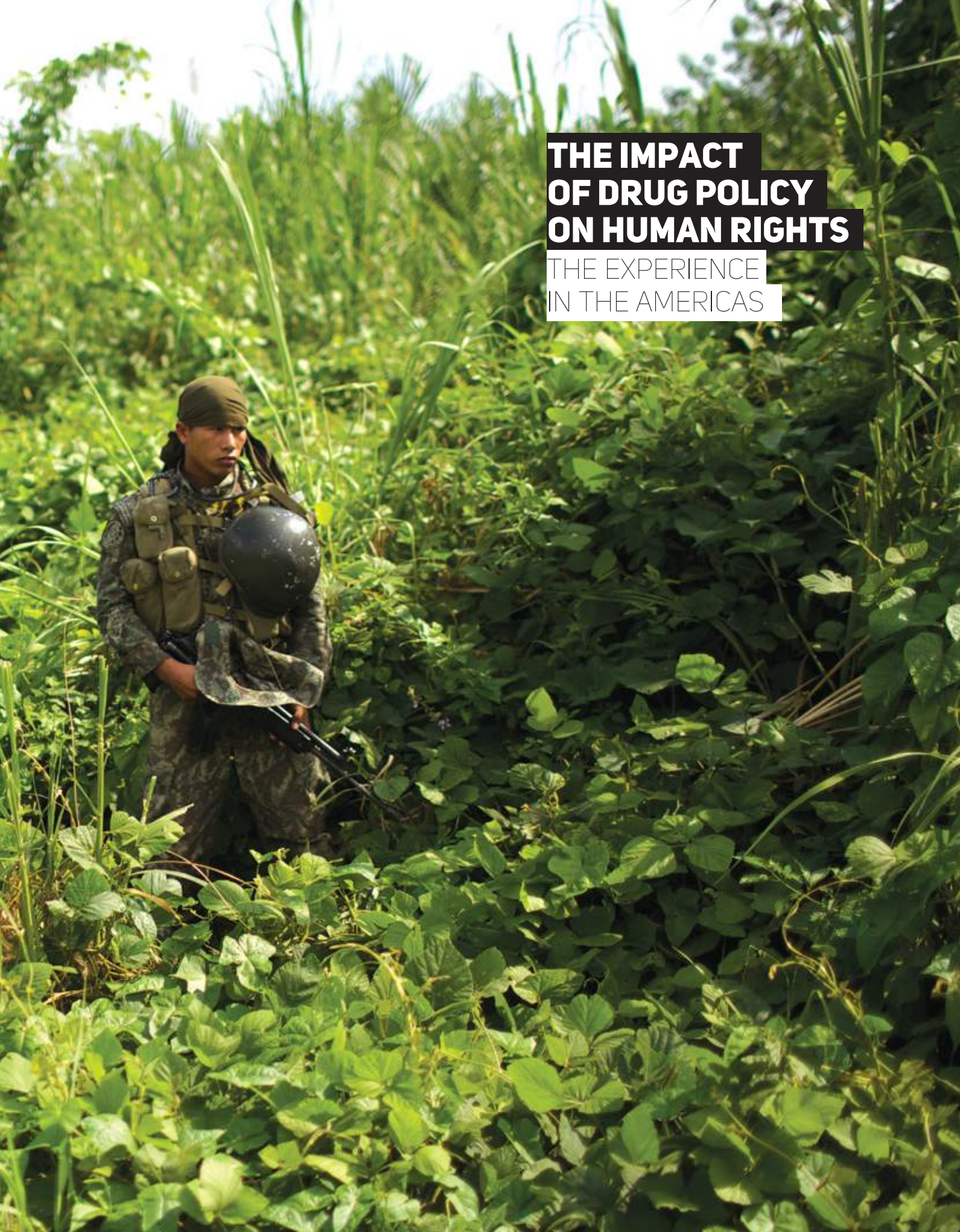


THE IMPACT OF DRUG POLICY ON HUMAN RIGHTS

THE EXPERIENCE IN THE AMERICAS

THE IMPACT OF DRUG POLICY ON HUMAN RIGHTS

THE EXPERIENCE IN THE AMERICAS

THE IMPACT OF DRUG POLICY ON HUMAN RIGHTS

THE EXPERIENCE IN THE AMERICAS

Center for Legal and
Social Studies - CELS

Content coordination and editing:
Luciana Pol and Ximena Tordini,
with revisions and contributions from
Paula Litvachky and Gabriela Kletzel
and with the collaboration of Edurne Cárdenas.

Writing: María Schujer

Design: Mariana Migueles

Photo editing: Jazmín Tesone

Translation into English: Hilary Burke

Revision of English version: Adam Schaffer, WOLA

This publication is the result
of the collective efforts made by
the following organizations:

American Civil Liberties Union (ACLU),
Association for Human Rights in Peru (APRODEH),
Canadian Civil Liberties Association (CCLA),
Center for Research on Drugs
and Human Rights (CIDDH),
Center for the Study of Law,
Justice and Society (Dejusticia),
Collective for an Integrated
Drug Policy A.C. (CUPIHD),
Committee of Relatives of the
Disappeared in Honduras (COFADEH),
Conectas Human Rights,
Humanas Corporation,
Institute for Legal and Social Studies (IELSUR),
Intercambios,
Latin American Institute for
Security and Democracy (ILSED),
Medical College of Chile,
Mexican Commission for the Defense
and Promotion of Human Rights (CMDPDH),
Myrna Mack Foundation,
Washington Office on Latin America (WOLA).

We thank each of them for their work
and collaboration.

We give special thanks to
Coletta Youngers for her support.

Financed by Open Society Foundations.

Centro de Estudios Legales y Sociales - CELS
The impact of drug policy on human rights:
the experience in the Americas. - 1a ed. -
Ciudad Autónoma de Buenos Aires: Centro
de Estudios Legales y Sociales - CELS, 2015.
68 p. ; 27 x 21 cm.
ISBN 978-987-29080-4-1
1. Política de Seguridad. 2. Política sobre Drogas.
3. Derechos Humanos.
CDD 320.6

Center for Legal and Social Studies
Piedras 547, 1er piso
C1070AAK Buenos Aires, Argentina.
Tel/fax: +54 11 4334-4200
e-mail: consultas@cels.org.ar
www.cels.org.ar

CELS
CENTRO DE ESTUDIOS LEGALES Y SOCIALES

1
Prohibition under debate
- PAGE 4 -

2
Militarization and violence
- PAGE 8 -

3
Criminalization of drug use
- PAGE 16 -

4
The erosion of due process and mass detentions
- PAGE 22 -

5
Disproportionate punishments
- PAGE 28 -

6
Mass incarceration and inhumane detention conditions
- PAGE 34 -

7
Forced crop eradication campaigns
- PAGE 40 -

8
Limits and shortcomings in access to health care
- PAGE 46 -

9
Drug policies in light of International Human Rights Law
- PAGE 52 -

10
New approaches given the failure of prohibition
- PAGE 58 -

1

PROHIBITION UNDER DEBATE

PROHIBITION UNDER DEBATE

The so-called "War on Drugs" deployed in the last 50 years has had an enormous impact on the functioning of security, justice and prison systems in Latin America. Despite the high levels of violence that this battle has caused in some areas and its grave consequences, for many years it was not analyzed from a human rights perspective in local or international arenas. This scenario has begun to change. In March 2014, at the request of 17 organizations from 11 countries in the Americas, the Inter-American Commission on Human Rights (IACHR) held a regional thematic hearing on this topic, the first in the history of its 150 sessions. This publication expands on the assessment presented by those organizations.

The prohibitionist paradigm has increased exponentially the militarization and violence associated with drug trafficking. By creating an enormous illegal market controlled by complex and increasingly powerful criminal groups, violent conflicts have intensified throughout the region, especially in impoverished areas where there has been a further deterioration of inhabitants' living conditions and increased stigmatization.

These repressive policies tend to violate the human rights of thousands of people, above all those who face judicial proceedings and are sent to prison, where overcrowding and inhumane detention conditions are often the norm. Numerous studies have shown that these policies tend to disproportionately affect particularly vulnerable groups, and in that way, they reinforce and replicate discrimination and social exclusion.

The prohibitionist model, far from waging an effective battle against the problems associated with drugs and drug trafficking, has instead widened social gaps, economic inequities, political differences and international asymmetries. This global system has maintained a repressive logic oriented toward reducing supply in the half century since the first United Nations drug convention was approved in 1961. By putting pressure on some areas of production or transit, the problem has only been shifted—along with the associated violence, destabilization and crime—to other places, affecting more and more communities. At the same time, many of these new areas have experienced an increase in drug use, which has overburdened their health care systems.[1]

For these reasons, the models promoted in the framework of the "War on Drugs" are reaching a critical crossroads: their credibility and legitimacy are seriously eroded and it is clear that a new and better assessment of the problem is needed. If there is no understanding of the real scope of the phenomenon, or the elements that led to its evolution in the last twenty years, these policies will continue to be implemented worldwide. To ensure that the suffering experienced in our region is not repeated elsewhere in the world, a truly open debate is needed and the human rights movement has an essential responsibility in it.

In recent years, progress has been made in the regional and global discussions that question current drug policies, and it is clear that governments, social organizations and academics, among others, are worried about the negative impacts on human rights. Two advances in this sense include the regional report "Scenarios for the Drug Problem in the Americas," presented by the secretary-general of the Organization of American States (OAS), as well as the Antigua Declaration.[2] However, this open debate at the OAS is incipient and there have still not been policy changes made in the majority of countries. Other sub-regional forums such as the Community of Latin American and Caribbean States (CELAC), the Union of South American Nations (UNASUR), the Common Market of the South (MERCOSUR), and the Caribbean Community (CARICOM), have also begun to discuss and work on the issue in broader terms with the aim of forging a new consensus that reflects the region's interests and needs.

The United Nations system has called for a United Nations General Assembly Special Session (UNGASS)

on drugs, which will be held in New York in April 2016. This summit represents an exceptional opportunity to debate drug policies and make an honest appraisal of their successes and failures. Latin America has played a key role in questioning the current model, and some countries have publicly called for reflection on the policies in effect and have led debates in international forums. In our region, there are experiences worth sharing that change the focus and provide an alternative to punitive state responses. These policies should be conceptualized, studied and taken to international arenas to highlight other possible approaches.

This publication aims to contribute to these global debates, based on the experience of human rights organizations in the Americas.

NOTES

1 United Nations Development Program. "Perspectives on the Development Dimensions of Drug Control Policy." March 2015. Available at: www.unodc.org/documents/ungass2016/Contributions/UN/UNDP/UNDP_paper_for_CND_March_2015.pdf

2 Declaration of Antigua Guatemala "For a comprehensive policy against the world drug problem in the Americas." June 7, 2013. Available at: http://www.oas.org/en/media_center/press_release.asp?sCodigo=S-010

This publication was based on a report prepared for the Regional Hearing before the Inter-American Commission on Human Rights (IACHR) on the impact that drug policies have on human rights in the Americas, which was held in March 2014, by:

American Civil Liberties Union (ACLU), United States

Association for Human Rights in Peru (APRODEH), Peru

Canadian Civil Liberties Association (CCLA), Canada

Center for Legal and Social Studies (CELS), Argentina

Center for Research on Drugs and Human Rights (CIDDH), Peru

Center for the Study of Law, Justice and Society (Dejusticia), Colombia

Collective for an Integrated Drug Policy A.C. (CUPIHD), Mexico

Committee of Relatives of the Disappeared in Honduras (COFADEH), Honduras

Conectas Human Rights Brazil

Humanas Corporation Chile

Institute for Legal and Social Studies (IELSUR), Uruguay

Intercambios (Civil Association for the Study and Assistance of Drug-Related Problems) Argentina

Latin American Institute for Security and Democracy (ILSED)

Medical College of Chile Chile

Mexican Commission for the Defense and Promotion of Human Rights (CMDPDH), Mexico

Myrna Mack Foundation Guatemala

Washington Office on Latin America (WOLA), United States

2

MILITARIZATION AND VIOLENCE

URBAN STYLE
INDEPENDENTS
FOR EVER ACTIVITY
STYLES. FOR EVER

MILITARIZATION AND VIOLENCE

The prohibitionist approach of anti-drug policies has fostered the creation of highly profitable illegal markets dominated by armed groups dedicated to trafficking. The violence associated with these groups grows ever greater and more serious and has become the fundamental way that illegal markets are regulated. The trafficking of illicit substances is inseparable from arms trafficking, territorial disputes, corruption and the weakening of democratic institutions, in particular the police, the judicial system and government offices. The state responses based on waging a police and military battle against drug trafficking adopt the same logic and have contributed to the overall increase in violence.

In the last few decades, changes have taken place in terms of the location of production and transit of prohibited substances, and many of these shifts have been prompted by state crackdowns. Because the criminal groups that control these flows have been relocating, violent situations that take a heavy toll on local communities have also been increasing and conflicts have expanded to new regions and countries.

