

Conclusions and Recommendations

Depriving an individual of his or her liberty is among a state's most formidable powers. The way this power to imprison is exercised – balancing the obligation to ensure public safety with respect for civil and human rights – is of enormous significance. Incarcerated individuals and their families are obviously affected directly. But the workings of the criminal justice system also reflect and affect society as a whole. A fair system upholds respect for the rule of law and the legitimacy of the state. An unfair system – rigged against the poor and the vulnerable – contravenes basic human rights obligations and erodes respect for the law. The so-called “war on drugs” has had an enormous impact on the functioning of national justice systems and prisons in Latin America.

In recent decades, the realm of drug control has increasingly become a matter of criminal law around the world. Led by influential governments such as the United States, the global drug control system – embodied in three United Nations conventions – came to emphasize prohibition and criminal sanctions for many aspects of illicit involvement with controlled drugs. In Latin America, numerous governments adopted exceptionally harsh drug laws, featuring stiff prison sentences.

The global drug control system's increasing emphasis on criminal sanctions has led to unprecedented increases in the number of people imprisoned for drug offenses, including in Latin America. The criminalization of drug policy was meant to protect public health and safety by curbing illicit drug production, trafficking and consumption. These goals have not been achieved. To the contrary, despite the enactment of harsh drug legislation and the incarceration

boom that has ensued in Latin America, the illicit drug industry is flourishing like never before.

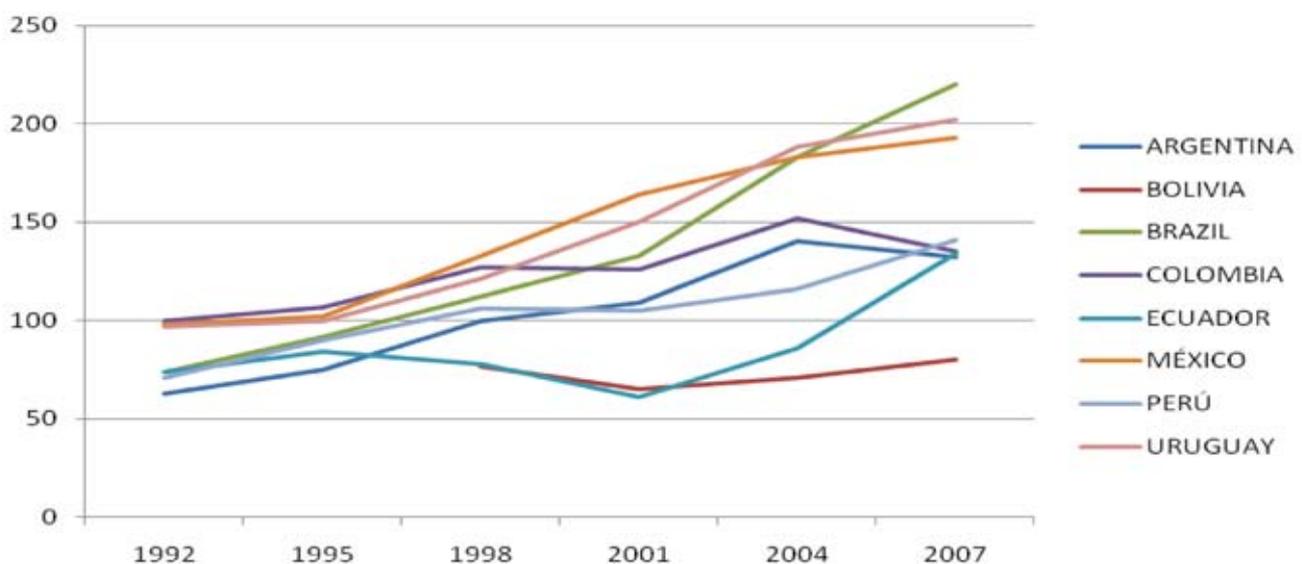
The country studies assembled here have demonstrated that harsh drug laws have not merely proven ineffective in stemming the drug trade. Increased reliance on criminal sanctions for purposes of drug control has generated enormous negative consequences, including over-burdened courts and prisons and the suffering of tens of thousands of people put behind bars for low-level drug offenses or simply for drug possession. The fact that the weight of the criminal law falls most heavily on those at the lowest ranks of the drug trade speaks to both the injustice and the ineffectiveness of the current approach.

