

CENTRE FOR COORDINATION OF RESEARCH

INTERNATIONAL FEDERATION OF CATHOLIC UNIVERSITIES

POLICY BRIEF

DRUG POLICIES IN LATIN AMERICA AND ASIA

**TOWARDS THE CONSTRUCTION OF RESPONSES
FOCUSED ON HUMAN RIGHTS**



September 2013

1. EXECUTIVE SUMMARY

Prohibitionist policies have shown their limits, deepening the stigmatisation of drug users, especially those living in situations of social vulnerability, and this has been translated into problems in accessing social and health services. The predominance of these policies has resulted in the criminalisation of drug users and minor agents in the trafficking circuit (growers, small-scale carriers and drug dealers) and the consequent prison overcrowding. Nor do certain legislative advances always result in social practices that transform conditions of social exclusion.

A change of paradigm is therefore necessary, placing the restoration of drug users' dignity at the centre of the debate, respecting the international rules of human rights and promoting inter-sectorial responses based on integrated perspectives.

As this is a time for global debate on the alignment of drug policies, and in view of the top-level review of the implementation of the Policy Declaration and Action Plan on international cooperation in favour of an integrated, balanced strategy for counteracting the world drug problem to be held in 2014 during the 56th session of the Commission on Narcotic Drugs, **it is becoming essential for academic sectors, politicians and civil society to work in a coordinated way to promote an approach based on rights.**

The research developed by teams from Latin America (Argentina, Bolivia, Brazil and Colombia) and Asia (Philippines, India, Indonesia, Lebanon and Thailand) in the context of a common project coordinated by the International Federation of Catholic Universities is offered to provide stimulus for this debate.

2. CONTEXT AND IMPORTANCE OF THE PROBLEM

The problems linked to drug use are complex and multidimensional. Policies that provide a response to these social issues can therefore be designed in a diversified way in accordance with specific problems, depending on the regions, population groups and/or substances involved. However, it is clear that there are notable common features in the philosophy, strategy and general objectives inspiring drug policies throughout the world.

2.1. Objectives, strategy and philosophy of policies

Drug policies are generally structured in accordance with the logic of the principle of reducing supply and demand. This logic is based on the idea that people consume drugs because they are available to them and that drugs are available to everyone because there is demand. The two factors mutually support one another. The main aim is therefore to halt supply and reduce demand. The different interventions seek the same ultimate objective.

Three main instruments are established to support the general objectives:

- prohibition
- prevention
- treatment.

There may be variations between countries in the importance given to each component but, in general, all three elements are present.

The supply reduction strategy is the criminalisation and strict penalisation of trafficking, consumption and possession of drugs and other related activities. Police forces, in cooperation with the courts, form the set of institutions helping to apply the prohibition strategy.

At its 20th special session in 1998, the United Nations General Assembly recognised the reduction of demand as “an indispensable pillar in the global approach to countering the world drug problem” (UN General Assembly, 1998) and highlighted education, treatment, rehabilitation and social integration as the main interventions for reducing demand.

The assumption on which the education strategy is based is that the main reason why people resort to using drugs is lack of knowledge. The expectation is that if this information vacuum is filled people will be warned about the risks and damage deriving from drug consumption and will therefore avoid any experimentation with them.

The incorporation of treatment measures as a demand-reduction strategy is based on considering that drug dependency is an illness rather than a crime and, as such, the best approach would be treatment instead of imprisonment.

2.2. Drug policies and human rights

We consider that one issue cutting right across this problem that is important for policy is the establishment of the “drug question” as a human rights issue, essentially with respect to four aspects: the stigmatisation of drug users; difficulties of access to health services; the criminalisation of drug users and minor agents in the trafficking circuit, and the distance between laws, needs and social practices.

SOCIAL PERCEPTIONS

An initial problem that stands out in several of the studies is the persistence of social perceptions focusing on the drug object above subjects and social groups. In this respect, the Latin American teams point out the **persistence of a stereotyped view of the concept of drugs that does not take scientific information into account**. Social representations of drug users as “dangerous” and “self-destructive” remain current, generating discrimination processes. While the use of some substances (like cocaine paste or inhalants, associated with poverty) generates social alarm, other problematic substance consumption practices (such as the use of ecstasy, associated with recreational consumption by young people of the middle and upper classes) are made invisible. Along the same lines, it is highlighted that, in some countries, the legal drug industries – alcohol, tobacco and psychoactive medication – have a strong political influence, which leads to the problems which can derive from their consumption being made invisible.