Colombia's recent history is marked by the violence of major mafias and their open war against the state over the drug trade. During the 1980s and much of the 1990s, this violence was led by big cartels and took the form of bombings, kidnappings and murder. At that time, the homicide rate surged to its highest level in five decades (81 homicides per 100,000 inhabitants)[1] and in Medellin the proportion of homicides committed with firearms rose from 40% in 1979 to 76% in 1985.[2]

In recent years, participants in Colombia's armed conflict were also tempted by the economic incentives related to the prohibition of drugs and established alliances with drug trafficking mafias. The FARC guerrilla group began taxing the traffickers for growing coca leaves and using routes in its territory as paramilitary groups meanwhile allied with the cartels to consolidate a counterinsurgency strategy that attacked the coca areas dominated by the guerrillas. Both sides strengthened their military capacity through the profitable drug business and deepened the armed conflict.[3]

In Mexico, the war against drug trafficking has led to more than 70,000 murders as well as major infringements on millions of people's physical integrity, liberty and security.[4] Since late 2006, the use of lethal force was reinforced and the participation of the Armed Forces in security policy was significantly increased. In December of that year, then President Felipe Calderón ordered a military offensive against the cartels that operated in the country, enabling tens of thousands of army officials to carry out detentions, patrols, inspections and frisking. In parallel, numerous state and municipal public security institutions began to appoint active or retired military personnel to head them.[5] With the pretext of keeping drugs away from children, they launched a militarization campaign that, paradoxically, generated greater violations of the rights of children and adolescents.[6] According to Juan Méndez, the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment, by 2012 some 50,000 military officials were carrying out public security tasks. This means that the military has assumed de facto responsibility for the country's public safety and, as a result, complaints against the Armed Forces at the National Human Rights Commission have risen significantly: there were more than 5,000 complaints of torture and ill-treatment, more than 22,000 victims of enforced disappearance[7] and more than 280,000 people displaced by violence.[8] The investigation, sanction and reparation of these gross human rights violations are sorely lacking.[9]

The Mexican Commission for the Defense and Promotion of Human Rights (CMDPDH in Spanish) has denounced numerous cases that reflect the dire consequences of the

The state responses based on waging a police and military battle have contributed to the overall increase in violence.

"War on Drugs" in various regions of the country with the proven participation of the security forces. In the case of torture, it has found that these forces use practices aimed at extracting confessions that link detainees or their relatives to criminal organizations.

In addition, and as the United Nations Working Group on Enforced or Involuntary Disappearances determined, the disappearance of people has reemerged forcefully in Mexico in the context of the current public safety strategy. There are common patterns in these cases: when victims are arbitrarily detained by military or police officials, there is no official record of the detention; their cases are not elevated to the Public Ministry (the state prosecutors' office); information is withheld from relatives when they approach the security forces or the judiciary; and officials refuse to open investigations.[10]

The changes in drug trafficking routes have expanded the areas affected by violence to Central America. Honduras has the highest homicide rate among 207 of the world's countries: 92 murders for every 100,000 inhabitants, according to figures from 2011.[11] These levels of violence have multiple causes, but they are strongly associated with drug trafficking and the militaristic policies implemented to combat it. In 2009, a militarization process was set in motion that gave greater powers to the Armed Forces to carry out police functions. Honduras, which has very high military and police spending, has continuously kept more than 4,000 soldiers on city streets, highways and in towns since 2010. Congress approved in August 2013 the creation of a military police force of 1,000 members. This police force has its own judges and prosecutors. Toward the end of that same year, it also passed a constitutional reform to confer constitutional status on the Public Order Military Police. In Guatemala, the problem of drug trafficking is very delicate, not so much because of consumption or production levels within its territory,

but rather because of the country's geographical location; with a border that is more than 900 kilometers long, it is a direct step to Mexico en route to the United States. Local and Mexican drug trafficking groups have acquired enormous economic power as well as political and operational influence in society, and they have also penetrated the state significantly.

Peru has also opted for military solutions, with similar results. In 2012, the country was the biggest global producer of coca leaves,[12] surpassing Colombia. With a strategy that responds fully to the principles associated with the "War on Drugs," the state has unsuccessfully attempted to put an end to production and illicit trafficking. Peru also shares with Colombia the dangerous juxtaposition of drug trafficking with internal armed conflict. So in some areas, military actions intensify even more due to the proximity to zones controlled by the Shining Path, such as in the Valley of the Apurímac, Ene and Mantaro rivers (VRAEM in Spanish), a strategic area in southern Peru where natural gas and hydroelectric facilities are located along with tourist attractions such as the Machu Picchu ruins. Because it is considered to be a territory ruled by illegal drug trafficking and terrorism, it is over-militarized, with 1,700 officials distributed among over 40 military and police bases, and there exist projects to build a runway and sign a defense agreement with the United States.

These military actions, above all those aimed at the forced eradication of coca crops, mark yet another chapter in the long history of human rights violations of the peasant population. In these areas there is a complete lack of the rule of law due to the actions of the drug traffickers, armed groups and the police and military occupation. The government has decreed a state of emergency that has been extended every three months for many years now.

This situation, sustained over time, has fueled confusion between two distinct phenomena: the armed conflict and drug trafficking. The overlap between the two has been disseminated by the media through the use of the term "narco-terrorism." The result is the over-militarization of the region located on the left bank of the Mantaro river, with an extensive perimeter used for military operations, curfews, forced retention of the population (which cannot tend to its agricultural duties), the construction of a military airfield, the presence of foreign police and/or military at the Palmapampa police base, the announcement of the eradication of coca crops, coordinated police and military actions, and major operations with numerous unjustified detentions of peasants and community leaders, as well as frequent harassment, attacks and cross fire that affect the safety of the civilian population.

In Brazil, meanwhile, the Pacifying Police Units (UPPs in Portuguese) were created as a public safety measure to contain trafficking and organized crime in the metropolitan area of Rio de Janeiro. The UPPs were presented to the public as a drug-fighting body but in practice, their interventions in outlying neighborhoods implied disciplining, controlling and even selectively employing institutional violence in these occupied territories. One of the most emblematic cases of violence by the UPPs took place in the Favela da Maré slum in 2013, when police forces executed ten members of the community in circumstances that have not been clarified to this day. Over the course of one year this neighborhood, along with others in Rio de Janeiro, was occupied by the "Pacification Force of the Military Army." The troops operating in Favela da Maré included nearly 2,430 army soldiers and 575 naval personnel to patrol the community. During the period of occupation, 20 deaths were registered as a consequence of military action, including that of a 67-year-old woman.

In other countries, the "war against drug trafficking" has been used as an argument to promote tougher security policies and justify various degrees of military intervention in matters related to drug trafficking. In Argentina in 2013, the Armed Forces were permitted to participate in border patrols to address the so-called drug threat. However, this involvement in domestic security tasks is expressly prohibited by laws that distinguish between interior security (which is managed by the security forces) and national defense, which is the purview of the Armed Forces. This shows that the need to provide "tough" state responses to drug trafficking managed to pierce the paradigm favoring non-militarization. Other more extreme proposals, such as a law to shoot down unidentified planes, were rejected across a broad political and social spectrum.

In Argentina, the advance of the "drug threat" has functioned as a discursive excuse for applying punitive and demagogic recipes in terms of security, including police saturation in working-class neighborhoods, stiffer sentencing, the abusive use of pretrial detention, and the expansion of police powers to detain, among other policies. This widespread concern over drug trafficking has not addressed essential questions about the central role that security forces play in the creation and expansion of the violence associated with illegal markets in poor neighborhoods; the enormous difficulties that the security forces and the judiciary face in terms of investigating complex crimes; or the necessary revision of current drug legislation.

NOTES

1 Sánchez Torres, Fabio José and Díaz, Ana María. "Conflicto, violencia y actividad criminal en Colombia: un análisis espacial." Economy Archives, National Planning Department, Bogota, 2003.

2 Reid, Michael. "Una región amenazada por el narcotráfico" in García Sayán, Diego (Ed.). *Coca, cocaína y narcotráfico. Laberinto en los Andes*. Andean Commission of Jurists. Bogota, 2013.

3 National Center for Historical Memory. "*BASTA YA. Colombia: memorias de guerra y dignidad*." Available at: http://www.centrodememoriahistorica.gov.co/micrositios/informeGeneral/descargas.html

4 Final report of the mission to Mexico by the Special Rapporteur on extrajudicial, summary or arbitrary executions. June 12, 2014.

5 Acosta Urquidi, Mariclaire. "La impunidad crónica de México: Una aproximación desde los derechos humanos." CDHDF. Mexico, 2012. See also: International Crisis Group. "Peña Nieto's Challenge: Criminal Cartels and Rule of Law in Mexico." 2013.

6 Barra, Aram and Joloy, Daniel. "Children: The Forgotten Victims in Mexico's Drug War" in *Children of the Drug War: Perspectives on the Impact of Drug Policies on Young People*. Damon Barret (Ed.). Idebate Press. New York, 2011.

7 Steimberg, Nik. "Vanished: The Disappeared of Mexico's Drug War." Human Rights Watch. New York, 2013. Available at: http://www.hrw.org/news/2014/01/08/vanished-disappeared-mexicos-drug-war

8 Mexican Commission for the Defense and Promotion of Human Rights. "En México 281 mil 418 personas son víctimas del desplazamiento interno forzado por la violencia." Mexico, 2015. Available at: cmdpdh.org/2015/02/en-mexico-281-mil-418-personas-son-victimas-del-desplazamiento-interno-forzado-por-la-violencia/

9 According to a report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment, of the 4,055 complaints over torture filed at a federal level with the General Prosecutor's Office of the Republic between 2006 and 2014, only 5 resulted in torture convictions. Available at: hchr.org.mx/images/doc_pub/G1425291.pdf

10 United Nations Working Group on Enforced or Involuntary Disappearances. "United Nations Working Group on Enforced or Involuntary Disappearances concludes visit to Mexico." March 2011. Available at: www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10907&LangID=E

11 United Nations Office on Drugs and Crime (UNODC), in the study "Transnational Organized Crime in Central America and the Caribbean, A Threat Assessment." Available at: https://www.unodc.org/documents/data-and-analysis/Studies/TOC_Central_America_and_the_Caribbean_english.pdf

12 UNODC, Coca Crop Monitoring 2012. Available at: www.unodc.org/documents/peruandecuador//Informes/MonitoreoCoca/Peru_Monitoreo_de_Coca_2012.pdf

VIOLENCE AGAINST WOMEN

LATIN AMERICA

The Latin American women's movement has expressed concern about the impacts of the "War on Drugs" on women in the region. The declaration entitled "Reviewing the current anti-drug policy: A priority for reducing violence against women in the Americas"* contends that the structural violence faced by women has been increased and intensified by the conflicts that illegal markets spawn. In these contexts, cruelty against women has symbolic connotations that are characterized by the exacerbation of gender stereotypes and violent concepts of masculinity. Current anti-drug policies create spaces of illegality that foster other illicit activities related to drug trafficking, such as human trafficking, in which women are the primary victims.

*

Statement to the Sixth Summit of the Americas. Regional Feminist Articulation for Human Rights and Gender Justice: ELA, Latin American Team of Justice and Gender (Argentina); Humanas Corporation (Chile, Colombia and Ecuador); EQUIS: Justice for Women (Mexico); and DEMUS – Study for the Defense of Women's Rights (Peru). April 2012.

PAULINO HUAMÁN, A CIVILIAN RESIDENT OF THE VRAEM REGION

PERU

In October 2013, helicopters belonging to Peru's Armed Forces bombed the town of Nueva Esperanza in the Valley of the Apurímac, Ene and Mantaro rivers (VRAEM) region. Paulino Huamán's lifeless body was found amid the rubble of destroyed homes. Although the Defense Ministry described the operation as "failed" and "without a planned strategy," this was not the first nor the last time that the Army took action against the civilian population. An easy target in the so-called "War on Drugs," this area is the focus of an intensive and progressive militarization that directly affects civilians who live in the middle of cross fire and endure military operations, curfews, the forced retention of people, the construction of military airfields, mandatory eradication without sustainable alternatives, major operations aimed at leaders of coca growers, and the harassment of small producers.

AYOTZINAPA, A TRADITION OF SOCIAL ACTIVISM

MEXICO

Since its founding in 1926, the Normal Rural School of Ayotzinapa has defended a grassroots educational model based on self-management and horizontal relations. The project's highly social approach and its students' openly combative nature have historically created tension with the government which, in addition to reducing its financing, has responded with eviction attempts and repression. It is in this context that we can understand the incidents of September 26, 2014. About eighty students from that school traveled to the municipality of Iguala to try to raise funds to attend a march commemorating the anniversary of the massacre of Tlatelolco in Mexico City. The buses in which they traveled were intercepted by local police, who opened fire. Six people died and twenty were injured. The survivors recounted that their classmates were forced to get into patrol cars. That was the last time they were seen and, at the time of this report's publication, they were still missing.

The Mexican state, during the initial investigations, revealed the link between the municipal police and the "Guerreros Unidos" cartel. Many groups and social organizations, outraged over the violence seen in recent years, have joined the parents of the 43 disappeared students in protest, openly pointing to complicity between the local government and criminal groups associated with drug trafficking. Meanwhile, as the search for the students continues, in the state of Guerrero officials have discovered mass graves in which hundreds of unidentified corpses were buried.