The current approach is unfair, as the smallest players in the drug trade – including those charged with mere possession of drugs – face penalties grossly disproportionate to the gravity of their offenses. The current approach is also ineffective, since the severe punishment and incapacitation of so many low-level participants has no impact on the functioning of the drug market; low-level participants are quickly and easily replaced by newcomers, and if and when the newcomers are jailed, fresh recruits are abundant.

The twelve main conclusions drawn from these country studies are described below. The conclusions leave no doubt as to whom are the primary victims of this “war on drugs,” and should spur an urgent debate on ensuring a more balanced and humane approach to reduce the harms associated with illicit drug production, distribution and consumption.

Naturally there are gradations and variations among the eight countries studied, given their own particular roles within the drug markets, distinct internal political dynamics, and varying connections and vulnerabilities to inter-

Graph 1. Prison population rate (per 100,000 national population), 1992-1997



Source: Authors' elaboration, based on data from International Centre for Prison Studies, King's College London

national political pressures. To be sure, much remains unknown about the extent to which drug laws have fueled incarceration rates and exacerbated prison overcrowding in the region; clearly it has been one of the key contributing factors, but official data on these subjects is sorely lacking and must be improved. Still, as a first systematic attempt to shed light on the repercussions in Latin America of this “unintended consequence” of global drug policies, we hope that this study helps sound the alarm for reforms.

CONCLUSIONS

Conclusion I

• **Latin American countries have not always had such harsh drug laws. The adoption of the laws now in place began within the past four decades, first under authoritarian regimes in some countries and then during a period of intense international and U.S. government pressure to stiffen penalties for drug offenses.**

In some of the countries studied, such as Argentina and Brazil, drug legislation characterized by harsh criminal sanctions was adopted under authoritarian regimes. In most countries, new drug legislation was based on external models, and was implemented under international or bilateral pressure, using a variety of instruments for imposing conditions. These instruments include the United Nations conventions, specifically the Single Convention on Narcotic Drugs of 1961, and its Protocol of 1972; the Convention