ACCESS TO HEALTH SERVICES

A second group of problems consists of access barriers to health services, partly generated by the processes of social stigmatisation of drug users. Health professionals, policy managers and users themselves reproduce a series of mechanisms that make it difficult for friendly, flexible health and social services to exist in order to deal with drug users’ needs.

*In **Indonesia and the Philippines**, the concept of drug courts operates as a platform for the treatment programme.*

This means the criminal justice system is used as a tool for introducing the drug user into treatment systems.

Along these lines, the Asian teams note that the idea of treatment, as it appears in practice, is largely understood as abstinence from drugs. **It is considered that the capacity to remain clean and drug free is the main parameter for rehabilitation and, in turn, social reintegration.** In practical terms, this means that, for a drug user to be reintegrated into a family or a job, he/she must first be

completely drug free. This position has configured the treatment model that, in general, considers strict abstinence as the main objective. This approach also explains the limited presence of damage-reduction programmes in these Asian countries.

For their part, the Latin American countries warn of other difficulties linked to institutions such as the **persistence of models focused on care rather than on prevention or promotion, on the individual rather than on the social, and on biological rather than on integrated visions** including the subjective and social aspects of the health-sickness process.

Albeit with differences depending on the country, problems of resources and investment, largely in demand reduction, are also repeatedly mentioned, along with problems concerning institutional bureaucracy, a lack or insufficiency of coverage and a lack of the right mechanisms for socially excluded populations.

The Asian teams indicate that many problems arise due to a **lack of financial, physical and human resources**. While demand is very high, resources are not sufficient to meet it. As a result, many policy provisions are not implemented and, those that are, are inadequate or end up merely being sporadic actions with symbolic value, lacking any kind of continuity. In this case, sustainability is the main problem.

The Latin American teams also point out **deficiencies or absences in the regulation of quality standards in treatment**, affecting the possibility of ensuring compliance with individuals' rights. Some treatments uniformly prescribe the way in which drug users must alter their behaviour, which ends up homogenising differences, ignoring the interests, identities and cultures of the subjects and preventing social recognition with respect to humanisation

and decent treatment of drug users. In turn, the intervention mechanisms reproduce different paradigms involving debates in various areas.

*In **Brazil**, damage reduction programmes, such as consultórios na rua, forming part of a territorially-based federal policy and supported by the National Drug Policy Office and the Ministry of Health, to tackle the problems associated with the use of crack in vulnerable populations coexist with a considerable presence of therapeutic communities characterised by constituting residential approaches prioritising coexistence between peers.*

However, they are questioned by some sectors because of the isolation they involve, the lack of scientific support for some models and because of the possibility that the treatments are carried out using compulsion – that is, without the consent of the subjects.

CRIMINALISATION

A third problem is the criminalisation of drug users, which sometimes leads to imprisonment and to disproportionate sentences applied to minor trafficking agents, growers and small-scale drug carriers and dealers.

In the five countries studied in Asia, legislation seriously penalises drug-related crime with sentences including life imprisonment and even the death penalty. **The criminal system is generally characterised by a lack of discrimination.** Under the law, any drugs offence, from mere consumption and possession to trafficking, is indiscriminately considered as a criminal offence. In addition, the criminal system barely makes distinctions between types of drugs; both “soft” and “hard” drugs are equally penalised, regardless of whether they are “processed” or “pure”. The only factor determining the penalty is normally not the type of drug, but rather the quantity intercepted.

Similarly, as a recent study carried out in eight countries in Latin America shows:

“The application of harsh laws for drug-related crime has not only been ineffective in halting the production, traffic and consumption of illicit substances, it has also generated negative consequences, such as the overloading of courts and prisons and the suffering of tens of thousands of people behind bars for minor drug offences or simple possession” (Metaal & Youngers, 2010:88).

The situation becomes more complex in countries like Bolivia and Colombia that, as they are producers of raw materials, also suffer from phenomena such as the forcible eradication of crops, breaching the fundamental rights of the most vulnerable populations.

GAP BETWEEN LAWS, POLICIES AND PRACTICE

A final point to be highlighted is the distance between laws guaranteeing rights and public policies and social practices aimed at making them effective.

In some cases, this is due to loopholes in the text of the existing legal provisions or in their interpretation. For example, some of the provisions of the drug laws cannot be put into practice because they conflict with other current legislation. In other cases, the law can, in practice, be subject to different interpretations.

Other problems are due to coordination or cooperation failures between the agents putting them into practice, for example between the courts and the systems for applying the law; between the communities responsible for treatment and the courts, or between the families and the treatment agencies.