URUGUAY
REGULA
2013
URUGUAY
REGULA
2013
URUGUAY
REGULA
2013
URUGUAY
REGULA
2013
URUGUAY
REGULA
2013
URUGUAY
REGULA
2013
URUGUAY
REGULA
2013

3

CRIMINALIZATION OF DRUG USE

CRIMINALIZATION OF DRUG USE

Criminal law seems to be the main tool of the anti-drug policies implemented in the second half of the 20th century. This system of controls was developed on the basis of three international conventions. In 1961, the Single Convention on Narcotic Drugs established the legal foundation and created a bureaucracy charged with overseeing and enforcing a list of illegal substances, including coca leaves and cannabis. Ten years later, in 1971, the Convention on Psychotropic Substances expanded controls on amphetamines and other drugs that were in use. The legal architecture was completed in 1988 with the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. It was recognized at the time that previous efforts to avert an increase in drug production, trafficking and consumption had failed. The Convention called on states to breathe new life into the fight against criminal groups and also focus on lower links of the commercialization chain, including drug users. The Convention encouraged the codification of the crimes of possession and of purchasing narcotic drugs or psychotropic substances for personal consumption.[1] Although the criminalization of personal consumption was not obligatory for countries, the Convention had a rapid influence on national legislation: in various countries new laws were passed that criminalized the possession of small amounts of drugs. Some of these regulations were declared unconstitutional years later, as in the cases of Argentina and Ecuador. The focus of the international drug control system was total prohibition and a moral crusade against consumption. The results of this repressive approach were seen clearly in state responses and in the criminal prosecution of drug users in the 1990s and 2000s.

There are numerous examples that illustrate this problem. In Argentina, a law is still in effect that criminalizes the possession of narcotics for personal consumption, despite the fact that a 2009 ruling by the nation's Supreme Court declared it unconstitutional and ordered the legislature to reform the drug law.[2] Argentina's Congress did not modify the legislation and there are still people being detained for drug use. They are generally apprehended in public spaces with small amounts of drugs in their possession, are unarmed and are not in violation of any other law.

Some countries have passed legislation that decriminalizes possession for personal use up to a certain amount, or taking into account specific parameters. However, these limits often have paradoxical effects: because they allow room for discretion, the police continue arresting users and then (in some cases) accuse them of more serious crimes, such as trafficking, to justify their detention. In Brazil, for example, prison terms were eliminated for drug users and stiffer sentences were implemented for trafficking. After this change, between 2007 and 2010, the number of people imprisoned for trafficking jumped 62%, while the total detainee population rose just 17% in the same period, which indicates that some people who were detained for consumption ended up being accused of trafficking.[3] In Chile, possession for medical use or for exclusively personal consumption is not criminalized. However, in 2014, of the more than 50,000 detentions for infringements of the Drugs Law, the highest percentage was for possessing substances (46.6%), followed by trafficking (27.3%) and consumption (17.0%). In Peru, the criminal code does not criminalize the possession of small amounts of drugs for personal use. Nevertheless, the number of people detained for consumption has risen in recent years. National Police statistics show that in 2009, of 13,142 detentions over drug-related crimes, 51.19% were for consumption.

In Mexico, the legislative reform of 2009 decriminalized the possession of up to 5 grams of marijuana and 0.5 grams of cocaine. The following year, in 2010, 71% of activity by the Attorney General's Office (PGR in Spanish) corresponded to the crimes of possession and use. How can this high proportion of detained users be explained? On the one hand, this is due to people who

> *Penalizing drug users sets in motion mechanisms of criminalization and pushes aside the health and human rights considerations that should take precedence.*

are caught using drugs in public spaces; on the other, it is also related to how police search through the belongings of people who are arbitrarily detained and, if they find illegal substances, they send them to the Public Ministry on charges of crimes against public health in the form of *"narcomenudeo,"* or retail drug dealing. According to the Survey of Illegal Drug Users in Mexico City, half of the users take drugs in public areas and are at the mercy of police, who often take advantage of their vulnerability to extort them. Figures indicate that two out of every three illegal drug users have been detained or subjected to extortion. More than 95% of users consider that the police discriminate against them in different ways. The increase in the number of *"narcomenudistas"* who are convicted does not affect the dynamics of the local market for illegal substances, but it does affect thousands of users whose lives are marred by criminal records for having taken drugs in public areas.

Another example of the negative effects of criminalizing users is linked to the right to health. Criminalizing marijuana means that people with serious illnesses cannot legally access a medication that relieves pain efficiently and has no debilitating secondary effects. Cannabis is indicated for the treatment and prevention of nausea and vomiting and for the treatment of glaucoma; it is also used as a muscle relaxant and analgesic. It has proven positive effects on the treatment of diseases such as multiple sclerosis, cancer and Alzheimer's, and it has also been shown to improve the appetite of patients with HIV or cancer.

In parallel, cultivating cannabis for personal use is a phenomenon that is growing in the region due to a significant movement by users who defend the right to grow. Cultivating on a small scale is also a way to avoid participating in the illegal market and facing the associated risks. Uruguay and Ecuador recognize this possibility in their laws and have decriminalized what is known as home-growing. But in most countries of the region, growing—even on a small scale—is treated in the same way as trafficking crimes, with disproportionate periods of detention.

How far-reaching are the consequences of the criminalization of users and home-growers? Having criminal proceedings brought against them fosters uncertainty and stigmatization. The fact that a person has had dealings with the criminal justice system has an impact on various aspects of his or her life, and has a direct effect on the exercise of other economic and social rights. Penalizing drug users sets in motion mechanisms of criminalization and pushes aside the health and human rights considerations that should take precedence.

ARGENTINA

Prison for home-growing

Fernando Colombini works in construction, is married and has a young daughter. In February 2013, in a police operation plagued by irregularities, he was detained and later charged with the crime of growing plants for drug production. Colombini says that when police searched his house, after a neighbor with apparent links to the Buenos Aires provincial police force filed a complaint, they found eight marijuana plants. But instead of registering this finding, they cut them up, took them to the street and displayed them in a way that made it look like there were twenty. They photographed these "twenty" plants, handcuffed Colombini and arrested him. Inside his house, they did not find pressing machines, scales or any other instrument that would indicate he was selling drugs. They did seize items indicative of consumption, including pipes and a grinder. He was jailed in the Magdalena and Olmos prisons until May, when he was granted house arrest. In September 2014, he was sentenced to four full years in prison and at the time of this report's publication, he was still incarcerated.

COLOMBIA

A holding cell for users

Juan, a philosophy student, spent the night of July 1, 2012, in a holding cell after being shut inside the bathroom of a police station for nine hours, incommunicado and handcuffed to the top of a locker. When he was finally taken before a prosecutor, they moved him to a holding cell and the following day he was released. In his recounting of that night, Juan spoke of the presence of many other detainees who, like himself, had been arrested for carrying drugs. The majority of them were users from working-class neighborhoods who had less than the legally permitted amount of marijuana on them at the time of arrest. It is clear that although the use of psychoactive substances is legally protected under Colombian law, its criminalization by state security forces is an everyday practice.

MEXICO

50; 100; 20,000; 30,000

Carlos was walking along the streets of Mexico's Federal District with two friends when two police officers stopped them. Upon being questioned, Carlos admitted to carrying less than 5 grams of marijuana but when he realized they would not let them go, he offered to pay them the 50 pesos he had on him at the time. The police demanded that they pay "at least 100 each." Because the young people did not have that much money, they were taken to a civil courtroom, where they waited for several hours. Carlos was sent to an agency of the Public Ministry, where he spent the night. Meanwhile, the police officers called his mother to demand 20,000 pesos in exchange for saving her son. She agreed, but they nonetheless initiated proceedings against him for drug possession, which he was able to skirt by declaring himself an addict and requesting rehabilitation. Several days later, the police called Carlos' mother again: if she gave them 30,000 pesos, they would close the case. She refused and filed a complaint with the Federal District's Human Rights Commission. Since then, the threats have not stopped. And Carlos' case is still open.

LEGISLATIVE MODIFICATIONS TO REGULATE THE CANNABIS MARKET

In December 2013, Uruguay passed a law to legalize the production and sale of marijuana. This legislation allows people to grow up to six plants, with an annual production limit of 480 grams for personal consumption. The state will oversee the system and growers should register themselves with a database that will not be made public. Meanwhile, official licenses will be provided to pharmacies so they can sell cannabis to adults who reside in Uruguay. This is the first country in the world to take a measure of this kind. The government's aim, according to then President José Mujica, is to dismantle the black market and drug trafficking structure and, at the same time, work to address the damage that the use of marijuana and other drugs can cause. The Uruguayan government launched this measure while also promoting laws that take a tougher state stance on other drugs, such as the regulation of cocaine paste (PBC in Spanish). It also established that judges may use their "free moral conviction" to determine if possession should be sanctioned or is for personal consumption in relation to all substances, with the exception of cannabis. As a whole, Uruguay's laws reflect a comprehensive conception of anti-drug policies aimed at controlling supply and reducing demand. The government itself stated that this policy was part of a series of measures to reduce drug trafficking and related violence.

The International Narcotics Control Board (INCB), the body charged with applying the drug conventions, criticized Uruguay's decision on the argument that it would negatively affect the fight against drugs elsewhere in the world.

Further north, four states in the United States (Washington, Colorado, Alaska, and Oregon) and the District of Columbia have taken steps to legalize cannabis for non-medicinal uses, a decision that the federal government has permitted as long as certain criteria are met, such as a ban on the sale to minors and prohibitions against selling plants on the illegal market. Colorado and Washington have established a regulatory paradigm and levy taxes on this activity, which local human rights groups say will be positive not only for users but also for the judicial system, since it will no longer have to process numerous and unnecessary detentions.[4]

The legal frameworks developed in these two pioneering states have laid the foundation for broadening the debate on marijuana legalization elsewhere in the country. All signs point to the possibility that in the 2016 legislative elections, some states—including California, which is the most populous state in the country—will propose creating legal, regulated markets for cannabis.

Although some of these models are being developed from a commercial approach, the legislative reforms reveal a cultural shift regarding this substance and represent innovative proposals that can offer lessons for the future. It will be vitally important to analyze the impact of these policies, based on empirical evidence that yields clear results.

NOTES

1 The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. Art. 3.2.

2 In 2009 Argentina's National Supreme Court of Justice issued the "Arriola" ruling in which it declared unconstitutional article 14 of Law 23737, which penalizes the possession of narcotics for personal use, and urged legislators to adapt current regulations in order to protect this right.

3 Dzimidas Haber, Carolina and Abramovay, Pedro Viera. "Velhos Problemas e Novos Desafios do Sistema Prisional Brasileiro. Centro de Estudios de Derecho Penitenciario." Center for Penitentiary Law Studies, online magazine. N 1. Brazil, 2011. Available at: usmp.edu.pe/derecho/centro_derecho_penitenciario/revista/pedro_viera_y_carolina_dzimidas.pdf

4 ACLU. "Colorado's Legal Marijuana Sales Bring 'Common Sense' Justice and Savings." The United States, 2013. Available at: www.aclu.org/criminal-law-reform/colorados-legal-marijuana-sales-bring-common-sense-justice-and-savings

4

THE EROSION OF DUE PROCESS AND MASS DETENTIONS

LICIA
SSASSINA

THE EROSION OF DUE PROCESS AND MASS DETENTIONS

Drug law-related detentions represent a very high proportion of police work in the streets. The analysis of police and judicial data suggests that a vast majority of efforts are concentrated on initiating minor cases related to possession for personal use, rather than investigating large-scale dealing or trafficking. These detentions fuel the growth of the prison population and expose people detained for minor offenses to the violent situations and abuses that often occur in police stations and places of detention. What starts as a simple identification procedure can turn into a violent search, a criminal case for possession, ill-treatment, threats or coercion, beatings, harassment, torture—or even death.

In Argentina, between 2010 and 2012, the percentage of detentions by the Federal Police originating in infringements of the narcotics law ranged between 20% and 25% of the total.[1] Half of all these drug proceedings (49%) were attributed to "police prevention" efforts, in which police alleged that the detention was carried out because they suspected the person was committing a crime. The second-biggest group of detentions (38%) involved people who, according to the police, were arrested *in flagrante* while using—a figure that demonstrates the persecution of consumers. Next were detentions motivated by complaints or 911 calls (6%). Only 4% of drug-related detentions took place during searches and just 2% were made under judicial order. The majority of overall detentions occur as part of "police prevention" and without a court order, which clearly shows the broad discretion given to members of the security forces. In many cases, the application of the drug law is used to justify proceedings that have already been carried out and serves as a police tool to concentrate its surveillance on certain vulnerable groups: young people, migrants, street vendors and sex workers, among others. Qualitative studies[2] among these populations show that the "planting" of drugs by police officers to justify detentions is a recurring problem. In many cases, this detention is the result of a prior conflict between police and the detainee regarding the use of public space, a situation that can involve police demands for kickbacks to allow people to continue with their activities.