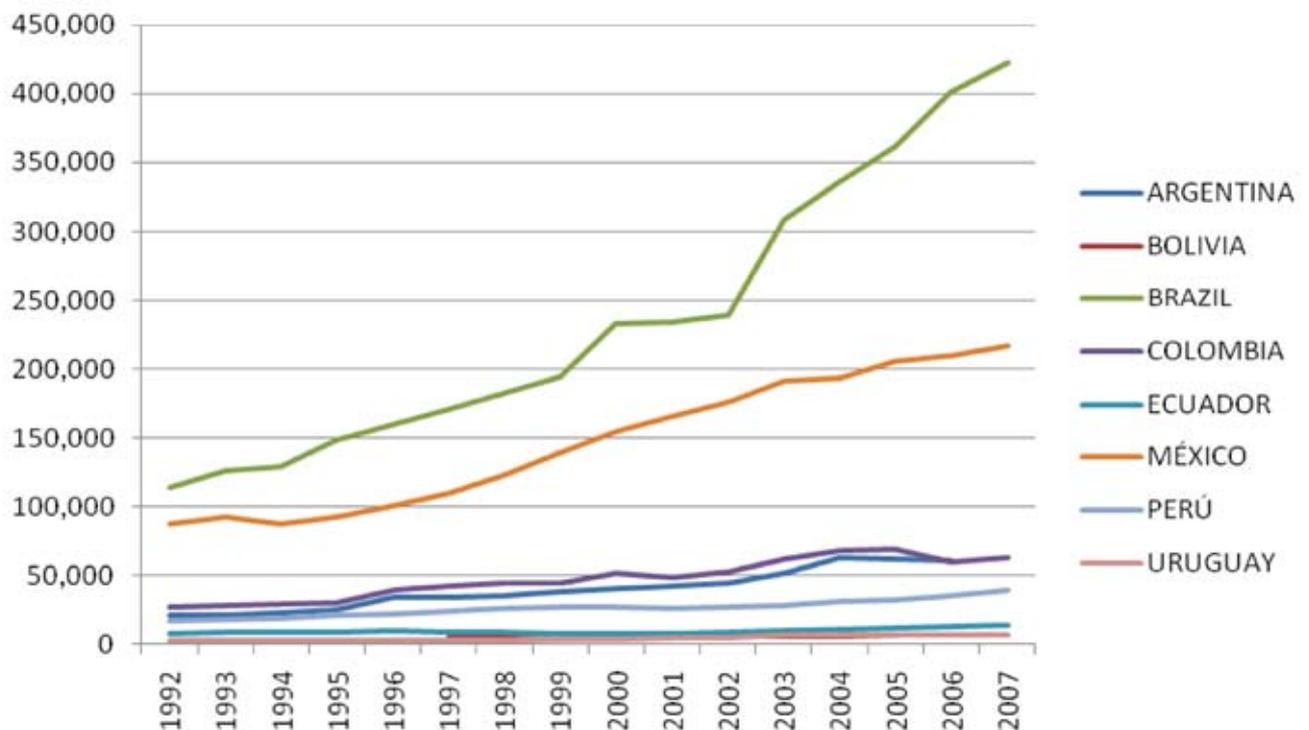
on Psychotropic Substances of 1971; and the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. This treaty obligated the countries that ratified it to adapt their domestic legislation so as to criminalize all acts – except for use – related to the illicit market in controlled substances. This led to various changes in the existing body of laws, to amendments and decrees, as well as to new statutes that date from those years.

The justification for having a separate body of laws for drugs is based on the presumption that illicit drug activities constitute crimes that attack universally held legal principles and interests. According to the dominant perception and as codified in the United Nations conventions, the nature and magnitude of the business is such that it cannot be addressed with the same mechanisms used for other criminal offenses. In Latin America, the existing legislation often goes beyond the obligations assumed in the international treaties.

Bilaterally or regionally, as in the case of the Andean region, the export of the U.S. government’s “war on drugs” has contributed significantly to the wave of harsh laws that were adopted in the 1980s and 1990s. The U.S. government used economic assistance and access to certain trade benefits to pressure Latin American countries, imposing its agenda, methodology, and strategies.

One extreme case is **Ecuador**, a country that in large part due to U.S. pressure has one of the harshest drug laws in all of Latin America. Apparently, U.S. bilateral agreements in

Graph 2. Overall Prison Population Trends, 1992-2010



Source: Authors’ elaboration based on data from: E. Carranza, *Cárcel y Justicia Penal*, 2003; TNI-WOLA reports; and International Centre for Prison Studies, King’s College London

the area of counter-drug cooperation between the United States and Ecuador included arrest quotas for drug offenses. In other words, in order to carry out the agreement, Ecuador had to show a larger number of persons charged and prosecuted for drug offenses. Another example is **Bolivia**, whose Law 1008 was reportedly drafted by U.S. government officials, apparently originally in English, a language foreign to the Bolivian legislature.

Conclusion II

• Drug legislation and the manner in which it is applied in Latin America results in disproportionately severe penalties for those charged with drug offenses.

