



17th St. & Constitution Avenue N.W.
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IN SEARCH OF RIGHTS:

DRUG USE AND STATE RESPONSES IN LATIN AMERICA

PRESENTATION BY COLETTA A. YOUNGERS,

SENIOR FELLOW, WASHINGTON OFFICE ON LATIN AMERICA (WOLA)

MEMBER, COLLECTIVE FOR THE STUDY OF DRUGS AND THE LAW (CEDD)



In Search of Rights:

Drug Use and State Responses in Latin America

Presentation by Coletta A. Youngers,

Senior Fellow, Washington Office on Latin America (WOLA)

Member, Collective for the Study of Drugs and the Law (CEDD)

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This report presents the results of the most recent study by the **Research Consortium on Drugs and the Law (Colectivo de Estudios Drogas y Derecho, CEDD)**. The study, entitled “In Search of Rights: Drug Users and State Responses in Latin America,” analyzes States’ responses to the consumption of illicitly used drugs, focusing on two key areas—criminal justice responses and health responses—in eight Latin American countries: Argentina, Bolivia, Brazil, Colombia, Ecuador, Mexico, Peru, and Uruguay.

An international consensus appears to be emerging that drug use is not a criminal matter, but a health issue. Nevertheless, as shown by the country investigations that are part of this study, Latin American government responses to the use of illicit substances remain predominantly punitive and handled through the criminal justice system; it is through judicial, rather than healthcare, institutions that states address the illicit use of drugs and drug users. Even in countries in which drug use is not a crime, persistent criminalization of drug users

is found.

Treating drug use (and users) as a criminal matter is problematic for several reasons. First, as an earlier study by CEDD shows, responses that criminalize drug users are often ultimately more hazardous for the users' health than the drug use itself and do not help decrease levels of use (either problem or non-problem use). Second, as this report shows, the criminal justice response contributes to a climate of stigmatization of and discrimination against users, reducing the likelihood that police and the judicial system will take an impartial attitude toward them. Third, the criminalization of drug users is a poor use of public resources in both the public security and health sectors. Finally, this approach to drug use—through criminal justice institutions—violates various fundamental rights of users, including the rights to health, information, personal autonomy and self-determination. All of this violates various national and international human rights norms that States are obligated to uphold.

The following is a summary of the studies' key findings:

- ☒ Most public policies related to drug use in the countries studied take a punitive and prohibitionist approach that does not distinguish among different types of use and/or among substances or users; they are therefore inadequate for addressing the harm caused by problem drug use.

- ☒ In all of the countries studied, there is strong discrimination against and stigmatization of drug users. Even in countries where use of those substances is not criminalized, we found that consumers are often treated as criminals. This leaves users outside the reach of health systems.

- ☒ In all the countries studied, we found that drug users are criminally prosecuted. In Argentina, Ecuador, Mexico and Bolivia, drug use is not a crime. Nevertheless, according to the study in Argentina, in a sample from 2011, nearly 75 percent of the cases involving drug law violations that were initiated by security forces in the Federal Criminal Court in the city of Buenos Aires were for possession of drugs for personal use. In Ecuador, 5,103 people are presently incarcerated for possession of narcotic or

psychotropic substances, of a total of 6,467 convicted on drug-related charges. In Mexico, 140,860 people nationwide were arrested for drug use between 2009 and May 2013, and investigations were opened in 53,769 cases in the federal system during that period. In Bolivia, 6,316 people were arrested for drug possession (mainly cannabis) between 2005 and 2011, although possession is not classified as a crime.

☒ The criminal justice response puts drug users in a vulnerable position before the authorities, exposing them to corruption, extortion, physical abuse, sexual abuse, arbitrary detention and other violations of their fundamental rights.

☒ Largely because of the stigmatization of drug use, users suffer constant violations of their fundamental rights, including the rights to health, self-determination and free personal development, the right not to suffer discrimination, and the right to information and due process.

☒ The governments studied emphasize controlling the supply of illicitly used drugs over addressing drug use, or demand, which has a negative impact on the ability to provide adequate social and public-health responses to drug use and contributes to the violation of present and future users' rights to health.

