

## IDPC Briefing Paper

# Proposals for alternatives to criminal prosecution and incarceration for drug-related offenses in Latin America

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## Introduction

Latin America is immersed in a prison epidemic. The so-called “war on drugs” and harsher criminal penalties underlie the increase in the prison population.<sup>2</sup> The number of women incarcerated in the region, for example, nearly doubled between 2006 and 2011, from 40,000 to 74,000,<sup>3</sup> and drug crimes are the first or second most frequent reason for incarceration of women.<sup>4</sup>

Some characteristics that affect criminal justice in the region's countries, although with some differences, are: (a) use of preventive detention as the norm, instead of a last resort, which has a direct impact on prison overpopulation; (b) disproportionate sentences; (c) criminalization of drug possession and/or arbitrary differentiation between users and small- and medium-scale traffickers; (d) categorization of any drug crime as serious; (e) inadequacy of alternatives to incarceration or lack of implementation of alternatives in cases of drug offenses; (f) denial of or limits on benefits of parole, sentence reduction, and the like; (g) lack of possibility of bail for drug crimes;<sup>5</sup> and (h) lack of gender-sensitive approaches and appropriate measures for children and adolescents.<sup>6</sup>

In general, most people incarcerated for drug crimes are small fish in criminal networks or are users accused of dealing.<sup>7</sup> It is worth asking whether prison is the best response. And, moreover, what prisons? As the Inter-American Commission on Human Rights notes, the penitentiary systems in the region's countries share the following characteristics: (a) overcrowding and overpopulation; (b) inadequate incarceration conditions; (c) high rates of prison violence and lack of effective control by authorities; (d) use of torture in criminal investigations; (e) excessive use of force by security forces inside prisons; (f) lack of effective measures for protecting vulnerable groups; (g) lack of job and education programs and the absence of transparency in mechanisms for access to those programs; (h) corruption and lack of transparency in prison management.<sup>8</sup>

The need to implement alternatives to incarceration, as well as to find solutions different from those developed so far to address the drug problem, seems imperative.

Among the best-known alternatives are so-called drug courts or drug tribunals,<sup>9</sup> which are

promoted in the region by the Inter-American Drug Abuse Control Commission (CICAD) of the Organization of American States (OAS). The term “drug courts” or “drug tribunals” refers to a series of approaches that seek to channel drug users accused of committing a crime into treatment schemes instead of imposing criminal penalties. The different schemes share certain characteristics: entry into the program is voluntary; the program is based on understanding drug use as a health problem that leads to commission of a crime; treatment is handled by the judicial system – under the concept of therapeutic justice – and is monitored, rewarded or sanctioned by a judge or panel of judges; conditioning of suspension of criminal proceedings or of the sentence on abstinence and, in some models, on the defendant's obligation to admit guilt.<sup>10</sup>

Drug courts have been or are being adopted by various countries in Latin America and the Caribbean, including Mexico, Argentina, Chile, Panama, Costa Rica, the Dominican Republic, Jamaica and El Salvador.<sup>11</sup>

One clear limitation of these tribunals is that they mainly handle cases of substance users accused of possession or minor crimes related to dependent use of drugs. They therefore serve as a partial response to a series of complex problems. The criminal justice system in the region's countries in general, and drug policies in particular, require structural changes, not just solutions to specific problems.

From June 17 to 19, CICAD organized a workshop on alternatives to incarceration in La Antigua, Guatemala, with experts from various countries around the world.<sup>12</sup> The author of this paper was among the speakers. This IDPC briefing paper summarizes the discussion of alternative measures and offers examples of other ways of handling drug-related offenses

and their criminalization. The selected cases are not exhaustive, as there are dozens of programs available. The following selection criteria were used:

- Offer examples that include different phases in which an alternative to the criminal justice system and incarceration could be implemented, from arrest to imposition of the sentence
- Propose legislative tools that are more integral and appropriate for the multiple aspects of so-called drug crimes
- Show cases that involve different actors: police, civil society, administrative authorities and authorities from the legislative, health sector and judiciary
- Design proposals that can respond to different populations, such as adolescents.

Critical reflections and recommendations can be found at the end of this document.

