



Promoting Human Rights-Based Drug Policies in Latin America

Presented at:

“Drug Policy from a Public Health and Human Rights Perspective,”
Side Event, 54th Ordinary Session of CICAD
Bogota, Colombia
December 10, 2013

by Coletta A. Youngers¹

The “war on drugs” has had a devastating impact on those in the region on the front-lines, including poor farmers pushed deeper into poverty when their coca plants are eradicated, Colombians forced to join the ranks of the country’s internally displaced when their crops are sprayed, and non-violent drug offenders who, as a result of disproportionate sentencing policies, spend years and years in jail. The so-called “war on drugs” has led to social unrest, violence and human rights violations across the hemisphere.

Present policies and law enforcement practices also lead to systematic discrimination against people who use illegal substances, who are often among the most marginalized and stigmatized sectors of society. They are subject to a wide array of human rights violations, including abusive police practices, denial of health and treatment services, and incarceration for simple possession — often with excessively long sentences. Criminalization of drug use, or carrying drugs for personal consumption, prevents those who need it from accessing evidence-based treatment services, while others are subject to compulsory treatment — a practice condemned by numerous UN agencies and experts — in sub-standard, if not prison-like, conditions.

Internationally, inherent contradictions and inconsistencies exist in the application of international drug control and human rights treaties. Despite directives from the UN General Assembly that drug control activities should be carried out in accordance with international human rights norms and standards, in practice, harsh drug laws trump human rights concerns across the globe. Yet UN agencies and UN member states are all bound by their obligations under the Charter of the United Nations to promote “universal respect for, and observance of, human rights and fundamental freedoms.” Moreover, the Charter explicitly states that in the event of conflicts between states’ obligations under the Charter and other international agreements, their Charter obligations take precedence.

¹ Coletta A. Youngers is a Senior Fellow at the [Washington Office on Latin America](#) (WOLA) and an Associate at the [International Drug Policy Consortium](#) (IDPC).

The importance of human rights for drug policy was recognized at the OAS General Assembly meeting in Antigua, Guatemala in June 2013, where the hemisphere's foreign ministers issued a [declaration](#) that highlights that drug policies need to be implemented from a human rights and a gender perspective.

Ensuring respect for human rights is the right thing to do. But human rights-based drug policies can also be more effective. Latin American countries are increasingly calling into question the very high costs that they have paid to wage a war which has failed to meet what has become the primary objective of the international drug control regime; curtailing the production and use of illicit drugs. Yet the 1961 Convention on Narcotic Drugs clearly states that the ultimate objective of the international drug control system is the improvement of the health and welfare of mankind. Present policies are failing dismally on both counts.

Latin American countries can take the lead in ensuring that national, regional, and ultimately international drug control policies are carried out in accordance with respect for the human rights of people who use drugs and affected communities more broadly. A thorough discussion on adopting human rights-based drug policies is beyond the scope of this presentation, but here are six places to start:

Recognize the rights of drug users and decriminalize drug consumption. The OAS report, [The Drug Problem in the Americas](#), reflects a growing trend in Latin America calling for the decriminalization of drug consumption or the possession of drugs for personal use; in other words, drug consumption should be treated as a public health, not a criminal, issue. This implies distinguishing between types of consumption: occasional, recreational, or dependent drug use. As the OAS report recognizes, most people who use drugs do so without causing any harm to themselves, their families or their communities. For dependent drug users, evidence-based treatment programs are sorely needed. It is also important to distinguish between types of drugs and the possible damage that they can cause—precisely what is at the center of the cannabis debate today.

The OAS report provides a coherent critique of the lack of access to treatment and prevention programs. However, it fails to discuss the basic concept of harm reduction: policies, programs, and practices that aim primarily to reduce the adverse health, social, and economic consequences of the use of legal and illegal psychoactive drugs without necessarily reducing drug consumption. This concept — at the core of UNODC, UNAIDS and WHO best practice guidance — recognizes that despite the negative consequences associated with drug use, many people will be unwilling or unable to stop using drugs. And such interventions are even more important in the Latin American context, where even those who may want to overcome their dependency may not have access to treatment services. Harm reduction interventions are low-cost, highly effective and internationally recognized measures that protect the health and human rights of people who use drugs.