In recent decades, punitive legislation has been adopted in the region, along with greater reliance on criminal law, to address the production, trafficking and consumption of illicit drugs. This trend has occurred in periods and in countries in which illicit drug markets were relatively limited in size and scope. The relationship between the challenges posed by drug distribution and problematic drug use and the penalties entailed by the criminal statutes is alarmingly disproportionate.

In most of the countries studied, sentences for drug offenses mandated by law are disproportionate to other crimes, and rigid mandatory minimum sentences ensure that those convicted stay behind bars for prolonged periods, often for years. While the laws vary across countries, maximum sentences for drug trafficking can range from 15 to 25 years. In countries where mandatory minimums are in place, judges have no discretion to take into account extenuating circumstances or distinguish between first-time and repeat offenders. Even in countries with sentencing guidelines, rather than mandatory sentences, political pressure is often brought to bear on prosecutors and judges to issue stiff sentences.

Perhaps the most extreme case is **Ecuador**. In that country, drug trafficking convictions result in minimum and maximum sentences of 12 and 25 years, respectively. Yet the maximum sentence for murder is 16 years. As is common across the region, the Ecuadorian law fails to distinguish between levels of involvement in the drug trade, so that a small time trafficker can end up with a longer sentence than someone who committed murder.

Conclusion III

• Existing drug laws fail to distinguish adequately between low-level and high-level drug offenses, and fail to distinguish among types of drugs; in general, all drug offenders are subject to comparably high sentences.

Drug laws in general do not distinguish among levels of

involvement in the business, treating small-scale sellers and “mules,” or transporters, on par with large-scale drug traffickers, and failing to distinguish between violent and non-violent offenses. Many accused are subject to the maximum penalties and many, even those who have not committed serious or violent crimes, end up in maximum-security prisons.

Nor are distinctions made between the particular type of substance and the health risks it poses when it comes to pursuing, arresting and prosecuting persons for drug offenses. In many cases cannabis is treated the same as cocaine, and a seller of cannabis may get the same sentence as a person who sold cocaine.