In the United States, between 1990 and 2010, the length of prison sentences grew, drug arrests rose 53% and the number of people arrested for marijuana-related crimes surged 188%.[3] Between 2001 and 2010, there were more than 8 million arrests for marijuana, of which 88% were for possession. These arrest rates for marijuana possession reveal marked racial prejudice: for people of African descent, the rate is 716 for every 100,000 inhabitants, whereas among white people the figure is 192 for every 100,000. Between 2001 and 2010, this racial disparity grew 32.7%: while the arrest rate among white people has remained steady, the arrests of black people jumped from 537 for every 100,000 in 2001 to 716 for every 100,000 in 2010. That means that the rise in the overall arrest rate for marijuana possession ultimately rests on greater arrests of black people. Nonetheless, the rates of use and non-use of marijuana are very similar in the white and black populations.

In Chile the same focus on users can be seen: 22,708 detentions for violations of the Drugs Law were made in the first quarter of 2012 alone. Of those, 60.4% were related to possession, 18.9% to trafficking and 15% to consumption. These figures also show an increase of 13.9% versus the same quarter of the previous year.[4]

In Mexico a similar situation is observed. The Attorney General's Office in the Federal District confirmed that the majority of people sent to them had been detained *in flagrante.* Furthermore, less than 2% of these derivations referred to three or more persons, which indicates a concentration on street dealers who are easily replaced and on users caught with drugs on their person. There has also been an increase in the proportion of crimes of possession—which the federal authorities categorized as consumption (grouping together, or

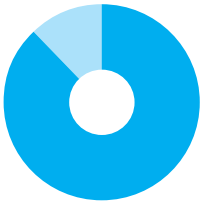
> *A vast majority of efforts are concentrated on initiating minor cases related to possession for personal use, rather than investigating large-scale dealing or trafficking.*

confusing, consumers with *narcomenudista* retail dealers)—which went from 31.5% in 2010, to 41.6% in 2011 and to 47.9% in the first few months of 2012.

The strategy to fight drug trafficking has also justified the existence of a set of laws that, in practice, constitutes an extraordinary or parallel judicial system. Shielded by the argument of the "exceptional" nature of organized crime and the complexity of prosecuting it, laws and other regulations have been approved that act in detriment to judicial rights and guarantees: in Mexico legal concepts such as detention without charge (*arraigo*) and "protected witnesses" have been used to unjustifiably expand the state's faculties to detain people, which violates due process. In several countries people may be detained indefinitely until formal charges have been filed against them. In Peru, preventive police detention for most crimes is allowed for 24 hours; however, in the case of drug crimes, it is 15 days. In Mexico, suspects can be detained for up to 80 days without having formal charges filed against them under the arraigo system.

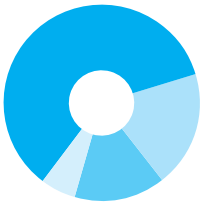
UNITED STATES
MARIJUANA ARRESTS
2001-2010

8 MILLION PEOPLE



88%
for possession

CHILE
DRUGS LAW DETENTIONS
2012



60%
possession

19%
trafficking

15%
consumption

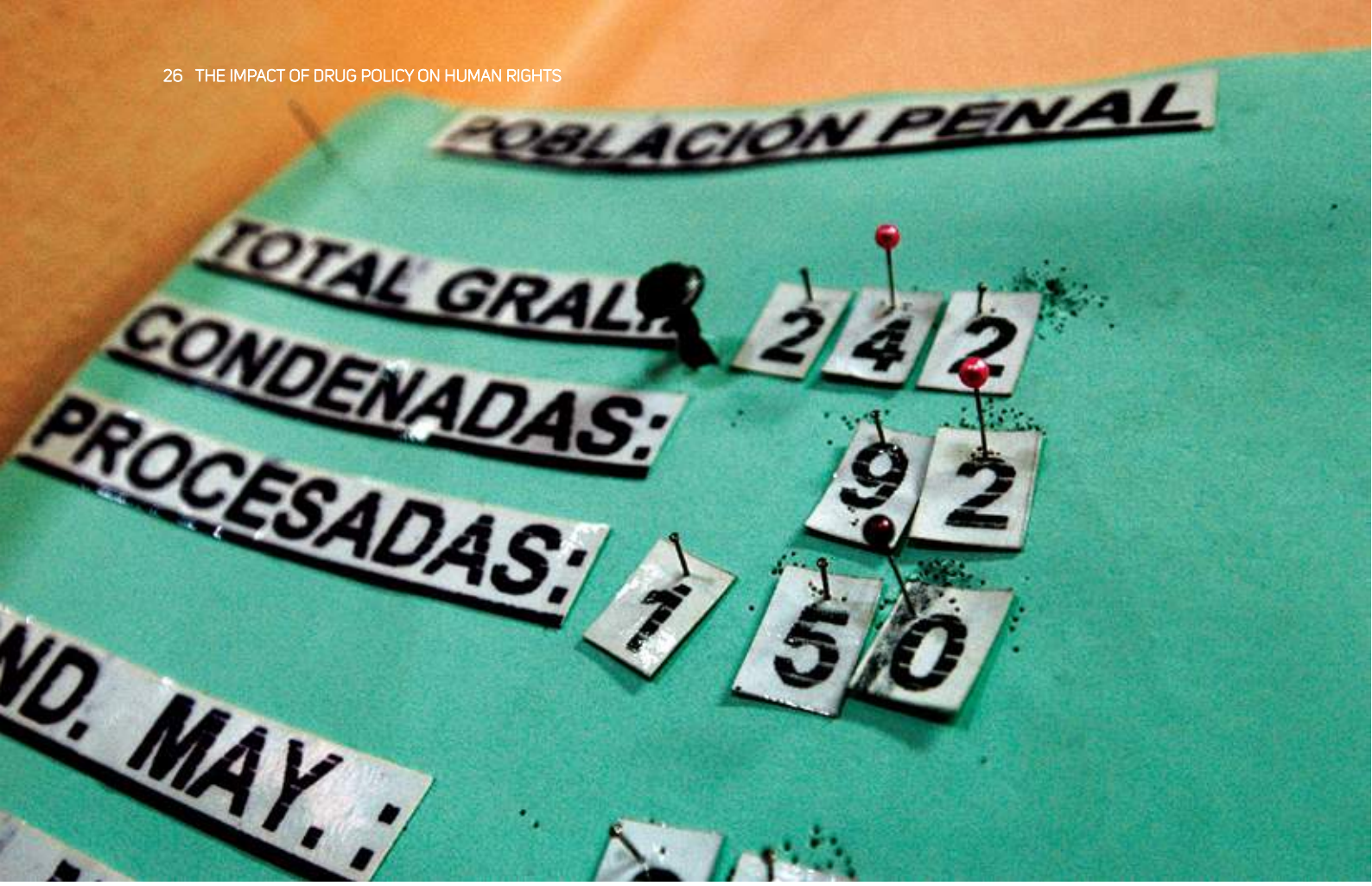
NOTES

1 Data from the National Office for Criminal Information Management at the Nation's Security Ministry.

2 CELS, 2013 Report on Human Rights in Argentina. Siglo XXI. Buenos Aires, 2013.

3 ACLU, *The War on Marijuana in Black and White: Billions of Dollars Wasted on Racially Biased Arrests.* The United States, 2013. Available at: www.aclu.org/files/assets/aclu-thewaronmarijuana-rel2.pdf

4 Information available at: www.seguridadpublica.gov.cl/filesapp/04_Informe_DROGAS_1er_trimestre_2012.pdf



ARRAIGO, DETENTION WITHOUT GUARANTEES

MEXICO

Miriam Isaura López Vargas was detained in Ensenada on February 2, 2011. Two members of the Secretariat of National Defense (SEDENA in Spanish) forced her inside a vehicle at gunpoint and took her to military barracks in Tijuana. She was detained for seven days and was beaten, abused and raped as a form of torture. In her criminal complaint, she described the sinister array of physical and psychological tortures used, which included techniques such as drowning, asphyxia and electrocution, as well as the reiterated threat that her children and partner would be harmed. Subjected to torture and without the presence of a defense lawyer, she gave a false confession, on the basis of which she was taken to Mexico City as an arraigada for presumed drug possession. She was detained for two months at the National Arraigo Center and later transferred to the Center for Social Readaptation in Baja California. On September 1, 2011, she was absolved and released. When she filed a complaint over what she had suffered through during her arraigo with the Special Prosecutor's Office for Crimes of Violence against Women and Trafficking in Persons, special security measures had to be taken to protect her because she was constantly harassed. At the time of this report's publication, not only had the suspects not been apprehended, the chain of command responsible for her detention and for the crimes committed against her had not even been identified.

DEAD AFTER 12 HOURS OF DETENTION

ARGENTINA

Miguel Ángel Durrels, a 29-year-old horse groom, was detained on September 8, 2013, for possessing 78 grams of marijuana and was taken to a police station in Pilar, Buenos Aires province. Miguel Ángel was detained in a holding cell that was not authorized for this purpose. About 12 hours later, he was found dead: hung by an electrical cable and propped upright against the iron bars. His body showed evidence of having been struck in the face and the chest. From the start of the investigation, the police accounts were contradictory and imprecise regarding the time he was arrested and sent to the hospital for a routine checkup, a procedure that should be carried out on all detainees before they are incarcerated. In addition, it is unclear how many people were being held with Durrels in the cell. His relatives reported that they were not allowed to see his body before the autopsy was performed. The family continued demanding that the truth be known and that the institutional responsibility for someone dying in police custody be established. After a year-and-a-half of work on the judicial case, four police officers will be investigated for disobedience and involuntary manslaughter.

5

DISPROPORTIONATE PUNISHMENTS

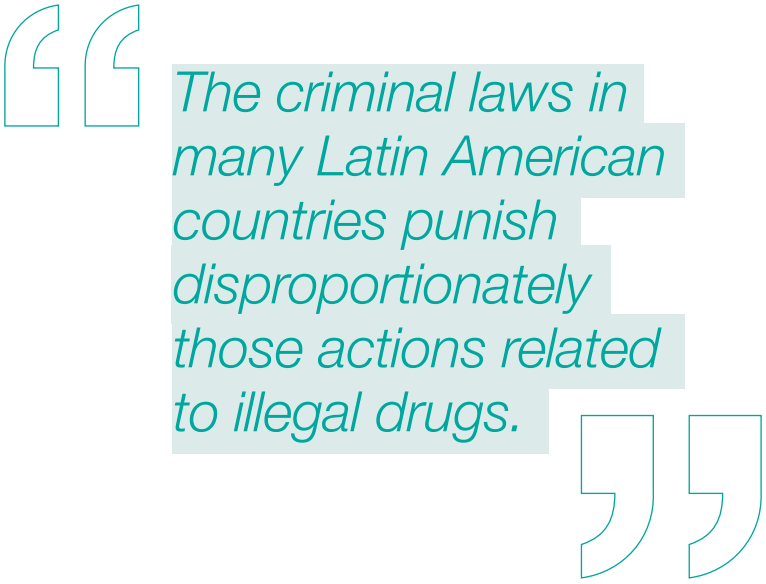
DISPROPORTIONATE PUNISHMENTS

The disproportionate use of criminal law to punish conducts related to the use, possession or sale of illegal drugs is a threat to human rights. This paradigm has justified a very significant increase in criminal penalties and pretrial detention, which contradicts the principles of the American Convention on Human Rights regarding the reasonableness, necessity and proportionality of sanctions.

Since 1950, in seven countries of the region (Argentina, Brazil, Bolivia, Colombia, Ecuador, Mexico and Peru), the number of criminal definitions that punish drug-related behavior increased tenfold and the total number of actions related to illegal substances that are penalized jumped from 67 to 344. This criminal expansion in Latin American legislation reveals the zeal for punishing any behavior or any person even minimally associated with controlled psychoactive substances.

For example, article 307 of the Criminal Code of Guatemala expands the offenses punishable by law and defines the crime of drug trafficking with eight verbs: introduce, sell, deliver, transport, supply, retain, store or preserve. This lexical excess shows that, in contrast to other crimes, the laws on drugs allow for all forms of participation in the criminal act (from attempts to secondary participation) to be punished as authorship.

In addition to the greater quantity of criminal definitions, the fight against drugs has been focused on lengthening prison sentences. Both the minimum and maximum sentences have expanded by as much as twentyfold in the last 60 years. In Colombia, for example, in 1950 trafficking was punished with prison time of between 6 months and 5 years, whereas the current requirements run from 10 years to 30 years in prison, without aggravating circumstances. In Mexico, the minimum sanction for the crime of trafficking went from 6 months in prison in 1950 to 10 years today. And in Peru, a crime that was punished by at least 2 years in prison in the 1950s is now sanctioned with at least 8 years. Canada's federal government established mandatory minimum sentences for certain drug crimes in 2010 and eliminated the judicial discretion that had allowed for sentencing to take into account factors such as mental health, poverty, addiction and systemic discrimination.