Despite all this, some countries have moved forward with regulations expanding the recognition of human rights, although there are still gaps as, in practice,

the laws in question are difficult to comply with. In view of this, **the implementation of policies embodying and regulating compliance with laws guaranteeing human rights is fundamental.**

*Two examples of this gap are the development of regulations in **Argentina** and **Colombia** with respect to both countries' Mental Health Acts (2010 and 2013), setting out a series of rights for people suffering from mental difficulties, including people with problematic drug use. These laws involve the expansion of rights and press for the transformation of social perception.*

However, their effective implementation is difficult because this involves change in institutions, budgets, professional training and consolidated procedures, as well as the interests of certain agents opposed to them, bringing the risk that these laws expressing new paradigms may become a dead letter.

3. APPROACHES CONCERNING POLICIES AND ALTERNATIVE SOLUTIONS

All the countries where this research has been carried out have signed the various United Nations conventions on drugs and their national drug policies therefore fall within the stipulations of these protocols. One consequence of this is that the local context of the problem was not considered when they were formulated.

In this sense, the Asian teams highlight the fact that their countries share a series of similar contextual backgrounds. All of them have a history in which drug consumption formed part of the indigenous culture. Equally, almost all of them were, at some point, colonies of one Western power or another and, in a way, this colonial background has strongly marked the formulation of current drug policies.

For their part, the Latin American teams note that the “war on drugs” approach has hegemonically governed drug policies in their region during the past few decades. This approach is translated into policies characterised by “a golden triangle: abstinence as the normative ideal, detoxification for those who have been attracted by artificial paradises and the eradication of drugs from society as a political horizon” (Ehrenberg, 1996: 6).

The “war on drugs” was influenced by the United States. As early as 1971, Richard Nixon stated: “America’s public enemy number one in the United States is drug abuse.” Along the same lines, President Reagan declared in 1982 that drug consumption in the United States had to be fought abroad as it was a foreign problem. This approach took the form of the investment of resources promoting repressive measures and the criminalisation of producers of raw material and drug users, but it failed in its objective of reducing consumption and supply.

The Global Commission on Drug Policy, made up of well-known world leaders¹, firmly points out that:

“A key idea behind the ‘war on drugs’ approach was that the threat of arrest and harsh punishment would deter people from using drugs. In practice, this hypothesis has been disproved – many countries that have enacted harsh laws and implemented widespread arrest and imprisonment of drug users and low-level dealers have higher levels of drug use and related problems than countries with more tolerant approaches. Similarly, countries that have introduced decriminalization, or other forms of reduction in arrest or punishment, have not seen the rises in drug use or dependence rates that had been feared” (Global Commission, 2011:10).

Considering the limits of the “war on drugs” approach, the need to promote integrated responses not focusing on criminalisation is being debated. With this aim, a reform movement has emerged including the participation of agents from the political and academic worlds and from civil society with common proposals to transform the old punitive paradigms that generate subjective and collective suffering and greater social exclusion.

¹ It includes former presidents Cardoso, of Brazil, Gaviria, of Colombia and Zedillo, of Mexico. Its aim is to bring informed debate based on scientific evidence on humane but effective measures for reducing drug-related damage to people and societies into the international sphere.

4. PUBLIC POLICY RECOMMENDATIONS

The experience of the last few decades has taught us a lesson: the drug policy model concentrating on laws and their application has been shown not to be as effective as expected. What it promised has turned out to be far removed from reality.

- Despite many years of a strictly prohibitive system, easy access to drugs is still not under control. Instead, unexpected problems have arisen such as illegal trade, corruption, minor offences, an overwhelmed prison system and various human rights violations.
- Despite the proliferation of information and educational campaigns, drug consumption continues to attract many people, particularly younger members of the population.
- The treatment of problematic drug use is marked more by relapses than it is by rehabilitation.

This situation results in the need to change current approaches to drug policy, putting the problem in the context of a **human rights perspective** and emphasising the **dignity** of people who use drugs.

However, emphasis should be placed on the fact that, in order for there to be a true link between human rights and public policies it is necessary to humanise the subjects in their different roles, especially in the progressive, sustainable development of education policies, where learning is based on solidarity and personal dignity from an early age and even at vocational training stages.

Recommendation 1:

Change of paradigm

In view of all this, we must rethink the way we approach the drug problem. As an expert defender of these policies stated “effective alternatives are impossible to design if we do not first re-design both our historical perspective on present drug control ideology and our conceptual tools for thinking about drug use” (Cohen, 1993:1).