## What is meant by alternative measures?

The term “alternative measures” refers to a series of substitutes for criminal prosecution and incarceration.<sup>13</sup> The alternative measures can be implemented in different phases:

- At the time of arrest
- Before preventive detention is ordered
- When the sentence is issued
- When a decision is made about releasing a person from prison

They can be implemented by different authorities:

- Police
- Prosecutors
- The judiciary
- Administrative authorities.

Their design and implementation may imply modifications to legislation, issuing of directives, drafting of protocols, creation of *ad hoc* agencies or simple adjustments to existing institutions. The measures may be administrative or criminal. To implement successful measures, it is important to clearly understand the target population, the goals, the indicators that will be used to measure their effectiveness, and the principles that will guide their implementation.

Of course, there are no universal formulas. As the following cases show, such measures cannot be implemented in all countries as models to be copied. Some respond to the circumstances and capabilities of certain cities or regions of countries, or they respond to the profile of certain populations. Some proposals require changes to legislation. In other cases, an administrative apparatus capable of monitoring the new strategies is needed. The judiciary is important, but it is not the only force involved. In neighborhoods, cities or regions where reliable police forces and prosecutors' offices have been established, these institutions can be crucial for implementation of successful referral programs. In most programs, the participation of civil society, the community and the health sector is crucial.

Every national and local government can turn to different proposals to address diverse problems and adapt them to its particular situation. Various alternative measures exist and offer real possibilities for reforming the criminal justice system and drug policies.

## LEAD

The “*Law Enforcement Assisted Diversion Program*” (LEAD) was launched in October 2011 in Seattle.<sup>14</sup> Unlike drug tribunals, which are an alternative to prison sentences, this program intervenes at the time of arrest, before the person is sent into the judicial system. It can be considered an early diversion program.

Although the police have a margin of discretion in determining the handling of 20 percent of the cases, as described below, their actions are governed by a protocol designed down to the last detail by the participating actors before the program is implemented.

### Who is eligible?

Eligible people are users or dealers detained with three grams or less of an illicit substance and sex workers with problem use who want to become part of the program. As then-Interim Seattle Police Chief James Pugel explained at an event at the United Nations, the program is designed for the most vulnerable people.<sup>15</sup> For that reason, mid-level dealers are not included. Only small-scale dealers, who sell drugs to pay for their own drug use or for basic survival expenses, can be admitted. These are people who tend to go in and out of prison and who are exploited in turn by dealer networks.

Some assumptions that make a person *ineligible*, therefore, are: (a) the suspicious activity is selling drugs or possession for sale; (b) that sale appears to be intended to obtain an income higher than subsistence level; and (c) the person is probably responsible for exploiting minors or others.

At the time of detention, two scenarios are offered: continuing with criminal prosecution or participating in the program. A person

who chooses the second option is taken to the police station for an initial meeting with a case manager. Case managers are people from outside the judicial system, contracted and trained by Evergreen Treatment Services, a non-profit organization devoted to treatment of the problem use of substances. In December 2013, LEAD had six full-time case managers.<sup>16</sup>

During this initial interview, the case manager becomes familiar with the detainee's most pressing needs. The person is free to leave and is summoned for a second interview with the case manager in 30 days, in the LEAD office. If the person returns, he or she becomes a client of the program. If not, the prosecutor's office (which is kept abreast of the case from the time of arrest) can proceed with criminal charges.

Each case gets individualized treatment. LEAD clients will have free legal, social and community assistance to obtain access to housing, treatment, health care, education, and the like. The case manager is responsible for monitoring the case, handling the necessary appointments, making LEAD funds available and accompanying the client in all phases of the process. Clients are provided with immediate assistance, including resorting to private services if the waiting list for public services is too long.

Twenty percent of cases can be chosen *ad hoc*: police have the discretion to offer inclusion in the program to people with a criminal record who have demonstrated good will and who need the support provided by LEAD's services.