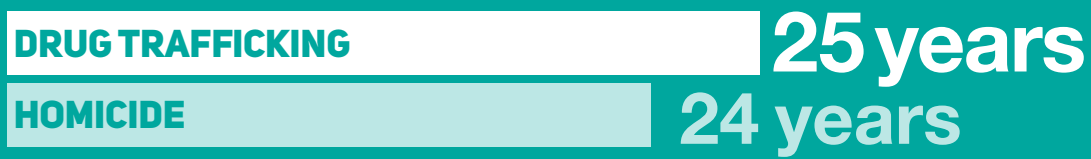
In practice, judicial authorities are required to impose considerably severe punishments even when the actions performed do not harm third persons. In other words, in Latin America, a person who is carrying 25 grams of marijuana is prosecuted on charges of narcotics trafficking—including in cases where the substance is for personal use—and can be sanctioned with minimum penalties of approximately 10 years in prison.

The criminal laws in many Latin American countries punish disproportionately those actions related to illegal drugs. The absence of reasonableness and proportionality in criminal legislation can be demonstrated by comparing the penalties imposed for other kinds of crimes that are more serious than those involving narcotics. In some countries in the region, the punishment is the same or greater for people who decide to sell prohibited substances to adults who are voluntarily consuming them than it is for people who commit sexual crimes or even murder. In Bolivia, the maximum sentence for narcotics trafficking (25 years in prison) is higher than what is stipulated for homicide (20 years) and rape (15 years). The situation is similar in Mexico, where the maximum penalty for trafficking is 25 years in prison and 24 years for homicide.

DISPROPORTIONATE SENTENCING FOR DRUG TRAFFICKING

BOLIVIA

MEXICO



ECUADOR

ALTERNATIVES TO INCARCERATION

In recent years, Ecuador has taken a series of measures to rationalize the use of criminal law to punish drug offenses. The first of these was the granting of pardons to low-level traffickers or "mules" in 2008. This resulted in the release of more than 2,000 people and served initially to reduce the imprisonment rate. But because the laws maintained the same criteria for detention and sentencing, prisons began filling up again. Therefore it became clear that to address the problem in a comprehensive way, it would be necessary to amend the legislation in effect. With significant participation by civil society, the Criminal Penal Code (COIP in Spanish) was drafted. This new law reflects a multidimensional and broad vision that contemplates, among other factors, the proportionality of penalties and the decriminalization of drug use, possession and cultivation for non-commercial purposes. With regarding to trafficking, it seeks to establish proportional sanctions based on three criteria: the scale of trafficking (low, medium, high, and large-scale); the degree of the accused person's participation in the crime (distinguishing between instruments, authors, and leaders); and the type of substance produced or commercialized. The COIP went into effect in 2014, and thanks to the work of the Public Defender's Office, guidelines have been developed to implement the principle of favorability, allowing sentenced people to benefit from these new criteria as well.

BRAZIL

SIX YEARS IN PRISON FOR 1 GRAM OF MARIJUANA

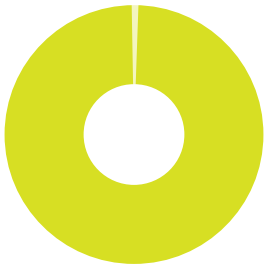
Bariri municipality, São Paulo, 2007. As they patrolled the city streets, two police officers saw a scene that seemed "suspicious" to them: two people were on the sidewalk, talking, and the woman went inside her house and the young man began walking away. The police detained him and demanded that he put his hands on his head and spread his legs. In one of his pockets they found the *corpus delicti*: 1 gram of marijuana. Perhaps hoping that things would stop there, the young man said the drugs were not his, they were the woman's. This was enough information for the officers to search the woman's residence and arrest her. Judge Ivana David, of the São Paulo judicial tribunal, sentenced her to 6 years and 9 months in prison for the crime of drug trafficking.

6

MASS INCARCERATION AND INHUMANE DETENTION CONDITIONS

WHO IS BEING DETAINED FOR DRUG-RELATED CRIMES?

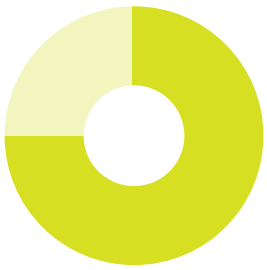
COLOMBIA



98%

of those detained for drugs are not proven to have had significant participation in drug trafficking networks

MEXICO



75%

of those detained for drugs were arrested with a small amount of an illicit substance on them

MASS INCARCERATION AND INHUMANE DETENTION CONDITIONS

The enforcement of harsh laws has led to the overburdening of courts and prisons, and to the deprivation of liberty of tens of thousands of people for minor crimes related to drugs or for simple possession. The weight of these laws has fallen principally on the most vulnerable social sectors.[1]

Even in countries where carrying small amounts of drugs for personal use is not considered a crime, the prisons have been filling up with users. It is possible this is due to the fact that, in most of these countries, the laws do not distinguish clearly between users and drug traffickers and they give police and judicial officials room to freely interpret each situation.

The severity of current drug laws and their aggressive enforcement are a determining factor in the increase in imprisonment rates and in overcrowding in places of detention. Despite a lack of reliable information and deficiencies in official penitentiary data, it can be seen that the period marked by a sharp rise in the prison population coincides with an increase in the number of people deprived of their liberty due to drug crimes. In some countries in the region, the imprisonment rate rose more than 100 percent in the last 15 years: in Brazil, it jumped 150%, and in Colombia, 125%.[2] Although there are differences between countries, imprisonment for drug crimes shows an upward trend. In some countries such as Bolivia, 45% of detainees are incarcerated for drug crimes.[3] One can observe the abuse of preventive arrests for people suspected of committing drug crimes. In many cases, these detentions last for years without every arriving at a solution. For example, in Bolivia, Ecuador, Mexico and Peru, pretrial detention is obligatory in cases of drug crimes, independent of whether the infractions are minor or major. Without making a distinction over the degree of participation, drug offenses are classified as serious crimes, along with murder, rape and kidnapping.

At the same time, people who are charged with or convicted of drug crimes are often denied access to alternative sanctions and measures that do not include prison or that provide for early release. In Peru, some benefits, such as parole, are not granted to people detained for drugs. In Brazil, the drug law of 2006 prohibited release on bail and substituting prison with alternative penalties until the Supreme Court declared both of these provisions to be unconstitutional.

The majority of people deprived of liberty for drug-related crimes operate on the lowest rungs of the drug trafficking ladder. In the case of Colombia, approximately 2% of all prisoners convicted of drug crimes are medium- or high-ranking figures. That means that the remaining 98% are people who did not have, or were not proven to have, significant participation in drug trafficking rings. In Mexico, a study carried out by the Center for Research and Teaching of Economics (CIDE in Spanish) shows that 75% of people detained for drug crimes were detained with small quantities.

The weight of the law falls mainly on a specific segment of the population: people with few resources, who are unemployed or have informal employment and who, due to economic difficulties or family or health crises, chose to risk their freedom and physical integrity to try to obtain the extra income that would allow them to overcome their situation.

The increase in mass incarcerations has aggravated the crisis of penitentiary systems in countries of the region, where human rights are systematically violated.

MORE WOMEN IN PRISON DOES NOT MEAN LESS TRAFFICKING

When analyzing the gender dimension of imprisonment on drug crimes, it can be seen that the percentage of women in prison for this reason (versus the total female prisoner population) is higher than that of men. In addition, the proportion has been rising in recent years and has reached between 75% and 80% in Ecuador; 64% in Costa Rica; 60% in Brazil; 66% in Peru; and between 65% and 80% in Argentina.

These numbers are constantly rising and, nonetheless, they have no impact on the functioning of drug trafficking, a criminal ring in which women tend to occupy the weakest positions. They often act as growers, harvesters, retail vendors, human couriers—or "mules"—or people who bring drugs into detention centers. In sum, with few exceptions, they are easily replaced workers for transnational criminal networks.

Due to the high unemployment rates among women, as well as their economic responsibility for children, they are vulnerable to entering the drug business. More often than men, women are victims of deceit and violence.

The impact of drug laws on detainees, their families and their communities can be devastating. Many women represent the only source of income for their families, and due to the stigma of a criminal conviction, they will have even fewer economic opportunities when they are released from jail. Children whose parents end up incarcerated are divided up among other relatives and often end up in institutions or are forced to live inside the prison with their mothers.

According to research carried out in women's prisons in Argentina, between 1990 and 2007 the female prison population grew 350%. And 80% of these women had not had previous contact with the penal system. Nearly all of them had minor children in their care at the time of their detention and 64% were the heads of single-parent households. In the case of women, prison sentences imply a brutal break in their family and social ties. Many prisoners suffer isolation in terms of contact with their relatives and loved ones, since most of them get few if any visits while they are incarcerated.

It is important to pay special attention to the situation of women who enter the penitentiary system. A report by the International Drug Policy Consortium (IDPC) indicates the detained women are often subjected to specific forms of discrimination and violence, such as the lack of detention centers exclusive to women; rape and sexual abuse on the part of center staff; the existence of trafficking rings between women's and men's sections of prisons; the lack of medical attention, which is more severe among women than men in prison; the damage done to their children, both those who live with them and those who are on the outside; and fewer education, work or training opportunities, among others.

NOTES

1 The conclusions in this section are based on the research in "Systems Overload: Drug Laws and Prisons in Latin America. Reform of Drug Laws in Latin America," coordinated by WOLA and TNI (Transnational Institute) in eight Latin American countries. Available at: http://www.wola.org/sites/default/files/downloadable/Drug Policy/2011/TNIWOLA-Systems_Overload-def.pdf

2 Penal Reform International. "Global Prison Trends 2015." London, 2015. Available at: www.penalreform.org/wp-content/uploads/2015/04/PRI-Prisons-global-trends-report-LR.pdf

3 idem

4 International Drug Policy Consortium (IDPC), 'Women, Drug Offenses and Penitentiary Systems in Latin America', 2013. Available at: http://idpc.net/publications/2013/11/idpc-briefing-paper-women-drug-offenses-and-penitentiary-systems-in-latin-america

5 idem

THE UNITED STATES

PERSECUTION OF USERS, RACISM AND PRISON

The United States' prison population is one of the largest in the world with nearly 1.5 million people detained; in federal prisons, more than half of all inmates are serving sentences for drug-related crimes. In the case of marijuana, the figures are especially alarming: between 2001 and 2010 more than 8 million marijuana-related arrests were made, 88% of them for the crime of possession. At the same time, a sharp imbalance can be seen in police persecution depending on the race of the detainees: for every 100,000 inhabitants, the black population has a marijuana arrest rate of 716, while the white population has a rate of 192—which is to say that the black population is 3.73 times more likely to be arrested for this reason. On top of living through difficult prison experiences, people who have served sentences for drug crimes pay a high price once they are released since they face a social stigma that translates into obstacles to accessing public housing or education subsidies; fewer employment opportunities; and problems related to the custody of their children or their immigration status, among others.

COLOMBIA

INCARCERATION FOR SMALL-SCALE TRAFFICKING

Rocío is a 38-year-old widow with three children. A victim of forced displacement, she had to leave her belongings and her life behind in Caquetá to move to the city of Neiva. After not being able to find work for several months, she decided to accept the only job she had been offered: taking drugs to another province in the country. Transporting small amounts of drugs became a stable source of income that allowed her to pay the rent and feed her family until the day that she was detained with 1,500 grams of cocaine base on her. After being charged with drug trafficking, she was convicted to 14 years in prison. In the hope that she would be able to stay close to her children, Rocío requested house arrest, but not only was this possibility denied, instead—apparently due to an administrative error—she was sent to the Buen Pastor women's prison in Bogota, very far from her family. Today, her mother, who is ill, is taking care of her two younger daughters, her son is doing military service and she continues to be in prison, waiting to be transferred to a detention center that is closer to the place where her family lives.

7

FORCED CROP ERADICATION CAMPAIGNS

FORCED CROP ERADICATION CAMPAIGNS

The United Nations Development Program expressed its concern over the impact of policies to eradicate illegal crops such as coca leaves, since the majority of growers are subsistence farmers.

"Forced eradication" is another of the policies developed to control drugs internationally, and its objective is to eliminate drugs at the point of production. This is a strategy that is appealing because it seems tough and straightforward, but in reality it has proven to be ineffective. There is broad evidence showing that eradication causes great harm to producers and their communities, increasing poverty for some of the neediest sectors, fostering human rights violations, fueling political instability and social conflict, and often benefiting armed groups.

The areas in the Americas where coca leaf and poppy crops flourish are characterized by extreme poverty, an absent state, limited physical infrastructure, scarce access to basic services and, very often, conflicts. The United Nations Development Program expressed its concern over the impact of policies to eradicate illegal crops such as coca leaves, since the majority of growers are subsistence farmers.[1] Forced eradication implies the destruction of the main source of income of poor small producers. By further worsening their living conditions, this policy reinforces—and may even strengthen—small growers' dependence on illegal crops.

At the same time, eradication processes entail other risks for farmers and their communities. Human rights abuses and violations are often carried out during eradication operations. The victims, since they have little income and tend to live in regions that are far from major cities, have few legal resources to protect themselves. The political and social impact can be devastating and it moves from one region to the next, along with the crops: forced eradication creates instability and violence. In Colombia, for example, crops have been expanding to new regions as eradication efforts are made, and this has meant that there are more areas where illegally armed persons are present and where the local population faces very serious acts of violence.