Drug abuse is basically a human problem covering a wide range of situations: problems of motivation, culture, human

rights, gender, etc. It is therefore more complex than the supply and demand reduction economic model can consider. What is needed is a paradigm of drug management rather than control. A paradigm of this kind must be sensitive to culture, being open to global factors and, at the same time, offering responses at local level. It must respect human rights and be integrating, realistic, inclusive and open to public participation.

Recommendation 2:

Policies based on context

The drug problem reaches transnational dimensions. Because of this, in the past drug policies were formulated in accordance with global considerations. The national aspects of culture and way of life are ignored when it comes to formulating national

drug policy. As suggested by Allison Ritter (2007:269), to be effective, “drug policies must be analysed in a given context, *in situ*, taking the local situation and reality into account”.

Recommendation 3:

Policies based on social inclusion

Experience has shown us that, in their implementation, drug policies tend to favour the elites. In practice, statistics show that drug consumers from the least privileged social sectors are an easier target for police action than their privileged counterparts, who are also often falsely implicated in drug trafficking. Faced with the impossibility of affording legal representation, they are found guilty of crimes they have not committed and they end up in prison.

They are given the harshest sentences. In summary, the defenceless people with the least resources are those who suffer the impact of criminalisation, regardless of whether they consume or possess drugs.

Practices need to be reformed so that drug policies are applied impartially in terms of rights, regardless of the difference in status.

Recommendation 4:

Policies based on rights

Drug policies, both in their provisions and in their application, must fully comply with international human rights law. They must not only contain the right premises to prevent these rights from being violated, they must also avoid practices that promote such violations. In a rights-based policy, there is no room

for practices such as violence and torture, unfair trials, extra-judicial execution, forced detoxification and “rehabilitation vouchers” that infringe basic freedoms. In a rights-based system, treatment must not only be accessible, but also humane and voluntary.

Recommendation 5:

Policies based on evidence

Laniel (1999) observed that: “Public policies on drugs have remained immune to the influence of research. Instead, conventional wisdom seems to have been the main force that has shaped them”. The International Drug Policy Consortium (IDPC), a world network of non-

governmental organisations (NGOs), has highlighted that evidence is one of the main guides for formulating drug policy. In other words: “Drug policies should be developed through a structured and objective assessment of priorities and evidence” (IDPC, 2012). However, reality

shows that those who formulate these policies – most of them politicians – pay more attention to social imaginings than to evidence demonstrated by the scientific community. Commitment to transforming social perceptions stigmatising drug users is needed to deal with the diversity of users and their complexity. Publicising scientific studies and appropriate information would make it possible to minimise widely accepted, stereotyped social beliefs and myths

about drugs and their consumption. In other words, “the idea is to deconstruct the perceptions and ideologies erected at social level, and, to do this, it is necessary to stop focusing on the drug issue and tackle the complexity of the problems with scientific data and serious assessment, calling on public health to play a central role and approaching the debate based on other premises” (Romaní Gerner, 2012:9).

Recommendation 6:

Participative formulation of drugs policies

The formulation of drugs policies tends to be based on a vertical approach. In most cases, rather than genuinely participating, civil society is co-opted in the process of creating the policies and involved only in the function of legitimising pre-designed policies from above. Civil society, NGOs and researchers are

key agents in the drug problem and they are playing an important role in society’s response. Those responsible for formulating drug policies should establish open, constructive relationships with them when it comes to debating policies and proposing strategies.

Recommendation 7:

Fair, humane, differentiated criminal drug policies

However important punishment systems are for the application of laws, punitive action must always respect the basic fundamentals of humaneness and fairness. This means punishments should not degrade human dignity and should be proportional to the crime committed. Considering these principles, it is doubtful whether the death penalty is a criminal instrument. Is the death penalty humane? Is it a punishment proportional to a drug offence? Our position is that the death penalty does not do justice to any of these two principles and should be eliminated from the list of punishments for drug offences.

The fact that the quantity of drugs is used as a factor determining the seriousness of drug crime also calls the principle of proportionality into question. Because of

this policy, it is not surprising that a minor drug offence is made equivalent to a more serious crime, like drug possession or even trafficking. There are many real cases where people discovered with relatively small quantities of drugs for personal consumption have been arrested and accused of drug trafficking. In the same way, politicians who apply the same penalties for “soft” and “hard” drugs are not following the criteria of proportionality or common sense. It is necessary to establish greater differentiation in the criminal system. As a minimum, the decriminalisation of the use and possession for personal consumption of some substances that are currently controlled should be considered.