LEAD does not operate every day. There are days when it does (*green light days*) and others when no one is eligible (*red light days*). James Pugel explains that there are problem users who stop at police stations to ask if it is a green light or red light day. He tells the story of one

dependent crack user who, upon discovering that it was a green light day, asked to be arrested and admitted to the program.<sup>17</sup>

## Guidelines

A series of principles guide the program:

- No displacement. Although an effort is made to obtain immediate access to the services needed by LEAD clients, this is not done at the expense of people who are not clients and who are on waiting lists. To ensure this, program funds and payment services are used
- Harm reduction. LEAD's goal is individual and community welfare. According to the program's protocol, instead of focusing on abstinence, this goal is attained through an immediate response to the client's drug-related activity and other factors underlying the problem behavior. Participation in the program, therefore, does not require abstinence
- A person who is considered to be misusing resources can be expelled from the program. The protocol does not authorize any formal or punitive sanction for those who do not comply. Although the judiciary could prosecute a client for crimes committed in the past or while the person is in the program, there is a commitment not to do so.<sup>18</sup>

## Decriminalization and economic sanctions: Czech Republic

Decriminalization is one way of reducing pressure on the criminal justice system and the undesired impacts that it can have for people, especially in cases of minor, non-violent

infractions. This term refers to the elimination of a behavior from the catalog of criminal behaviors. With decriminalization, criminal penalties are replaced by administrative measures or by no penalty.<sup>19</sup>

### What it is

In 2010, the Czech Republic decriminalized the possession of illicit substances.<sup>20</sup> This modification was made after two years of study to evaluate the results of the earlier criminalization policy, which arrived at the following conclusions:

- Criminalization of substance use had not affected the availability of drugs
- Drug use in the country was increasing
- The social costs of the use of illicit substances were increasing significantly.

It should be noted that according to the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), possession for personal use was not considered a crime prior to 1999.<sup>21</sup> Even before the reform, the Czech Republic had opted to take a public health approach toward users, which was reflected in low levels of incarceration for possession of controlled substances. The 2010 reform therefore occurred in a cultural and social context that was amenable to it.

The 2009 legislative reform is part of a national drug strategy that covers the period from 2010 to 2018.

### How it works

The new law, which took effect in 2010, establishes amounts considered “minimum levels.” This threshold system was based on an assessment of patterns of use, to ensure that the amounts were estimated accurately.

The amounts are: up to 15 grams of cannabis, 1 gram of cocaine, 1.5 grams of heroin, 5 grams of hashish, 5 blotter papers or other forms of packaging of LSD, 4 ecstasy pills or 40 pieces of hallucinogenic mushrooms.<sup>22</sup>

A person found in possession of these drugs in an amount equal to or below the threshold level is considered to have committed a minor infraction and will be punished with a fine of up to 550 euros (US\$756), handled through the municipal administrative system. This penalty does not give the person a criminal record.<sup>23</sup> Cultivation of cannabis for person use is also punishable with a fine.

Possession for use in amounts exceeding the threshold levels is handled with criminal proceedings, and the penalty is generally an alternative to prison.<sup>24</sup>

### An integral approach

The sources consulted do not offer an evaluation of these policies. What can be concluded from the Czech policy is that it takes an integral approach in an effort to address different problems with differentiated policies, and that it combines administrative sanctions with criminal penalties, distinguishing between non-custodial measures and incarceration depending on the seriousness of the behavior and the person's profile.

## Dissuasion Commissions in Portugal

In 2000, Portugal took a sharp turn in its drug policy: decriminalization of all drugs. Drugs remain illegal, but their possession for personal use was changed from a criminal violation to an administrative one.<sup>25</sup> This section focuses

on one component of Portuguese policy, Dissuasion Commissions, which are the administrative bodies responsible for handling cases of people found in possession of drugs for personal use.

It should be noted that decriminalization has been accompanied by a wide range of measures, including harm reduction programs, prevention and education, treatment for people dependent on drugs, and assistance to reintegrate them into society. More than 10 years after these policy changes took place, the number of users has not increased significantly (and no more than in other countries), and problem use and the number of people with drug-related illnesses (such as HIV and hepatitis B or C) have decreased.<sup>26</sup>

### **What they are**

Dissuasion Commissions appeared in 2002 and replaced criminal tribunals as the state's response in cases of people detained for possession of controlled substances. They exist in each of the country's 18 provinces and consist of three people appointed by the ministries of health and justice. The members usually are a legal expert, a health-care professional and a social worker. The commissions also receive support from psychologists and sociologists.