In past decades, during the years in which forced eradication campaigns were carried out in Bolivia, multiple abuses were committed against the local population. Associated clashes and roadblocks kept some regions

of the country isolated for months. Protests were staged to demand that the government fulfill its promise of economic assistance for alternative development and to denounce the human rights violations that often accompanied the forced eradication operations, which included summary executions, illegal detentions and torture. According to data from the Ombudsman's Office in the Chapare region, between 1994 and 2003, 33 coca producers and 27 police and military officials were killed, while 567 coca producers and 135 police and military officials were injured. In 2004, the government of Carlos Meza reached an agreement with the coca growers of the Chapare that allowed each grower to cultivate a small amount of coca leaves, a policy that was expanded after Evo Morales assumed the presidency. Since then, human rights violations have declined significantly and conflicts between coca producers and the security forces are the exception.

The programs for eradicating coca crops in Peru also show clear signs of failing. In response to the actions taken under the Special Project for Controlling and Reducing Illegal Crops in the Alto Huallaga (CORAH in Spanish), trafficking organizations in recent years have moved the crops from one area to another all along the Alto Huallaga, the VRAEM and the Pichis Palcazú central jungle, among other places. The vast majority of government measures aimed at fostering rural development have not been able to definitively eliminate poverty in the main producing areas in the high jungle region. In the places where illegal crops flourish, the Peruvian state does not have a medium-to-long-term strategy to manage the current conflicts that would prioritize pacification and promote development models.

Colombia is the only country in the Andean region that allows for the aerial spraying of herbicides, or fumigation, to destroy crops. The aerial fumigation operations represent a threat to fragile ecological systems and produce greater deforestation, since coca growers respond by going further and further into the jungle to grow their crops. According to the Consultancy for Human Rights and Displacement (CODHES in Spanish), a non-governmental organization, both forced eradication and aerial fumigation have swelled the ranks of the growing displaced population in Colombia; one of the main causes of internal displacement is the fight over control of the land to grow crops for the illegal market. There are frequent reports of food crops being fumigated, which further threatens the food security of farmers and their families, who are among the poorest Colombians. In 2015, the World Health Organization's International Agency for Research on Cancer (IARC) categorized glyphosate—the herbicide produced by Monsanto that is used in fumigations, and which is also known as Roundup—as "probably carcinogenic" and stated that it may cause non-Hodgkin lymphoma in humans.[2]

In 2014, Colombia's Constitutional Court ruled that the precautionary principle should be used and fumigations should be suspended until it was proven that they did not endanger public health. The WHO report renewed the debate within the Colombian government about the need to put an end to the glyphosate-based eradication program. The Health Ministry recommended that the president end the fumigations, but this stance was resisted by military authorities in the country. Even the United States weighed in with its opinion when its ambassador, Kevin Whitaker, said: "It has been demonstrated that glyphosate is very effective in stopping the growth of coca in the country, it is a very strong tool." Finally, in May 2015, President Juan Manuel Santos announced that the fumigations with glyphosate would be suspended by October 1, after 31 years of use in the country.

NOTES

1 United Nations Development Program. "Perspectives on the Development Dimensions of Drug Control Policy." March 2015. Available at: www.unodc.org/documents/ungass2016/Contributions/UN/UNDP/UNDP_paper_for_CND_March_2015.pdf

2 International Agency for Research on Cancer (IARC). Preliminary report. March 2015. Available at: www.iarc.fr/en/media-centre/iarcnews/pdf/MonographVolume112.pdf

COLOMBIA

INDIGENOUS PEOPLES THREATENED

The province of Putumayo, in southwestern Colombia, is populated mainly by peasants who subsist with minimal resources. Since the 1980s, the rural areas of this zone have been used by guerrilla groups, paramilitary units and drug traffickers. The armed conflict, combined with other factors, has provoked massive human rights violations against the population.

There are currently fourteen indigenous peoples that live in this area. Although they have obtained legal recognition from the Interior Ministry, the indiscriminate advance of anti-narcotics policies—including the spraying of glyphosate and manual eradication—jeopardizes these groups' material and cultural existence and directly affects their economic, social, territorial and environmental rights. Indigenous organizations have denounced, among other abuses, fumigation in areas where food crops are grown and livestock raised; pollution of bodies of water used for human consumption; impact on forests and conservation areas; and damage to sacred sites and plantings that have spiritual and medicinal uses. Displacement, extreme poverty and illnesses have increased alarmingly in recent years and, faced with protests by indigenous and communal leaders, the government has responded with greater militarization, persecution, repression, illegal detentions, stigmatization and judicial action.

BOLIVIA

"COCA YES, COCAINE NO"

The presidency of Evo Morales, which began in 2005, changed the focus of policies to combat drugs in Bolivia. As a first measure, the country reformed its constitution and recognized the ancestral right to consume coca leaves for traditional purposes. Since then, and backed by the concept of "coca yes, cocaine no," the Bolivian government has concentrated its actions on reducing and controlling coca leaf crops, while also increasing and modernizing the measures taken against cocaine production and drug trafficking.

At the center of this policy are the cooperation agreements with coca growers' federations: the producers can cultivate, in a legal and regulated way, a set amount of coca leaves. As a complement to this, the government created economic programs aimed at diversifying the sources of income of the coca growers, and it invested more in education, health and transportation. At the same time, hundreds of projects for infrastructure, institutional strengthening and social development were implemented in producing communities.

Although there are still challenges to be addressed, data shows that the current strategy has promoted a significant reduction in the violence and conflicts associated with forced eradication in the most vulnerable areas, such as the Chapare region.

8

LIMITS AND SHORTCOMINGS IN ACCESS TO HEALTH CARE

LIMITS AND SHORTCOMINGS IN ACCESS TO HEALTH CARE

One of the effects of criminalizing drugs is the stigmatization of people who consume them, and many users face obstacles to getting medical attention. In this sense, the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment, Juan Méndez, indicates that the "… experience of health care (of people who use drugs) is often one of humiliation, punishment and cruelty."[1]

In addition to the barriers to accessing health care, disrespectful therapeutic responses are often provided to people who use drugs. Despite the fact that drug use rarely makes a person incapable of being responsible for his or her actions (this is the consensus in medical, legal and philosophical literature), some people continue trying to justify forced treatment regimes. A rigorous approach to the issue of medical attention for users requires states to alter their conceptions about what kinds of practices should be part of treatment.

What is known as "treatment" in many countries often includes the excessive prescription of mood-altering drugs or the complete absence of medicines that help relieve the effects of withdrawal. In addition, under the guise of treatment, users may be subject to verbal abuse, military-style exercises or even beatings. Forced labor or work that is paid next-to-nothing is framed as "rehabilitation" and the conditions in which patients bathe, eat or sleep in many facilities do not meet the minimum standards for humane treatment.

These abuses are far from what can be considered healthy practices and can in fact be viewed as cruel, inhuman or degrading, according to the terms of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Free and informed consent should be a precondition to prevent arbitrary detentions and users must be situated in such a way that they are able to participate in defining their treatment, including the use of mood-altering drugs.

Local political debates regarding health and human rights have left this issue out of the discussion. There have been virtually no mechanisms implemented to monitor, regulate and, when necessary, sanction the abuses and rights violations committed in treatment centers.

Special attention and care must be given to people who use drugs in contexts of poverty, because in these circumstances the additional vulnerabilities and unsatisfied needs involved tend to be used as a justification to resolve through confinement what housing, education or health policies have been unable to resolve on their own.

Adopting the slogan that "a drug-free world is possible," Chile has opted to prevent the use of illegal psychoactive substances primarily through prohibitionist policies. At the same time, the indiscriminate use of alcohol and tobacco, which are legal drugs, is permitted without any health considerations whatsoever. With trends similar to those in the rest of the region's countries, in Chile the third leading cause of death among adults is traffic accidents, three-quarters of which are related to alcohol consumption.

Despite evidence refuting the effectiveness of programs solely based on abstinence to reduce drug use and the harms associated with these practices,[2] health services and educational policies generally have this orientation and do not employ strategies of harm reduction. Numerous organizations have recommended to the United Nations member states that obligatory hospitalization and rehabilitation centers be closed because they have not been proven to be effective.[3] In Canada, the government has rejected and tried to put an end to harm reduction programs and services, including prison-based syringe exchange programs, supervised injection sites, and medical prescriptions of controlled substances for extremely addicted patients. In a recent case, the Supreme Court declared unconstitutional the government's refusal to renew the legal exemption on a safe injection site.

Despite the fact that drug use rarely makes a person incapable of being responsible for his or her actions, some people continue trying to justify forced treatment regimes.

In some countries there have been positive changes in the paradigm of mental health care. In Argentina, the National Mental Health Law number 26,657 (in force since 2010, although it faces obstacles to full implementation) expanded the rights of people with addiction problems and stipulates that, in some cases, treatment that entails the deprivation of liberty can only be justified if certain criteria or strict guarantees are met. Hospitalization should only be ordered once it has been proven that other less invasive and less restrictive outpatient measures have failed and that there is a threat to the life of that person or others; in that case, the treatment should imply confinement under strict judicial supervision.

In the context of the criminalization of consumption, therapeutic responses for drug users continue to rely on the overuse of the penal system as a fast-track to medical attention. It is clear that when drug use is penalized and a user is obligated to choose between prison and a treatment institution, health care ends up becoming the soft side of criminalization.

The limited attention offered by the public health system leads to the proliferation of private institutions that operate without official regulation. This has prompted, for example, the expansion of different kinds of assistance (group or residential models) linked to religious communities,[4] whose lack of insertion in the public system favors situations of ill-treatment that no state body is regulating or supervising.[5]

BRAZIL

BRAZIL: A JUDICIAL BATTLE OVER ANNY'S HEALTH

Anny is 5 years old and has a rare illness that gives her frequent epileptic seizures, in addition to other symptoms. In desperation, her parents began treating her with a medication that contained cannabidiol (CBD), a derivative of marijuana that is used in the United States and several European countries to treat illnesses such as Parkinson's disease and multiple sclerosis, as well as to fight the symptoms of HIV and cancer. They knew that importing this product was illegal in Brazil, but they decided to do it regardless and face the consequences. The results of the treatment were clear: the seizures decreased, Anny began to eat again, she gained weight and was able to do physical therapy. In 2014, Judge Bruno César Bandeira authorized her parents to import the product. The ruling was a partial victory, however; there are many other families in similar situations that—faced with the suffering of their loved ones and delays in the judicial process—choose to traffic in illegal medicines. Even when the courts authorize it, acquiring and importing these treatments is only possible for certain social sectors due to their high cost and the judicial procedures involved.

One of the stated objectives of the international drug control system is to ensure public health, but some characteristics of its implementation involve serious restrictions on access to health care.

LACK OF ACCESS TO CONTROLLED MEDICINES

Another important aspect of the consequences of prohibition for health care is the lack of access to essential medicines used to treat pain. The Single Convention on Narcotic Drugs of 1961 established the obligation to ensure adequate availability of narcotic drugs—including opiates—for medical and scientific purposes, while also preventing the production and illegal sale of these drugs.[6] Opiates such as morphine are recognized by the drug control system as essential medicines but, because they may be abused, they have been classified in the category of strictest controls. The World Health Organization has estimated that 80% of the world's population lives in countries with little or no access to these pain treatments, which mainly affects terminal patients with cancer, HIV/AIDS and other illnesses.[7] The scarcity of opiates is due to administrative restrictions, including limits on the quantity and doses that can be prescribed, among other factors, and it affects many people who need palliative care in Latin America. The implementation of the international regulatory framework imposes excessive controls and restrictions that lead to the current situation of a lack of access to essential medicines, which is intensified in developing countries.[8]

In the region, the medicinal use of cannabis is impeded by current legislation, despite growing evidence of its usefulness in numerous treatments, not only of terminal illnesses but also for spasticity, chronic pain, neuropathies and inflammation-related problems, among others.[9] Some countries such as Chile and Colombia are debating the possibility of permitting this use, which would give legal and regulated access to people with diverse ailments. Today medicinal cannabis users are forced to participate in illegal markets and they are also unable to get medical supervision for their treatment due to the substance's illegality. Currently 23 states in the United States have legalized marijuana for medical use. Uruguay did so through its broader reform and Jamaica also made progress on the legalization of the medical use of cannabis in 2015.

To summarize, one of the stated objectives of the international drug control system is to ensure public health, but some characteristics of its implementation involve serious restrictions on access to health care. Ironically, the negative consequences of drug control policies have been greater than the harm caused by drug use itself: the black market has expanded, along with violence and corruption; there has been an exponential rise in the number of people detained for and charged with consumption and retail drug dealing; users have been criminalized and subjected to a psychiatric approach; and access to essential medicines has not been guaranteed. At the same time, statistics on drug use have not shown a decline in the last 25 years. In this context, the system of control and public health does not appear to be responding adequately to the problems related to use.