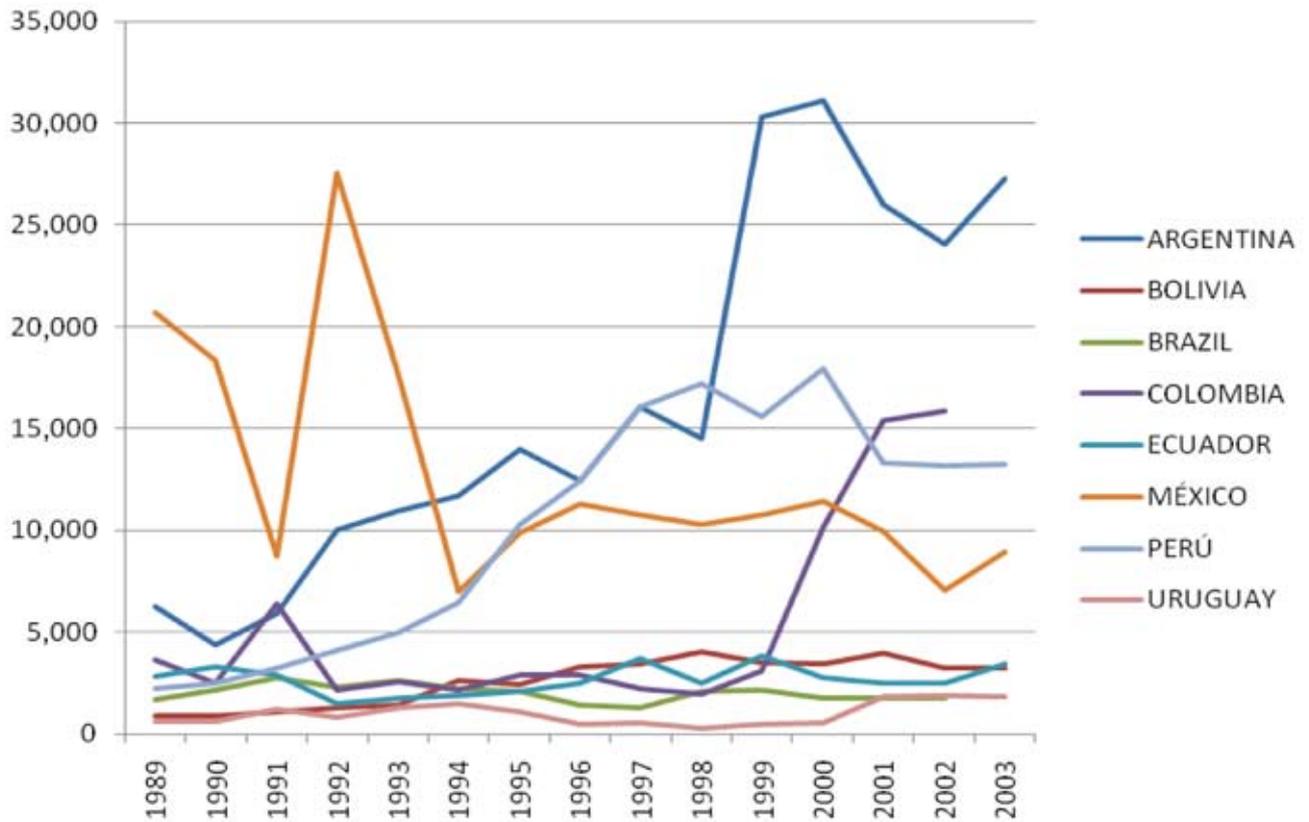
One example is Law 1008 in **Bolivia**, which according to a 1995 report by the Committee on Human Rights of the Bolivia's Chamber of Deputies “establishes a criminal justice subsystem parallel to the regular criminal justice system, characterized by the tendency towards unreasonably drastic penalties” that suppresses fundamental rights of defense and violates the constitutional rights of citizens. Law 1008 leads to over-criminalization by including offenses that already exist in Bolivia's Criminal Code, assigning them longer periods of imprisonment, more days of fines, and more confiscation of assets. The law does not distinguish clearly between street-level drug dealers and large-scale drug traffickers, such that the penalties range from one year in prison for producers of controlled plants to up to 25 years in prison for trafficking, independent of the volume of drugs involved. The law is also ambiguous in its definitions of manufacture, possession, storage, delivery, supply, purchase, sale, and donation and/or any other type of transaction. Moreover, the penalties as provided for in Law 1008 may be unconstitutional, given that the sum of the prison sentence and days of fine in many cases leads to periods of imprisonment that extend beyond the maximum of 30 years established by Bolivia's constitution.

Conclusion IV

• Strict drug legislation and its aggressive implementation are a key factor in rising incarceration rates and often extreme prison overcrowding in the countries studied.

Prisons across the region are bursting at the seams as a result of “mano dura” or hard line policies meant to address drug trafficking and related crime and violence. This study suggests a strong relationship between the aggressive enforcement of severe drug laws and soaring incarceration rates and prison overcrowding in the countries studied. Although a direct causal relationship is difficult to prove, especially given the paucity of trend data from prison authorities and other governmental sources, the available data do indicate at least a correlation. For the seven countries for which data on incarceration rates were available for the

Graph 3. Number of arrests for drug offenses, 1989 to 2003



Source: Inter-American Drug Abuse Control Commission (CICAD)

15-year period 1992-2007, on average the incarceration rate increased by more than 100 percent.

For **Bolivia**, the one country without data for the 15-year period 1992-2007, data for the 12-year period 1996-2008 show a nearly 13 percent increase in the incarceration rate. Comparing Graph 2, which shows the trends in the overall number of prisoners, to Graph 3, which shows the trends in the number of arrests made for drug offenses illustrates the connection between the two phenomena.