### **How they work**

When a person is found in possession of a controlled substance in amounts equal to or less than 10 personal use doses, police confiscate the drug and the person is sent before a commission. The person may be taken to the police station to confirm information, but is not arrested. If the drug possessed is in amounts greater than those allowed, the person may be accused of a criminal offense (possession).

The purpose of appearance before the commission is to create a non-intimidating atmosphere in which the members of the commission and the user – alone or accompanied by a therapist or legal assistant – discuss the person's history of use, reasons for using drugs, etc. In this context of dialogue, the commission can suggest treatment options and explain problems associated with drug use and the consequences of recidivism.<sup>27</sup>

The commission has various options at its disposal, including issuing a warning, assigning community service, suspending the person's driver's license, and prohibiting going to specific places. It can also impose a fine, but this is rarely done, as discussed below. It is prohibited from imposing fines on dependent users, on the grounds that this could force them to commit a crime to obtain the money to pay it.

The first appearance before the commission usually leads to suspension of the proceedings, and no penalty is imposed. If there is a second detention, or if the person skips a meeting, the commission can opt for one of the available administrative procedures.

### **Some results**

In 2009, 68 percent of the cases handled by Dissuasion Commissions involved non-dependent users and no penalty was imposed. In 15 percent of the cases, it was agreed that the person would seek treatment (this is always voluntary). About 14 percent received an administrative measure: 4 percent received fines and 10 percent received non-monetary sanctions. Seventy-six percent of the cases were for cannabis possession, 11 percent for heroin, 6 percent for cocaine and 6 percent for multi-drug use.<sup>28</sup>



The commissions do not have the power to impose criminal-justice measures if people do not comply with the agreements. The procedure is strictly administrative. Data show that the commissions are meeting the aim of diverting the average consumer – non-dependent users who mainly use cannabis – from the criminal justice system. Meanwhile, they offer an opportunity to people dependent on drugs. Contact with the criminal justice system can result in a criminal record and, therefore, stigma and difficulty in finding employment, gaining access to social benefits, a house, and the like. Hence, handling drug use through administrative procedures appears to be an appropriate solution that reduces economic and social costs for users as well as for the judicial system.

## Alternative measures for drug crimes in the United Kingdom

In the United Kingdom, drug crimes are sanctioned with a variety of measures established in the Misuse of Drugs Act.<sup>29</sup> The most common penalties are prison for more serious behaviors (such as large-scale trafficking) and a series of alternative measures in different phases, from detention to implementation of the sentence. Since 1998, integral strategies for alternatives to incarceration have been created for minor drug-related crimes, especially possession.

A large proportion of drug crimes are handled outside of the courts. For minor offenses, the police have numerous alternatives for proceeding outside of the courts. For adults, these alternatives include simple or conditional warnings for cannabis (*cannabis warnings*), introduced in 2004. These are verbal warnings that the police can issue in the street or at the

police station to people found in possession of small amounts of cannabis.<sup>30</sup>

In 2012, 69 percent of the sentences received by the adult population for drug offenses were for possession, 29 percent for production and sale, 1 percent for importing and exporting, and 0.1 percent for other offenses. This is reflected in the penalties. The following table shows the number of people sentenced for drug crimes in 2012 and the type of penalty received.

As the data show, fines represent about 40 percent of the sentences, while prison was imposed in 16 percent of the cases.

<b>Total people sentenced</b>	<b>57,601</b>
<b>People who have received:</b>	
Immediate prison	9,011
Sentences in the community	4,215
Fines	21,344
Other measures	11,518
Average duration of prison sentence (in months)	28.7

Source: Ministry of Justice (May 2013), "Criminal Justice Statistic. Quarterly Update to December 2012, Table A5.1, "Offenders sentenced by offence group and outcome, at all courts, 2002-2012," [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/203958/criminal-justice-stats-dec-12.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/203958/criminal-justice-stats-dec-12.pdf)

## More proportionate penalties

In 2012, the Sentencing Council for England and Wales,<sup>31</sup> which was created in 2010, issued guidelines on how to punish cases of drug-related crimes.<sup>32</sup> The crimes are divided into seven categories: bringing into or taking out of the country a controlled drug, supplying or offering to supply, possession with intent to supply another person, production, cultivation of cannabis plants, permitting the use of premises, and possession of controlled substances.