NOTES

1 Report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment, Juan E. Méndez, Human Rights Council, 22nd session, February 1, 2013. A/HRC/22/53. Available at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf

2 Schatz, Eberhard and Nougier, Marie. "Drug Consumption Rooms: Evidence and Practice." International Drug Policy Consortium. London, 2012. Available at: www.drugsandalcohol.ie/17898/1/IDPC-Briefing-Paper_Drug-consumption-rooms.pdf

3 "Compulsory Drug Detention and Rehabilitation Centres (Joint Statement)." 2012. Available at: www.unaids.org/en/media/unaids/contentassets/documents/document/2012/JC2310_Joint%20Statement6March12FINAL_en.pdf

4 Castilla, V., Lorenzo, G. and Epele, M. "Prácticas de Cuidado y Rescate de Usuarios de Pasta base/Paco y su Relación con la Religión Evangélica." In Social Sciences and Religion. Fifth Scientific Meeting CLACSO: Religion, Sexualities and Power, Buenos Aires, November 18-19, 2010.

5 Galante, A., Pawlowicz, M.P., Rossi, D., Corda, A., Touzé, G. and Goltzman, P. "El fallo Arriola: Debate en torno a la desjudicialización de la atención sanitaria de los usuarios de drogas." In: Arias, A.; García Godoy, B.; Bazzalo, A. (comp.): *Trabajos seleccionados, IV Encuentro Internacional "Aportes a la construcción de lo público."* Faculty of Social Sciences, UBA. Buenos Aires, 2012.

6 Single Convention on Narcotic Drugs of 1961, Art. 9.

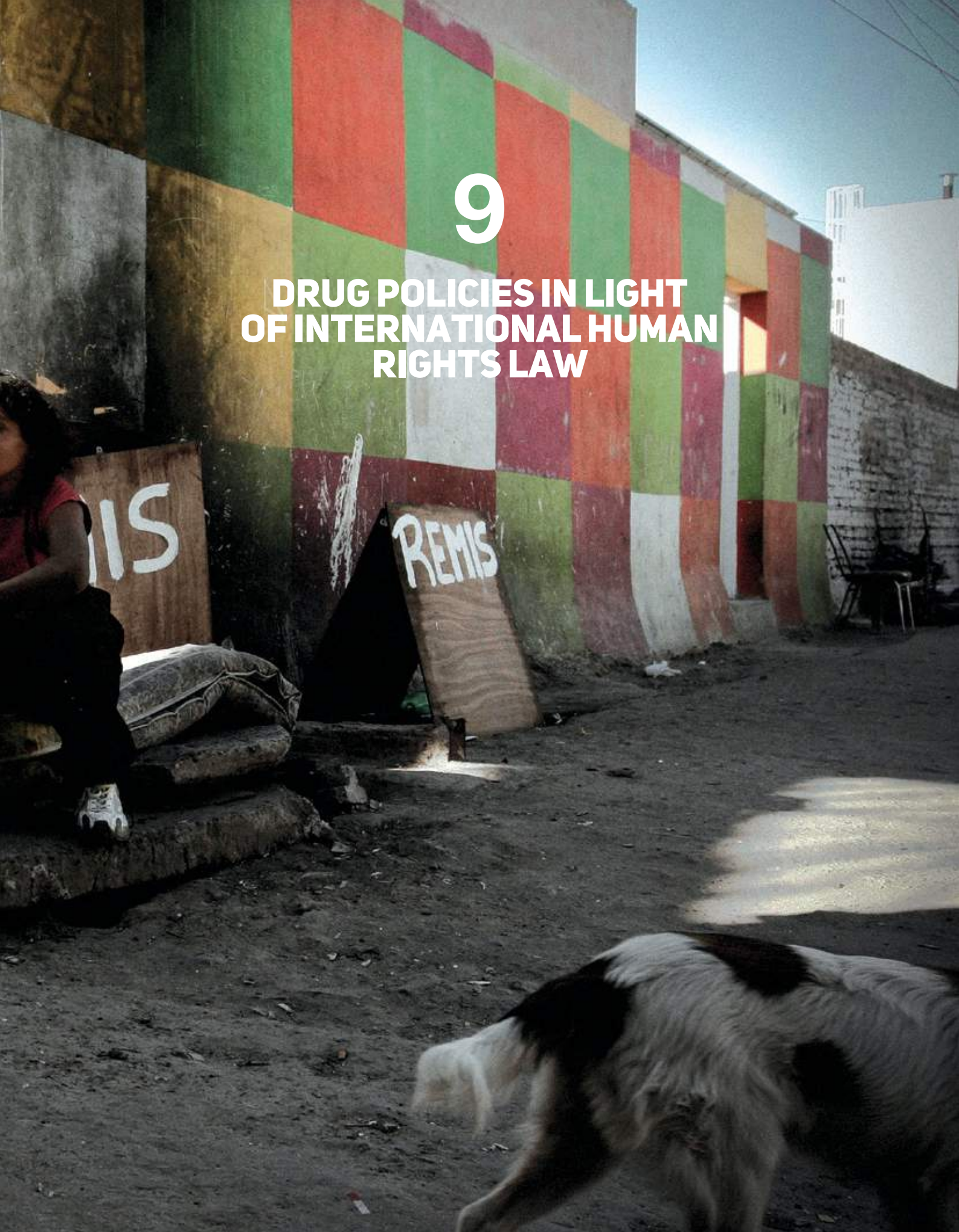
7 World Health Organization. Access to Controlled Medications Program. "Improving access to medications controlled under international drug conventions." Geneva, 2012. Available at: www.who.int/medicines/areas/quality_safety/ACMP_BrNote_Genrl_EN_Apr2012.pdf

8 Husain, S. Asra, Skemp Brown, Marty, and Maurer, Martha A. "Do national drug control laws ensure the availability of opioids for medical and scientific purposes?" World Health Organization Bulletin, Volume 92, No 2, February 2014. Available at: www.who.int/bulletin/volumes/92/2/13-121558/en/

9 The WHO's Expert Committee on Drug Dependence. "Cannabis and cannabis resin: Information Document." Geneva, 2014. Available at: www.who.int/medicines/areas/quality_safety/8_2_Cannabis.pdf

9

DRUG POLICIES IN LIGHT OF INTERNATIONAL HUMAN RIGHTS LAW



DRUG POLICIES IN LIGHT OF INTERNATIONAL HUMAN RIGHTS LAW

Prohibitionist policies enter into conflict with regional and international human rights laws. Many of the rights enshrined in the American Convention on Human Rights (ACHR)—the main instrument on this matter in the region—have been affected by the implementation of policies that are tough on drugs. Several deserve special attention.

The right to life (Article 4, ACHR) has been systematically violated due to the wave of violence associated with drug trafficking.

In Colombia, Mexico, Honduras, Peru and Guatemala, the clashes between criminal groups dedicated to this activity and state forces have caused an incalculable number of deaths among men, women and children. States are doubly responsible for this situation, in part because drug trafficking and the growing power of narco-criminal groups are largely the result of the state's own prohibitionist policies, which turn drugs into costly goods that are highly profitable to trade. In addition, the military and police actions deployed against drug trafficking are repressive in nature and affect the population indiscriminately.

The right to personal integrity and the prohibition of torture and other cruel, inhuman or degrading treatment (Article 5, ACHR) have been violated in at least three scenarios associated with drug policies.

First, through the participation of military forces in public security tasks in Mexico, where the indiscriminate use of force and abuse have led to the perpetration of torture to obtain confessions about illegal activities associated with drug trafficking.

Second, people detained for drug-related crimes in the region face serious problems in the prison system related to high rates of overcrowding (driven, in turn, by the large number of people incarcerated for simple drug possession), torture, inhumane treatment and internal violence. These are mainly people who make up the weakest links in the criminal chain. The situation of women detained for these crimes requires special attention.[1]

Third, due to weak state controls, many Latin American health centers carry out rehabilitation treatment on people dependent on psychoactive substances in a compulsory way, retaining and isolating people against their will, withholding access to any substitute medication, and in some cases promoting forced labor practices. These situations have been recognized as a form of torture by the UN Special Rapporteur.[2]

The right to lead a life free of arbitrary or abusive interference (Article 11.2, ACHR) has been violated by the way in which states confront the use of illegal drugs.

Argentina, Brazil, Chile and Peru have legislation or judicial rulings that decriminalize the use of small amounts of drugs. However, cases have been reported in which criminal sanctions are applied to people who decided to use psychoactive substances without affecting any third person, even within their own homes. Drug use is an activity that pertains to one's private life, meaning that criminal penalties constitute a state intervention that openly flouts the Convention.

The right to personal liberty and the prohibition of arbitrary detention (Article 7.3, ACHR) are ignored by security forces.

While carrying out drug control tasks, police make mass arrests that violate the prohibition against detention without a judicial order established by the ACHR. In Mexico, for example, numerous cases of arbitrary detentions by military and police have been reported in the context of the current public safety strategy.

The right to equality before the law and the principle of non-discrimination (Articles 1 and 24, ACHR) have also been violated by police detention practices for drug-related activities.

Detention rates for activities related to the possession of small amounts of marijuana and other drugs have increased exponentially in recent years. In addition, in various countries in the region, the weight of this increase falls mainly on persons of African descent, while the detention rates among the white population have remained stable.[3] This shows the great freedom that police have to act discretionally regarding cases related to drug possession, which often imply abuse of authority and racial discrimination.

The abusive and excessive use of criminal law to punish any behavior related to drugs (Articles 7 and 9, ACHR)

Not only are there ever-increasing numbers of conducts related to psychoactive substances that are categorized as serious crimes, but in addition, in recent decades, prison sentences have increased disproportionately vis-à-vis the actions that are being punished.

The right to be presumed innocent (Article 8.2, ACHR) and liberty as a rule during the judicial process (Article 7, ACHR) have been affected by the excessive and arbitrary use of pretrial detention for narcotics-related conduct.

Such is the case in Bolivia, Brazil, Ecuador, Mexico and Peru, where any person linked to drug-related offenses is automatically placed in preventive detention while their judicial situation is resolved. In these cases, judges do not have the possibility of weighing evidence about the configuration of so-called procedural risks (risk of flight or risk of obstruction of the investigation) to evaluate if pretrial detention is warranted, since the law makes it obligatory. The IACHR has declared this practice to be contrary to the standards of the Inter-American System.[4]

The right of movement and residence (Article 22, ACHR) has been affected by the forced displacement of the civilian population due to narcotics control strategies.

Such is the case of Colombia, for example, where entire populations have been displaced by the forced eradication and aerial spraying campaigns against illegal crops led by the Armed Forces.[5] According to Colombia's Constitutional Court, these security operations have been carried out without any kind of anticipation of or prevention against the effects of displacement on the communities involved.[6]

Economic and social rights and the obligation to adopt measures for their progressive development (Article 26, ACHR) have been threatened by, among other factors, forced eradication and aerial spraying of illegal crops.

These state actions are carried out in regions characterized by extreme poverty, a lack of state presence, limited physical infrastructure and scarce access to basic services.

In these circumstances, local communities rely on illegal crops as their only source of income, which means that indiscriminate state attacks, without simultaneous plans for alternative development intensify their poverty and restrict even further their access to health services, education, housing and food.

The right to health (Article 10 of the Protocol of San Salvador) has been violated in view of the serious health care problems faced by drug users.

In countries located in the Americas, criminalization and stigmatization of drug users have become obstacles to their unfettered access to health services, since the treatments they receive often amount to humiliating and cruel experiences. In addition, access to the health care system by users is frequently coordinated with the penal system, which means that people often prefer not to access health services in order to avoid criminal sanctions. The right to health is also affected by the lack of access to essential medicines, which is due to their prohibition.

THE INTERNATIONAL DRUG SYSTEM IN LIGHT OF STATES' HUMAN RIGHTS OBLIGATIONS

The states in the region have applied the international drug control system manifested in the United Nations Conventions from 1961, 1971 and 1988, in contradiction to their human rights obligations, even though the juridical superiority of the international human rights system is upheld both by the *"jus cogens"* (peremptory norm) status of some of its dispositions, as well as by the historical development of the obligations under the United Nations Charter, which, according to Article 103, shall prevail.

In recent times, efforts have been made to try to ensure greater coherence and communication between the two legal frameworks. For example, a 2008 resolution by the Commission on Narcotic Drugs (CND) calls for the integration of the two systems,[7] and a report by the United Nations Office on Drugs and Crime (UNODC) from the same year regarding improvements to controls admits that there are undesired consequences stemming from the application of the conventions and recognizes the primacy of the United Nations Charter.[8] In addition to these tensions, the literal and restrictive interpretation by the International Narcotics Control Board (INCB)—which is the body charged with monitoring compliance with conventions on this matter—has exacerbated the tensions between the international drug system and the human rights obligations of states. In a variety of forums, the INCB has defended the need to respect the letter and spirit of the conventions on narcotics above all other international duties. It has done so in response to national or local drug policy reforms in the Americas, relating both to supply reduction and demand reduction. For example, the INCB has criticized both the legalization of cannabis in the states of Colorado and Washington, as well as Uruguay's project to regulate the entire chain of production and distribution of this substance. These reforms have been defended by the states as more apt alternative responses that minimize the negative impact on human rights of prohibitionist drug policies.