Of the countries studied, the most extreme example is **Brazil**, where the number of people behind bars increased by more than 300 percent between 1992 and 2009, resulting in an incarceration rate of 253 prisoners per 100,000 national population. Prison infrastructure has lagged behind the growth in the prison population, leading to a shortage of space for 170,000 inmates and poor living conditions.

While the situation varies by country, drug offenders make up a significant and growing proportion of the prison population. In all eight countries, drug offenses are either the second or third cause for criminal prosecution. According to the data compiled by the research team, the percentage of the prison population incarcerated on drug charges currently ranges from about 9 percent in **Mexico** to 34 percent in **Ecuador**. Drug offenders also account for comparably large proportions of the overall prison populations in **Colombia** (17 percent), **Brazil** (19 percent), **Peru** (23 per-

cent), and **Bolivia** (30 percent). According to **Argentina's** Federal Penitentiary Service, the percentage of prisoners incarcerated for drug offenses increased from 1 percent in 1985 to more than 27 percent in 2000. The country-specific trends for drug offense arrests during the 15-year period 1989-2003 are illustrated in Graph 3.

Conclusion V

• **A key factor in prison overcrowding is the use of preventive detention, which is mandatory for drug offenses in many countries, regardless of the gravity of the offense. As a result, many people accused of drug offenses spend long periods of time behind bars before their cases are even considered in court.**

The use of preventive detention is a widespread practice in the region and is at odds with respect for constitutional rights and with the human rights commitments assumed by the governments. In many cases, long periods of detention stem from chronic delays in the administration of justice and from the inclusion of preventive detention provisions in drug legislation.

In five of the eight countries studied – **Bolivia, Brazil, Ecuador, Mexico** and **Peru** – preventive detention is mandatory in cases of drug offenses, whether minor or major. Drug offenses are classified along with murder, rape, and

kidnapping as serious crimes, no matter the degree of participation. Preventive police detention for most crimes in Peru is 24 hours, yet in drug cases it is 15 days. In addition, in several countries suspects may be detained for indefinite periods during the investigation phase until formal charges are filed. In Mexico, the accused may be detained without formal charges for up to 80 days. And in the five countries mentioned, detention is mandatory during the course of the trial until there is a verdict.

In general, given the delays in the administration of justice common to all the countries in this study, it is not unusual for an accused person to end up behind bars for a longer period than the sentence that is eventually imposed would have required. The filing of formal charges is the first stage of preventive detention. Once a person is formally charged with a criminal offense, the preventive detention prescribed by law ensures that the accused will remain behind bars. The proportion of those held in preventive detention that is charged with drug offenses could not be determined for this study.

Conclusion VI

- Those accused of and sentenced for drug offenses are usually denied or given only limited access to procedural benefits or opportunities for alternative sentences, although these are often made available to those accused of other types of offenses.

In most of the countries studied, access to procedural and prison benefits for the persons prosecuted and convicted of drug offenses is restricted or prohibited – another factor that contributes to the problems of overpopulation and