To determine the penalty, four criteria are defined through a system of tables: type of substance, quantity, offense and degree of leadership of the accused person (leading, significant or lesser role). Once the level of sanction is established, a series of mitigating and aggravating factors is considered. This makes it possible to combine classic elements for determining a penalty – those related to the substance – with others linked to the degree of responsibility and the circumstances of the person apprehended, allowing for the application of more proportional punishment. For example, the penalties suggested for the first group of offenses – international trafficking – range from 12 weeks (for substances classified as less hazardous, in small amounts and trafficked by secondary traffickers) to 16 years (for example, in the case of a leader who traffics large amounts of heroin).

The purpose of these guidelines is to create more consistent sentencing in general, but in the case of so-called “mules,” the goal is sentence reduction that takes into account their lesser role. Consideration of mitigating factors, though not widely used, is worth considering in Latin America. Between 1999 and 2009, the average sentence for importing a Class A drug (cocaine, for example) was approximately seven years.<sup>33</sup> Sentencing Council data for 2012 show that about 50 percent of the people accused of importing or exporting were considered to have played a “lesser role” and were sentenced, on average, to up to four years in prison.<sup>34</sup> In other words, with the implementation of these guidelines, sentences for drug mules who have been victims of organized crime networks have decreased notably.

### **Fines and alternative measures**

For other offenses, the mildest penalties include fines and, in some cases, complete dismissal of the case. Although prison

terms are still possible, the most common penalties are non-custodial measures known as community orders. The courts can select various types of community orders, including attendance at scheduled meetings, curfews, unpaid community service work, treatment for substance use, and the requirement to live in a certain place. A person who fails to comply with the sentence given them must appear before the court to receive another sentence that is different or more severe.<sup>35</sup>

For possession, the case is discharged or penalties ranging from fines to a maximum of 56 weeks in prison are imposed. Fines are not imposed unilaterally or defined *a priori*, but are calibrated based on factors that guide all penalties, ensuring that they are proportional to the offense and to the accused person's circumstances. The same is true of community orders, which are divided into low, medium and high categories. Each category includes one or more requirement.<sup>36</sup>

According to Prison Reform Trust, alternatives to prison have proven more effective than incarceration in reducing recidivism and are less expensive. Of the people who have benefited in some way, 77 percent said the measures reduced recidivism and 64 percent said the measures allowed them to give something back to society.<sup>37</sup>

### **Policies related to cannabis possession**

For possession of small amounts of cannabis, the United Kingdom has adopted a scaled penalty system, increasing the severity according to the degree of recidivism:

First detention:<sup>38</sup>

- Police will confiscate the cannabis
- A detainee age 18 or over will receive a verbal warning



- A detainee under age 18 will receive a reprimand and an adult close to the person will be contacted
- If the person is smoking in a public place or has been found in possession of cannabis before, there is a greater likelihood that he or she will be arrested and diverted to the criminal justice system.

#### Second detention:

- A person age 18 or over probably will receive a fine of 80 pounds sterling (US\$135). This will be recorded in the police's national system
- A person under age 18 will receive a final warning and will be sent to a Youth Offending Team.

#### Third detention:

- This time, the person is likely to be arrested.

## Restorative justice and youth in conflict with the law

The term restorative justice – known as “mediation” in some Latin American countries – encompasses a set of practices that offer an alternative to traditional means and forms of criminal justice and a series of principles aimed at creating a context of dialogue and reflection between the victim and the person responsible for committing a crime. The United Nations Office on Drugs and Crime (UNODC) Handbook on Restorative Justice Programs provides an extensive discussion of various examples and forms of restorative justice.<sup>39</sup>

### How it works

With reference to restorative justice for adolescents, international documents on children and adolescents highlight the importance of ensuring that the judicial system for this group uses incarceration as a last resort.

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (known as the Beijing Rules) insist that insofar as possible, and especially in the case of minor crimes, young people should be referred to alternative programs.<sup>40</sup> Possible measures include community service, voluntary treatment for substance use, conflict resolution circles, and peer interventions. Some of these measures can be implemented in the school or community through mediators or *ad hoc* judicial institutions designed around young people's characteristics and needs.