It is essential that regional and international human rights organizations and entities become more involved to confront this reality by rigorously monitoring the various dimensions of drug policies, and establishing a permanent dialogue with UN bodies and debate forums in New York, Vienna and Geneva (the General Assembly, CND, UNODC and the Human Rights Council), to ensure that a human rights agenda is incorporated across the board. The recent resolution by the Human Rights Council that affirms the need to incorporate this perspective in the 2016 Special Session of the General Assembly and orders for specific contributions to be made[9] is a first step along this path.

The states in the region have applied the international drug control system manifested in the United Nations Conventions from 1961, 1971 and 1988, in contradiction to their human rights obligations.

NOTES

1 IACHR. "Report on the Use of Pre-trial Detention in the Americas." December 2013. Available at: ww.oas.org/es/cidh/ppl/informes/pdfs/informe-pp-2013-es.pdf

2 United Nations Human Rights Council. "Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez." February 1, 2013. A/HRC/22/53.

3 cf. Fellener, J. "Race, Drugs, and Law Enforcement in the United States." Stanford Law & Policy Review, (20). 2009. Available at: www.hrw.org/news/2009/06/19/race-drugs-and-law-enforcement-united-states

4 IACHR. "Report on the Use of Pre-trial Detention in the Americas." December 2013. Available at: www.oas.org/es/cidh/ppl/informes/pdfs/informe-pp-2013-es.pdf

5 cf. Consultancy for Human Rights and Displacement (CODHES) on the effects of Plan Colombia on forced displacement. CODHES. "Balance del Plan Colombia en la frontera de Colombia con Ecuador: contraproductos y crisis humanitaria." 2003. Available at: http://www.acnur.org/t3/recursos/informacion-sobre-pais-de-origen/detalle-documento-coi/balance-del-plan-colombia-en-la-frontera-de-colombia-con-ecuador-contraproductos-y-crisis-humanitaria-2003/

6 Colombia's Constitutional Court. Edict 218 of 2006. M.P. Manuel José Cepeda Espinosa.

7 However, to ensure that this resolution be approved, numerous references had to be struck from the text, including references to the elimination of the death penalty, the declaration of the rights of indigenous peoples and to the specific human rights protection mechanisms of the UN. See a report by TNI about drugs and human rights, available at: //druglawreform.info/temas/derechos-humanos/item/5023-derechos-humanos-y-politicas-de-drogas#4

8 The report says: "While it is not always easy to establish a hierarchy between these different instruments, it is clear that the constituting document of the Organization, the Charter of the United Nations, takes priority over all other instruments ... In the context of drug control, this means that the drug Conventions must be implemented in line with the obligations inscribed in the Charter. Among those obligations are the commitments of signatories to protect human rights and fundamental freedoms." (See document of the Commission on Narcotic Drugs from May 7, 2008. Available at: https://www.unodc.org/documents/commissions/CND/CND_Sessions/CND_51/1_CRPs/E-CN7-2008-CRP17_E.pdf)

9 Human Rights Council. "Contribution of the Human Rights Council to the special session of the General Assembly on the world drug problem of 2016." A/HRC/28/L.22, March 2015.

10

NEW APPROACHES GIVEN THE FAILURE OF PROHIBITION

NEW APPROACHES GIVEN THE FAILURE OF PROHIBITION

The prohibitionist model is a global paradigm, promoted by the United States and with no significant opposition, which was imposed throughout the world. With the promise of creating a "drug-free society," it aims to eliminate anything related to the psychoactive substances that have been declared illegal, from the moment of cultivation all the way to consumption, with stops along the way at the points of production, trafficking and commercialization.

Beyond its rhetoric, the prohibitionist approach is not carried out in a coherent way and has some ambiguities and inconsistencies: it implacably punishes and pursues some participants in the illegal drug market while tolerating others. Over the course of five decades of "war," this latter group has done nothing but get rich off the drug business and the laundering of assets. In this context, more officials at a national and international level around the world have become "prohibition addicts"[1] and reproduce this model without assessing its effectiveness.

The negative consequences of this can be seen throughout the Americas. In various countries, human rights violations multiply as a result of the insistence upon a model of combating drug trafficking that intensifies and expands violence—and does not meet its purported objectives. The inability of this policy to reduce the production and trade of illegal substances is clear, along with the effects on the life of communities: forced displacements, mass detentions, prison overcrowding, eroded judicial guarantees, enforced disappearances and extrajudicial executions.

Prohibition has served to consolidate the illegal drug trafficking markets that are characterized by violence and corruption. The toughening of state responses—expressed, for example, through the implementation of militarized public policies—has negatively affected the well-being and security of the Americas and has not affected organized crime's power hubs, or its ability to penetrate institutions, nor has it reduced trafficking. In the best of cases, it has managed to move the problem to a neighboring region or country, where the same social damage is done. The "War on Drugs" has served as a discursive justification for tough-on-crime policies that have affected even people who have nothing to do with the markets for illegal substances; the effects of the institutional reforms and police practices associated with the "fight against drug trafficking" are felt throughout society, and especially in the most vulnerable sectors.

The region's judicial systems have had enormous difficulty developing an effective strategy against organized crime. Criminal prosecution efforts have ended up being focused on the actors with the least amount of responsibility in the trafficking chain: dealers who sell small amounts of drugs, poor women used as couriers, and people who are users. The laws or judicial proceedings frequently affect the guarantees of people who commit drug-related crimes; this is the case with detentions made without judicial due process. In nearly all the region's countries, sentences for these crimes are increasingly long and disproportionate compared with others, including life-threatening crimes. In this way, the prohibitionist laws, the police practices and the administration of justice have served as an incarceration machine that overcrowds the prisons, without affecting the functioning of illegal markets. Today, nearly one third of the population deprived of its liberty in the Americas is locked up for non-violent drug-related crimes, a situation that damages their lives and that of their communities, aggravating social exclusion.

In areas of production and transit, which are located mainly in developing countries, the most serious effects of this crusade play out: the living conditions of populations with very few resources deteriorate even further when militarization, displacement or fumigation plans are implemented.

Beyond its rhetoric, the prohibitionist approach is not carried out in a coherent way and has some ambiguities and inconsistencies: it implacably punishes and pursues some participants in the illegal drug market while tolerating others.

Contradicting the objective that the prohibitionist paradigm claims as its own, which is the eradication of illegal substances, the system built to achieve this purpose does not prioritize the creation of health systems that can treat people with addiction problems. In most countries in the region, it is difficult to find medical treatment that is accessible and respectful of the rights of users. The punitive approach also hindered the development of a coherent and comprehensive public health model capable of addressing the risks and harm related to narcotics use. The criminalization of consumption and the stigmatization of users act as de facto barriers to medical attention. At the same time, prohibitionist policies have created obstacles to accessing certain drugs that are essential for pain management. One case in point involves opiates: with the goal of preventing their sale on the black market, excessive administrative controls have been erected that hinder access to palliative care for many terminally ill people, especially those with fewer economic resources.

These grave social consequences of the policies guided by militarization and criminalization are justified as “collateral damage” given the need to eliminate the circulation of certain drugs, from a position that rejects the use of narcotics in itself. This purported moral justification is nothing more than a mechanism of ideological legitimation regarding deeper decisions about the role of the state and the validity of human rights.

The negative consequences of prohibition are part of a policy that has allowed people associated with illegal markets to accumulate wealth. Under the guise of protecting citizens, democracy and the political system, the state itself undermines the structure of guarantees and rights. The dynamics of the fight against drugs lead to a sharp deterioration of institutions, which, in many cases, jeopardizes the rule of law.

The drug problem cannot be exclusively conceived of as a security problem that must be attacked. Presenting

it in this way legitimizes a warlike response that seeks to crack down on criminal organizations as violently as possible. This perspective deliberately minimizes aspects related to public health, the production matrix of communities, cities and states, and the individual freedoms involved. In some cases, the negative impact on these areas ends up affecting countries' development models.

In various national and international arenas, an incipient debate to review anti-drug policies has begun. Reassessing the regulatory role of the state and its ability to intervene to create better living conditions for the entire population can foster an improved environment in which drug-related policies may be analyzed from a perspective that addresses their multiple dimensions: economic, social, cultural and health-related. This point of view allows for a discussion of the consequences of these policies, concentrated on prohibition, that fuel a market that is growing uncontrollably, produce extraordinary profits and are inseparable from the proliferation of violence.

Latin America has been playing a key role in spurring debate on the prohibitionist model. The governments of some countries have questioned the policies in effect and led debates in international forums. In the region there are examples of policies that aim to change the focus of punitive state responses, among them the regulation of markets that are currently illegal. In this sense, it is necessary to evaluate the regulation- and control-oriented public policies implemented to reduce the use of alcohol and tobacco as possible guides for a new approach to substances that are prohibited today.

The international community, multilateral organizations and governments must take a stance to ensure that drug policies are fully aligned with International Human Rights Law and models for inclusive development. It is time to engage in a deep, committed international debate about the policies that, after decades in force, have not been able to tackle the drug business or reduce related violence, and have instead had serious social costs and served to deteriorate the democratic system, as we document in this report. It is fundamental that this debate involve powerful central countries, which have been the main drivers of the "War on Drugs."

A work agenda to reflect upon new state responses will entail rethinking the priorities and objectives of drug policies. This debate will need to be carried out with

The drug problem cannot be exclusively conceived of as a security problem that must be attacked. Presenting it in this way legitimizes a warlike response that seeks to crack down on criminal organizations as violently as possible. This perspective deliberately minimizes aspects related to public health, the production matrix of communities, cities and states, and the individual freedoms involved.

quality information and rigorous assessments of the economic, social and health aspects of drugs, as well as the impact of the measures taken in recent decades. From our point of view, and based on the experience we have as organizations that work for human rights, the concrete, feasible measures that states should analyze in order to debate the prohibitionist model and reduce its impact include:

- Ensure that the state's obligations deriving from international instruments are compatible among themselves and with national regulatory frameworks, respecting the prevailing nature of states' human rights obligations.

- Explore non-punitive responses, including the regulation of markets.

- Aim state law enforcement efforts at criminal organizations and groups that use violence.

- Decriminalize drug consumption and cultivation for personal use.

- Establish penalties and prison sentences that are proportional and coherent with other crimes, and prevent the abusive use of criminal law.

- Develop alternatives to incarceration for people who commit non-violent crimes associated with drug trafficking.

- Develop health policies based on a human rights perspective that reach the drug users who need them.

These proposals have begun to be explored in various parts of the world, and numerous national experiences show that change is possible.

Alternatives exist.

NOTES

1 Tokatlian, Juan Gabriel. "Drogas (y dogmas) ¿una revolución paradigmática?" In Informe Escaleno. Buenos Aires. February 2014. Available at: www.informeescaleno.com.ar/index.php?s=articulos&id=119

THE IMPACT OF DRUG POLICY ON HUMAN RIGHTS

THE EXPERIENCE
IN THE AMERICAS

Cover

ALBERTO CIFUENTES
Anti-drugs operation.
Ayacucho, Peru.

P. 4 y 5

SUB.COOP
Near the Rua do marzo,
São Paulo, Brazil.

P. 8 y 9

MARÍA EUGENIA CERUTTI
Ejército de los Andes neighborhood,
Buenos Aires province, Argentina.

P. 15

Activists join a campaign by the Acción Visual organization in solidarity with the community of Ayotzinapa, Mexico. International Human Rights Colloquium co-organized by Conectas, LRC, KontraS and CELS. São Paulo, Brazil.

P. 16 y 17

SUB.COOP
March to celebrate the regularization and legalization of cannabis.
Montevideo, Uruguay.

P. 22 y 23

SUB.COOP
Arcos de Lapa, Rio de Janeiro, Brazil.

P. 26

MARÍA EUGENIA CERUTTI
Administrative office of Unit 31- the Nuestra Señora del Rosario de San Nicolás federal detention center for women. Ezeiza, Buenos Aires province, Argentina.

P. 27

MARÍA EUGENIA CERUTTI
Unit 31- the Nuestra Señora del Rosario de San Nicolás federal detention center for women. Ezeiza, Buenos Aires province, Argentina.

P. 28 y 29

MARÍA EUGENIA CERUTTI
Pavilion for indicted women in Unit 31- the Nuestra Señora del Rosario de San Nicolás federal detention center for women. Ezeiza, Buenos Aires province, Argentina.

P. 34 y 35

HÉCTOR RÍO
Penitentiary Unit 3. Rosario, Santa Fe province, Argentina.

P. 40 y 41

ALBERTO CIFUENTES
Drying of coca leaves. Pichari (VRAEM region), Cusco, Peru.

P. 44

ALBERTO CIFUENTES
Pichari (VRAEM region), Cusco, Peru.

P. 46 y 47

SUB.COOP
March to celebrate the regularization and legalization of cannabis. Montevideo, Uruguay.

P. 52 y 53

SUB.COOP
Villa 21, the city of Buenos Aires, Argentina.

P. 58 y 59

ALBERTO CIFUENTES
Huancavelica (VRAEM region), Peru.