimes. In addition, 25.8 percent of those arrested for drug trafficking, possession or production are between 26 and 34 years of age, versus 28.1 percent for other crimes. There is lower participation among people 35 and older.

In addition, 94.9 percent of the arrests for trafficking, possession or production are *in flagrante*, which puts this population at a disadvantage since, according to Article 301 of Colombia's Criminal Code, those who are arrested *in flagrante* only qualify to receive one-fourth of the sentence reduction benefits offered to others who agree to a plea bargain.



Photo Credit: Catalina Pérez Correa

According to the figures obtained by CEDD, 40.71 percent of the persons incarcerated in Colombian prisons for drug offenses are between 18 and 29 years of age, compared with 41.83 percent for other crimes. In Costa Rica, according to figures from 2011, 10.44 percent of the inmates under Law 8204 were between 18 and 24 years of age, while 18.07 percent were between 25 and 29. In Mexico, 65.2 percent of people convicted of drug offenses in 2012 were young people between 18 and 34 years of age. In Peru, 82.5 percent of the population incarcerated for drug crimes was between 20 and 49 years old. Furthermore, in the period from 2008 to 2013, there has been an increase in the detention of young people for drug offenses, mainly consumption and small-scale dealing. Taking as an example the prison of Palmasola in the Santa Cruz province of Bolivia, which is the most highly populated prison in the country, 13 percent of the group of people from 16 to 21 years of age (adolescents and youth) deprived of their liberty are detained on drug offenses, the third-highest percentage in terms of criminal behavior.

Adolescents deprived of their liberty due to drugs

The Juvenile Justice System² is the specialized system that deals with offenses committed by persons between 12 and 18 years of age. The way it should operate is established in the United Nations Convention on the Rights of the Child and in the doctrine of comprehensive protection, since it is understood that according to the principle of progressive autonomy, minors are responsible for the consequences of their actions.

Adolescents have limited or reduced criminal responsibility since they are going through a stage of intellectual, moral and emotional development. For that reason, the aims of the Juvenile Justice System are fundamentally socio-educational, in accordance with the doctrine of comprehensive protection. In the case of Brazil, the socio-educational system for adolescents is not criminal in nature; it is a protection system based on Law 8.069/90. In the framework of the Convention on the

Rights of the Child, the sanctions par excellence for adolescent offenders do not entail the deprivation of liberty, rather include programs such as supervised liberty and community service. The system must also include alternatives to deprivation of liberty through the application of mechanisms of Restorative Justice.

The deprivation of liberty (or internment in the case of Brazil) of adolescents should only be an exception; however, in practice, States use and abuse the prison option. This situation has transformed juvenile justice systems into producers of violence, strongly influenced by drug policies related to citizen security whose objective is often to prevent or repress drug offenses or control substance use. The following are figures on the deprivation of liberty provided by the Regional Juvenile Justice Observatory, created by Defence for Children International (DCI)³:

² The adolescent criminal justice system in some Latin American countries is called the Juvenile Criminal Justice System, due to translation from the English term "Juvenile Justice." It is worth clarifying that in the case of Brazil, the protection system for these cases is judicial but is not criminal, and as a result the term "crimes" is not

used in the case of adolescents but rather "infractions," and, with regard to the deprivation of liberty, places of confinement are not called "detention centers" but rather "internment centers."

³ Regional Juvenile Justice Observatory of Defence for Children International. Website: www.orjpp.org

Adolescents deprived of their liberty by country and gender

Country	Total number of adolescents deprived of liberty	Male adolescents	Female adolescents
Argentina	1,508	1,458	50
Bolivia	269 ⁴	252	17
Brazil	20,532	19,505	1,027
Colombia	3,539	3,330	209
Costa Rica	45	42	3
Ecuador	625	592	33
Mexico	4,959	4,612	347
Uruguay	512	474	38
TOTALS	32,376	30,639	1,737

Sources: Regional Juvenile Justice Observatory 2015 Monitoring Report. The dates of the statistics correspond to data presented by the Observatory's member countries throughout 2014.