Mediation groups, for example, could work in cases of small-scale trafficking (for people who fit the profile of candidates for the LEAD program, for example) or petty theft to buy drugs.

In cases of minor drug crimes with or without direct victims, it is important to consider the possibilities offered by restorative justice, because – in its multiple models and designs – it highlights the importance of the process of acceptance of responsibility, reflection and reincorporation of the person into society. Young people often are victims of criminalization, and their cases are handled as if they were adults.<sup>41</sup> What is needed, however, is a form of justice that is able to listen to and understand young people in their specific situation and helps them gain access to the services they often lack, and which could make the difference between whether they engage in or stop engaging in activities that are considered illicit.

### Remission orders and restorative justice: the case of the United Kingdom

In the United Kingdom, a series of modifications to legislation have fostered the development of restorative justice programs for youth.

The Powers of the Criminal Courts (Sentencing) Act 2000 lays the groundwork for remission orders for young people who plead guilty. The main goal of this provision is to prevent recidivism by taking a community-based restorative justice approach.

In 2012, the Powers of the Criminal Courts (Sentencing) Act 2000 was amended to expand the grounds for issuing a remission order. It also prohibits its use in cases in which the court would unconditionally discharge the case. Remission orders have a duration of three to 12 months, as established by the court.<sup>42</sup>

For a remission order to be issued, certain requirements must be met. A person under age 18 must admit responsibility and not have a criminal record, and the crime must be punishable by a prison sentence. If the court issues a remission order, the person will be sent before a Youth Offender Panel (YOP). The parents or an adult relative of the youth offender participate in the hearing. The victim, if there is one, can also choose to participate. The purpose of the meeting is to establish a “contract” that must fulfill two principles:

- Provide for reparations to the victim or the community; and
- Design a plan of activities or interventions aimed at preventing recidivism.

If the youth offender does not agree with the contract or fails to comply, the case is diverted again to the court, which can rescind the remission order and impose an alternative sentence.<sup>43</sup>

The YOPs must consist of at least two volunteers from the community, and one member from the Youth Offending Teams (YOT) who will provide guidance to the other members. The panel's actions must be based on the principles of restorative justice: responsibility, reparation and reintegration. The YOTs report to the UK Ministry of Justice's Youth Justice Board. Each case is assigned a case manager (as in the LEAD program), who monitors the specific circumstances, accompanies the YOP and follows the process of compliance with the contract. Detailed information about remission orders can be found in the Ministry of Justice's *Referral Order Guidance*.<sup>44</sup>

## Conclusions

Drug policies in Latin America are coming under serious scrutiny. In recent years, various countries, including Guatemala, Mexico and Colombia, have argued for the need to change the way the drug problem is dealt with in the region. They highlight the importance of taking a health-based approach and considering alternative policies. Uruguay has taken the lead with its regulation of the cannabis market.<sup>45</sup>

“One-size-fits-all” policies and severe sanctions have left the region's countries in a prison crisis that threatens future generations. Instead of proposing a single model, therefore, multiple pathways should be explored. This is especially important for the region, given the widespread dissemination of the drug court model. Although these tribunals pursue goals that can help people with dependent and problem use, the abstinence approach and imposition of criminal penalties in cases of non-compliance with the program should be critically reviewed based on the results

obtained to date and other programs that focus more on harm reduction should be explored.

Between prohibitionism and regulation there are various nuances. These are strictly linked to the functioning of the judicial system and the prison system, on the one hand, and the health system, on the other.

This briefing paper has focused on the judicial and prison systems, seeking to offer a variety of experiences that demonstrate how various situations can be addressed: occasional and recreational use, dependent or problem use of substances, small-scale drug dealing by vulnerable members of the trafficking chain (dependent users who sell for survival), and differences among the different levels of leadership in dealing and international trafficking.