☒ There is a marked paucity of information about consumption and a lack of systematization of that information and, in some cases there are methodological and conceptual problems in the gathering of information about drug use. That often leads to an exaggeration of the problem of consumption of illicitly used drugs and hinders the formulation and development of informed policies based on empirical information.

☒ By emphasizing a criminal justice approach over a health-related approach, governments have abdicated their responsibility to users who need treatment, leaving the private sector as the main provider of treatment and rehabilitation services. We found that States often do not regulate and/or oversee private centers, many of which operate informally, using treatments that have no scientific basis. Abstinence-based

treatment models predominate in both the public and private sectors and there is little emphasis on harm reduction programs, which have proven more effective in mitigating the negative effects of illicit use of drugs.

☐ Throughout the region, drug users—even when their use is not problematic—can be subjected to treatment involuntarily, forcibly or semi-forcibly. This means that scarce public-health resources that could be used for people who do want and need treatment are used for people who neither need nor want it. Given that situation, the proposal of drug courts offers an alternative to incarceration. One concern, however, is that this proposal is seen as a healthcare response, when its components are still of a criminal justice nature and risk reproducing all of the problems within the criminal justice system with regard to drug use.

RECOMMENDATIONS

1. Users or consumers of illicit substances must be recognized as being subjects of rights. These include the right to self-determination and free personal development, the right not to suffer discrimination, the right to health and the right to due process.
2. Drug use is a social and health issue that requires non-punitive public policies. Criminal law should never be applied in cases of drug use and simple possession or as an excuse to protect health. Possession and cultivation for personal use should therefore be effectively decriminalized by changing criminal laws and/or by correcting the practices of law-enforcement agencies and judicial authorities.
3. States should redirect the priorities of their drug policies, placing much more emphasis on demand and doing so through health services and education programs.
4. Governments should establish and implement inclusive, evidence-based social and health policies that respect human rights, with

increased budgets; accessible, high-quality public services; monitoring capacity; and periodic evaluation of the implementation of policies and their impact.

5. Drug policies should not be based on prejudices or stereotypes, but on reliable scientific information. Governments should make a greater effort to identify, gather, systematize and disseminate relevant information about types of use, users, the supply of services, and the production and distribution of substances.
6. Governments should also provide users with information about potential harm from the use of legal and illegal drugs, measures for mitigating the risks related to their use, and treatments that are available if needed.
7. Drug policies, including education and prevention programs, should distinguish among different forms of use -infrequent non-problem use, frequent problem use, frequent non-problem use, and infrequent problem use and differences in the substances themselves. Governments should also recognize that not all drug use is problematic or implies dependence that justifies state intervention.
8. Uruguay's initiative to create legal, regulated cannabis markets, including cannabis clubs, deserves international and regional support. Similar initiatives to promote legal, regulated cannabis markets should be promoted in other countries and localities (like those in the U.S. states of Colorado and Washington).
9. Governments should design and implement treatment and rehabilitation programs based on scientific evidence and with harm reduction approaches to mitigate the negative consequences and risks that can result from drug use.
10. Governments should oversee treatment and rehabilitation services provided by the private sector. Therapeutic centers that emphasize isolation or forced or unpaid labor should be replaced by evidence-based programs.

11. The State, as a rule, cannot force treatment. In extreme cases where internment may be advisable, State intervention must be based on two principles: informed consent and compulsory rehabilitation as a last resort, always with strict observance of individual guarantees.
12. Thresholds of legal quantities for personal use should be used to set minimum quantities below which a person cannot be considered a dealer; nevertheless, it should not be assumed that a person possessing an amount exceeding the threshold can be punished for distribution and trafficking, because the State must prove intent to sell or distribute. Thresholds must also be based on users' practices and not set arbitrarily, always ensuring that users are protected.
13. Although promoted as an alternative to incarceration, drug courts remain primarily a criminal justice response, rather than a social or health-oriented response. Instead of replicating the US drug courts model, Latin American countries should explore other alternatives to incarceration and the decriminalization of possession for personal use in order to reduce the number of people incarcerated for possession for personal use and for minor, non-violent drug offenses.

To view the full report, please visit <http://bit.ly/CEDDReport>