Mexico: National Census of Government, Public Security and State Penitentiary Systems, INEGI, 2013

According to the Regional Juvenile Justice Observatory, the population of adolescents deprived of their liberty for drug-related offenses is generally made up of people who are involved at the lowest levels of drug

transportation, small-scale trafficking (a high percentage of whom are users who sell drugs to finance their own consumption), or belong to the dispensable ranks of drug traffickers' armed contingents. In any case, these

⁴ This figure only includes adolescents between 12 and 15 years of age since, up until June 2014, adolescents who were 16 and 17 were tried in the adult criminal justice system.

adolescents tend to be lured or brought in by adults who are part of drug trafficking mafias and who use them, among other reasons, because of the reduced sentences that apply to minors in the framework of the specialized juvenile justice system (DCI, 2015). "The predicament of adolescent minors in drug trafficking is a matter that requires special care," states the study on this topic carried out by the Sub-regional System for Information and Research on Drugs in Argentina, Bolivia, Chile, Colombia, Ecuador, Peru and Uruguay. "The drug market's reliance on young actors, who are usually subject to regimes of limited criminal responsibility, is a trend that has been observed in several countries." (SISUID, 2010).

In Brazil, according to 2012 figures from the Secretariat of Human Rights of the Presidency of the Republic, 26.6 percent of the adolescents deprived of their liberty were detained for drug trafficking-related crimes. Between 2002 and 2011, the deprivation of liberty of persons under the age of 18 in Brazil grew from 4.5 percent to 10.6 percent. This number is even greater for those convicted of drug trafficking, the percentage of which rose from 7.5 percent in 2002 to 26.6 percent in 2012 (SDH, 2012). In Colombia, in the period between May 2007 and May 2014, drug trafficking, production or possession was the

second-leading reason (with 30 percent of cases) for which adolescents entered the system, after theft. In addition, according to the Regional Juvenile Justice Observatory, 31.1 percent of male adolescents deprived of their liberty in Colombia in 2012 were detained for drug trafficking, production or possession, as well as 25 percent of female adolescents.

De Also, according to data gathered by the Regional Juvenile Justice Observatory in Brazil, the number of adolescents accused of drug trafficking in the socio-educational system has increased tenfold (by 1,030 percent) over the last ten years. In Paraguay, judicial sources state that 85 percent of adolescents who enter the Juvenile Justice system consume crack. Since drug consumption is not stipulated as a crime, these adolescents must have been charged within the juvenile justice system for other offences, not for consumption per se. However, this high percentage shows that cases related to drug consumption are being dealt with and resolved within the juvenile justice system.

According to figures from the Legal and International Affairs division of the Mexican Attorney General's Office, 51.15 percent of male adolescents detained for drug offenses between 2006 and 2014 were accused of drug

possession, while 19.97 percent were detained for drug use. Similarly, 47.03 percent of female adolescents detained for drug offenses in the same period were arrested for possession, and 16.29 percent for drug use. Furthermore, Mexico's National Institute of Statistics and Geography (INEGI) reports that the number of adolescents charged in 2013 by the State's Public Ministry office that specializes in adolescents, in the prior inquiries initiated under the written or mixed system and in the investigations opened under the oral system, totaled 49,051. Of those offenders, 7.8 percent (3,808) were charged with small-scale drug dealing, with males representing 88.9 percent of that total (3,386) and females 11.1 percent (422).

Another situation to be taken into account is that crimes such as theft, robbery, rape or homicide committed by an undetermined number of adolescents who are deprived of their liberty may be linked to the use of licit or illicit drugs. Research carried out in 2014 in Brazil by the National Council of Justice on adolescent girls in juvenile detention centers found drug consumption to be a worrying, related factor. In one of the internment centers investigated, one in three adolescent girls was receiving treatment for drug use (DCI, 2015). Reality shows that the

relationship between drug use and criminal activity is very broad and complex and especially in the case of adolescents, is also linked to a lack of family or emotional ties, a lack of opportunities and other deficiencies suffered by part of the adolescent population. In Ecuador, for example – according to the Regional Juvenile Justice Observatory, which cites the Council on Childhood and Adolescence – 80 percent of minors detained for criminal conduct have no family members or, in some cases, their parents have migrated; in other cases, they abandoned their children or died, which could make this type of criminal conduct easier to understand.