The benefits sought are crucial:

- Reducing costs for the state
- Reducing prison overcrowding and its consequences in terms of living conditions, prison violence and human rights violations
- Reducing recidivism and juvenile delinquency
- Speeding up the administration of justice
- Advocating for policies centered on human beings and the community

## Recommendations

### Different responses to different problems

It is crucial to distinguish among occasional, dependent and problem users, the types and levels of dealers, the degree of leadership, mules who are victims of organized crime vs. those who are part of the structure of networks, etc., in order to develop coherent, differentiated

responses to the problem. This can be done, as the selected cases show, by decriminalizing possession for personal use; introducing administrative, rather than criminal measures for certain behaviors (so as not to create a criminal record); establishing programs for diversion from the time of arrest; reducing sentences; and introducing measures that offer alternatives to incarceration.

### Decriminalization

If decriminalization is implemented, it should include cultivation for personal use. The threshold system should also be based on *real* market conditions (see the cases of the Czech Republic and Portugal).

### Sentence reduction and proportionality

Drug laws in the region tend to offer categorical responses. The case of England, in contrast, offers a way of designing proportional sentences, which centers not only on the state's punitive power, but on the individual and his or her social relationships in all their complexity.

### Administrative and criminal justice measures

The cases of the Czech Republic, Portugal, and England and Wales illustrate the separation of the administrative and criminal justice spheres and the importance of developing integral policies, accompanied by harm-reduction programs and multifocal initiatives that include the active participation of civil society, the health sector and other social services. If the decision is made to implement fines, they must be calibrated based on the individual's circumstances. It also is not advisable to fine dependent or problem users. If the person does not respond appropriately to the alternative penalty imposed, that should not be punished with incarceration, but with another measure.

Prison should remain the last resort. In no case should mandatory treatment be imposed as an alternative to prison.<sup>46</sup>

### Training

It is important to work on the training of actors who will have to implement the new measures, including police, administrative officials and the judiciary. The training should transmit the principles underlying the reforms and the objectives being pursued. It is crucial to have protocols and guidelines that clearly establish the rules of the game.

### Appropriate policies for different populations

Finally, any public policy will have a different impact depending on gender, social class, age, and the person's ethnic or racial group and nationality. No policy is neutral, and just as prison has impacts on the people closest to the prisoner, so does community service, treatment for problem use of substances, house arrest, etc. In the design of any strategy, it is therefore crucial to have specific guidance on the various nuances of policies for different populations (women, LGBTTTI, senior citizens, indigenous people, people of African descent, immigrants, foreigners, and children and adolescents) and their effects, and develop a system of evaluation indicators that is sensitive to those groups.

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## Endnotes

- 1 Centro de Investigaciones Jurídicas of the Autonomous University of Chiapas, Mexico
- 2 Church World Service (2013), *Invisibles: ¿hasta cuándo? Una primera aproximación a la vida y derechos de niñas, niños y adolescentes con referentes adultos encarcelados en América Latina y el Caribe*, [http://www.cwslac.org/es/docs/Invisibles\\_hasta\\_cuando.pdf](http://www.cwslac.org/es/docs/Invisibles_hasta_cuando.pdf)
- 3 Campaña Global para la Justicia Previa al Juicio-Región América Latina (2013), *Mujeres y prisión preventiva: presuntas inocentes sufriendo castigos anticipados y abusos*, <http://equis.org.mx/wp-content/uploads/2012/05/previaaljuicio.pdf>
- 4 IACHR (2013), *Informe sobre el uso de la prisión preventiva en las Américas*, <http://www.oas.org/es/cidh/ppl/informes/pdfs/Informe-PP-2013-es.pdf>
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The International Drug Policy Consortium (IDPC) is a global network of NGOs and professional networks that promotes objective and open debate on the effectiveness, direction and content of drug policies at national and international level, and supports evidence-based policies that are effective in reducing drug-related harms. IDPC members have a wide range of experience and expertise in the analysis of drug problems and policies, and contribute to national and international policy debates.

One-size-fits-all” policies and severe sanctions have left the region’s countries in a prison crisis that threatens future generations. Instead of proposing a single model, therefore, multiple pathways should be explored. This briefing focuses on the judicial and prison systems, seeking to offer a variety of experiences that demonstrate how various situations can be addressed: occasional and recreational use, dependent or problem use of substances, small-scale drug dealing by vulnerable members of the trafficking chain (dependent users who sell for survival), and differences among the different levels of leadership in dealing and international trafficking.

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