Recommendation 8:

Integrated social policies

Those responsible for formulating policies tend to consider the drug problem in isolation from other social problems. The fact is that it is just one of many social problems. The social sciences agree in stressing the basic connection existing between social problems. Drug-related problems are frequently linked to problems associated with poverty, families, modernisation and development, and many others. This isolated approach to the drug problem results in incoherent laws and policies. A clear example is given by HIV-AIDS and drugs policies. The former allows, and continues to encourage, needle exchange programmes as a means for controlling the propagation of the virus. On the other hand, in some countries, drugs policies reject such a strategy, arguing that it encourages drug consumption. There are other examples of legal and political

contradictions. The connection between our laws and policies needs improving so that drug policies are perfectly integrated into social policies.

At the same time, it is necessary to provide universal, progressive access to adequate and appropriate health services, optimising the quality of integrated care and encouraging the work of interdisciplinary teams and inter-sectorial approaches, not only in institutions but in territories and the community environment. To do this, international cooperation is needed to support the development of integrated health systems and promote the training of professionals working from these perspectives. This constitutes a challenge for universities.

Of course, it is not only the health sector that can provide a response to these issues. The association with other problems linked to poverty and social exclusion requires spaces for multi-sectorial management including integrated education and social protection policies guaranteeing people's rights to coexistence within families and communities.

Recommendation 9:

Redefinition of the concept of treatment

There are at least two "treatment" paradigms. According to the traditional one, "treatment" means complete abstinence from drugs. Being cured of drug addiction means being completely free of consumption. The other paradigm, in the context of public health, defines treatment in a more inclusive way, covering the idea of damage limitation. It consi-

ders that people with problematic drug use are "treated" when, although they continue to consume, they are capable of behaving without harming themselves or the community. The term "stabilised addict" reflects this idea. It is time to expand the concept of treatment to include not only abstinence but also damage-reduction objectives.

5. CONCLUSION

- ✓ One of the essential elements of a good policy is stability, although stability does not mean inflexibility.
- ✓ Policies must not be irrevocable, but rather dynamic and open to change.
- ✓ Policies arise from specific situations and contexts and, as these are subject to change, policies also need to adapt.

Because of this, the Latin American teams reaffirm the point made in the recent Declaration of the Organisation of American States:

“That it is essential that the Hemisphere continue to advance in a coordinated manner (...) with a comprehensive integrated, strengthened, balanced and multidisciplinary approach with full respect for human rights and fundamental freedoms that fully incorporates public health, education, and social inclusion, together with preventive actions to address transnational organized crime, and the strengthening of democratic institutions, as well as the promotion of local and national development” (OAS, 2013:5).

Effective compliance with the legislative reforms going ahead in Latin America to expand citizens' rights, such as reforms in the mental health field and the decriminalisation of behaviour associated with drug consumption, requires the commitment of the different social agents involved.

In turn, the Asian teams draw attention to the fact that the drug situation in their countries has changed since policies were last formulated and it is therefore time to assess their relevance and effectiveness, taking into account the change in conditions.

In this sense, the next top-level review of the implementation of the Policy Declaration and Action Plan on international cooperation in favour of an integrated, balanced strategy to counteract the world drug problem to be held in 2014 during the 56th session of the Commission on Narcotic Drugs, could mean an opportunity for moving away from self-satisfaction and opening up to the exploration of other perspectives on this problem to try new methods, bearing in mind that:

“The main objective of drugs policies should be to maximise human safety, health and development” (Preamble to the United Nations Single Convention of 1961 on Narcotic Drugs).

In this context, the **strengthening of dialogue between universities and the social and political agents of States and civil society becomes more important.**

Our aim is to join forces with them so that the work done in the academic world can be used in social and political spheres, making it more likely that personal rights will be made effective and providing increasingly appropriate, inclusive responses to the growing demands in this field.

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Institution promoting and coordinating the research projects



Centre for Coordination of Research,
International Federation of Catholic Universities,
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Institutions taking part in the research project

“Studies of Policies and Practices in the Field of Drugs Use/Abuse”

Latin America



Pontificia Universidade Católica do Rio Grande do Sul (Brazil)



Universidad de San Buenaventura (Colombia)



Universidad Católica Boliviana “San Pablo” (Bolivia)



Intercambios Asociación Civil (Argentina)

Asia and the Near East



Atma Jaya Catholic University (Indonesia)



Université Saint-Joseph (Lebanon)



Stella Maris College (India)



Assumption University (Thailand)



University of Santo Tomas (Philippines)

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