According to the study done among adolescents in conflict with the law by the Sub-regional System for Information and Research on Drugs in Argentina, Bolivia, Chile, Colombia, Ecuador, Peru and Uruguay, 24 percent of the nonviolent crimes committed by adolescents in Uruguay can be attributed to drug use, compared with just 6 percent of violent crimes; in Colombia 29 percent of nonviolent crimes can be attributed to drug use and 17 percent of violent crimes; in Peru the percentages are 13 percent and 9 percent, respectively. The same study concludes that "...the close association between drugs and crimes

against property indicates that the acquisitive connection is equally or more important than the psychopharmacological connection, in the case of illicit drugs. The figures also indicate that despite the fact that the crime of drug trafficking is not very widespread among adolescents, in several countries it is associated with significant rates of drug abuse and with prior criminal records that include other offenses, which could portend more serious and persistent trajectories in the criminal arena.” (SISUID, 2010)



Photo Credit: Catalina Pérez Correa

With regard to centers for the deprivation of liberty of adolescents, several countries have high, problematic levels of drug use. According to the Regional Juvenile Justice Observatory, in Colombia 25.4 percent of the male adolescents and 30.1 percent of the female adolescents deprived of their liberty meet the criteria of substance dependence;

likewise, in Costa Rica, at least 80 percent of the population deprived of liberty in the Zurquí Juvenile Education Center had drug-use problems in 2012. Due to the precariousness in which the juvenile justice systems function, the centers for the deprivation of liberty of adolescent offenders often do not meet the requirements for specialized health care and, as a result, they do not offer treatment for drug use recovery, or that treatment has shortcomings.

Conclusions

The young people and adolescents who are involved with drugs tend to have characteristics in common, despite the fact that they are charged in different criminal justice systems based on their ages. One such characteristic is that neither adolescents nor young people tend to belong to the leadership ranks of the drug trafficking mafias; on the contrary, they are usually part of the trade’s weakest and most dispensable ranks. But despite this lesser participation, they are more vulnerable to bearing the brunt of punitive drug policies, which send them to judicial systems that offer no other option but confinement.

Also of concern is the government’s absence in terms of prevention and the lack of possibilities to access treatment and

rehabilitation for the problematic use of drugs for those young people and adolescents who, due to steady drug use, continue to engage in crime.

In the framework of current drug policies, the perception of young people and adolescents as victimizers, rather than victims, seems to prevail. The fact that this population tends to find itself in situations of vulnerability and/or exclusion is not taken into account, nor is the fact that contact with the criminal justice system without alternatives only aggravates the situation and does not resolve the underlying problems.

Recommendations:

- a) Drug laws and procedures should be reformed to reduce the negative impacts of repression and punishment on the population of adolescents and young people involved in drug offenses, who tend to be part of the most subordinate levels of the drug trade.
- b) More attention must be given to the fact that due to this disproportionate criminal repression, those adolescents who have no link at all to drugs are also victims of police repression and indiscriminate, wrongful detentions, through raids or other operations regularly carried out by police bodies.
- c) Governments must implement comprehensive public policies aimed at young people and adolescents, and move toward a change in the current stigmatization and criminalization of this population.
- d) The benefits and alternative sentencing policies established for this age group in different countries should be applied in the cases of young people.
- e) Governments should comply with the laws established by the juvenile justice systems, which regulate the State response to offenses committed by persons under 18 years of age and which stipulate that the deprivation of liberty of adolescents should be an exception and that the sanctions par excellence are those that do not entail confinement, in addition to the varied resources that the laws establish to be able to resolve cases outside judicial channels through Restorative Justice.
- f) Governments should provide sufficient resources to juvenile justice systems, so they can operate in a specialized, fair and efficient manner, adhering to the Convention on the Rights of the Child and other relevant international standards.

Sources:

Defence for Children International (DCI).
Regional Juvenile Justice
Observatory. Available at:
www.orjppj.org

Sub-regional System for Information and
Research on Drugs in Argentina,
Bolivia, Chile, Colombia, Ecuador,
Peru and Uruguay (SISUID). *La
Relación Droga y Delito en
Adolescentes Infractores de la Ley.*
2010.

Secretariat of Human Rights (SDH) of the
Presidency of the Republic.
*Atendimento Socioeducativo do
Adolescente em Conflito com a Lei.*
Brasilia, 2012.

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.

For more information visit:
www.drogasyderecho.org

This publication was made possible thanks to the generous support of the Open Society Foundations.



2015