Ensure respect for the rule of law. Research carried out by the [Colectivo de Estudios Drogas y Derecho \(CEDD\)](#) has documented how harsh drug laws have contributed to the region's prison crisis; how small-scale offenders are locked up for excessively long periods of time while those

directly involved in organized crime networks are rarely sanctioned; and how drug offenses carry penalties that are higher than heinous crimes such as murder or rape.

A human rights-based drug policy necessitates that the punishment be proportionate to the crime committed. In other words, drug laws should ensure [proportionality in sentencing](#), distinguishing between low, medium, and high-level drug offenses; the role of the accused in drug trafficking networks; violent and non-violent offenses; and between different types of drugs. Penalties should be brought into line with sentencing policies for more comparable crimes. And alternatives to incarceration should be established for those accused of low-level, non-violent drug offenses, including access to evidence-based drug dependence treatment programs, community service, education and employment training opportunities, and other programs to promote social reintegration and inclusion. This is particularly important with regard to the increasing number of women incarcerated for drug-related crimes, and especially for single mothers.

Promote social inclusion. Both dependent drug users and those incarcerated for drug-related offenses finish their treatment or complete their sentences and leave with few possibilities for reconstructing their lives. As a result, the vast majority return to drug use or illicit activities. As noted above, strong social reinsertion programs are needed; programs that include education, access to adequate housing and employment that generates sufficient income so that these individuals can lead a life with dignity.

The vast majority of those incarcerated for drug offenses come from the poorest sectors of society. Likewise, the insecurity generated by the violence associated with drug trafficking is concentrated in the poorest sectors of society. In the end, to promote a comprehensive and effective drug policy is to address poverty and inequality in our societies.

Create legal, regulated markets for cannabis. Across the region, cannabis users face stigmatization and harassment by local police forces and often end up in jail for growing or simple possession. The CEDD research described above found that marijuana consumers make up a significant percentage of those in jail for drug offenses in many countries. Moreover, law enforcement and justice sectors resources are disproportionately spent persecuting cannabis users – resources that could be used far more effectively.

The final chapter of the OAS report on drug policy underscores the value of assessing “existing signals and trends that lead toward the decriminalization or legalization of the production, sale and use of marijuana,” noting that, “Sooner or later decisions in this area will need to be taken.” The report recognizes that some jurisdictions have already moved in the direction of creating legal, regulated cannabis markets, such as allowing for cultivation for personal use via cannabis clubs as occurs in Spain, legal cannabis markets being put in place in the U.S. states of Colorado and Washington, and the regulation model being implemented by the government of Uruguay.

End forced eradication (including aerial spraying) and promote economic development. The eradication of coca or poppy crops is counter-productive unless [alternative livelihoods](#) are already firmly in place. Decades of experience has shown that the rapidly obtained short-term results are quickly reversed as crops are replanted or are displaced to another area or even

another country. At the same time, forced eradication worsens the situation of poverty for some of the most marginalized populations in the world and generates violence, conflict, and human rights violations. A much more effective strategy, as has been demonstrated in Thailand and more recently in Bolivia, is to improve the overall quality of life of those who cultivate coca or poppy and ensure alternative sources of income through integral development policies, followed by voluntary and gradual coca reduction efforts.

Implement policies aimed at reducing violence. Drug law enforcement efforts have traditionally focused on reducing the scale or size of the illicit drug market, with little attention to how those policies might lead to increased—or reduced—violence. The tens of thousands of people killed in Mexico in recent years have put a spotlight on such collateral damage. More viable strategies for reducing drug-related crime and violence are [focused deterrence and selective targeting strategies](#), which have shown some success in reducing violent crime in certain areas of the United States. Rather than trying to reduce the size of drug markets, enforcement efforts should seek to reduce criminal behavior in ways that discourage violence, for example by sending a clear message that those criminal organizations that engage in the most violence will be the primary target of law enforcement.

Ultimately, the goal should be to minimize the harm caused to communities — from problematic drug use, drug trafficking, and drug policies themselves.