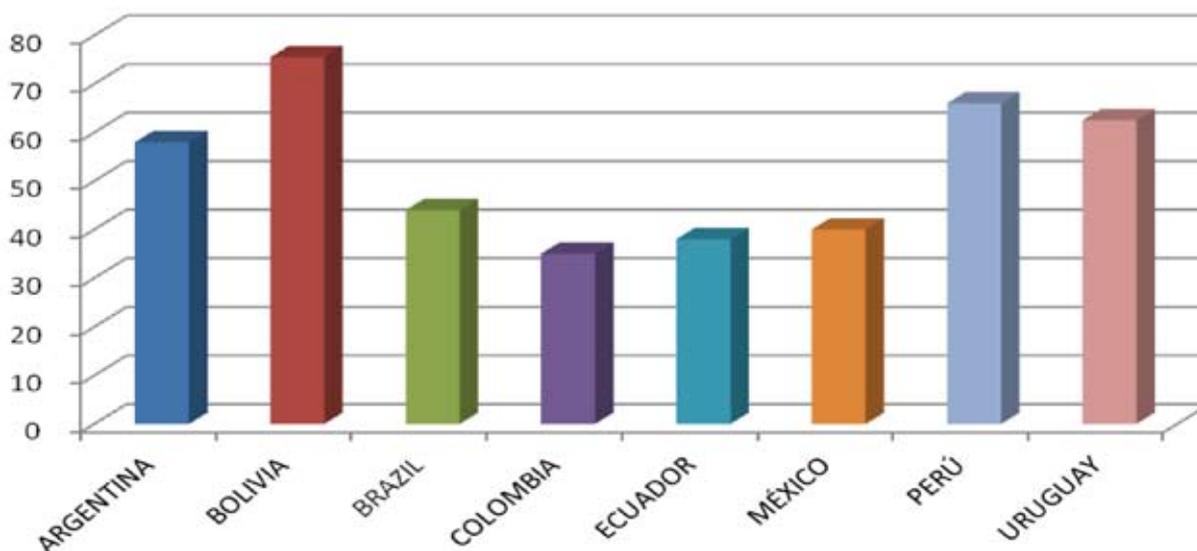
overcrowding in the prisons. The restrictions on access to benefits even while imprisoned are notable and are related to the tendency to fail to take into account the seriousness of the crime committed. Similarly, those accused of minor drug offenses do not have access to benefits that are commonly available for different types of offenses.

For example, **Brazil's** 2006 drug law prohibits substituting prison with alternative penalties, even though Brazilian law allows this in the case of sentences of up to 4 years for all crimes perpetrated without violence or grave threat, as is the case in many drug offenses. However, in September 2010, Brazil's Federal Supreme Court (Supremo Tribunal Federal) ruled in favor of an appeal by a person accused of trafficking 13.4 grams of cocaine, and determined that the prohibition on substituting the penalty of imprisonment in the case of a small-scale drug dealer, as established in the country's drug law, is unconstitutional and that the possibility of substitution should be considered on a case-by-case basis. In the opinion of some authorities, the application of that decision could avoid the incarceration of many other small-scale dealers, and as a consequence reduce the size of the national prison population.

One bottleneck in the justice system of **Peru** has to do with the prohibitions on benefits and rights during imprisonment, fundamentally those referred to in Article 42 of the country's Code of Prison Enforcement. Benefits in the Peruvian prison system include permission to leave prison, reduction in the sentence for work and education, semi-liberty, parole, and intimate visits, among others. Yet Article 47 of the same code prohibits such benefits, including the possibility of parole, in cases involving drug offenses. Even in **Uruguay**, which is alone among the countries studied in not having adopted punitive drug legislation,

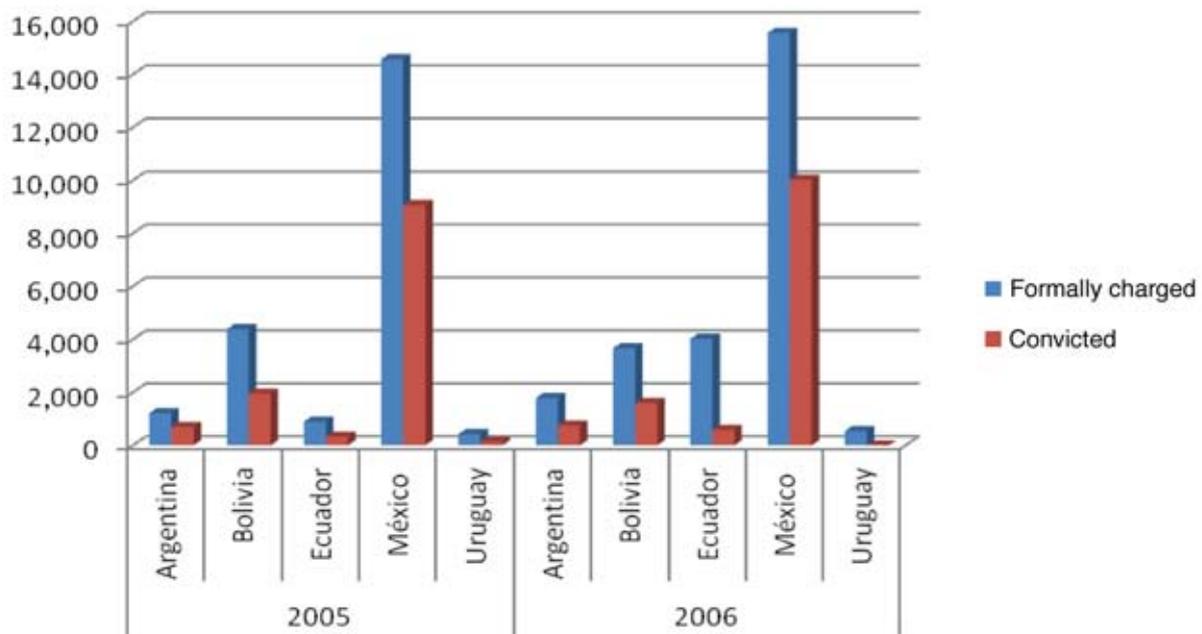
Graph 4. Percentage of prison population without a sentence

Argentina and Bolivia (2006); Brazil (2007); Colombia, Ecuador, Mexico, Peru and Uruguay (2008).



Source: Lucía Dammert and Uza Zúñiga, *La cárcel: problemas y desafíos para las Américas*, FLACSO, 2008.

Graph 5. Percentage of prison population formally accused and sentenced for drug charges, 2005 and 2006



Source: Inter-American Drug Abuse Control Commission (CICAD)

the scant use of alternative measures guarantees that many low-level, non-violent offenders remain behind bars.

Conclusion VII

- **Prison budgets and infrastructure are severely deficient in every country studied, due at least in part to the significant increases in the number of drug-offense prisoners.**

As a result of budget shortfalls, the prison infrastructures in all of the countries included in the study are inadequate for ensuring the rights of persons deprived of liberty and for respecting the countries' international obligations regarding prison conditions. Although drug policies have contributed to overcrowding the prisons, there was no corresponding increase for the prison system budgets, even as spending allocated to drug enforcement grew.

Graph 6 shows the level of prison overcrowding in six of the countries studied, while Graph 7 illustrates the extent to which governments are failing to meet the basic needs of detainees, particularly in **Bolivia, Ecuador and Peru**. These three countries allocate a daily food budget per prisoner of only \$0.80 USD, \$1.60 USD and \$2.00 USD, respectively. As a result, prisoners depend on food and other goods provided by family members in order to survive within the prisons.

The state should guarantee the rule of law and due process for each of the accused, including provision of legal representation. If before the existence of the drug legislation several states were not able to guarantee an adequate defense for all, now the situation has grown even worse. The

vast majority of those accused of drug offenses do not have access to an adequate legal defense.

Conclusion VIII

- **A shockingly high number of people are imprisoned for simple possession of drugs, including marijuana, even in countries where carrying small amounts of drugs for personal use is not a crime.**

A high percentage of drug offense prisoners are locked up for simple possession of drugs – consumers detained with a relatively small amount of drugs – even in countries where such conduct is not illegal. In most of the countries studied, the distinction between drug users and drug traffickers is barely developed in the statutes and is poorly interpreted by the police. According to our **Brazil** researcher Luciana Boiteux: “Such vague criteria are so difficult to apply that in practice the distinction depends on the respective authority in each case. The lack of a legal distinction a priori prejudices the defense of the accused, since the subjective view of the authority and the discretion of the police who make the first contact with the case are excessively broad.”

In **Uruguay** the law does not penalize the use of drugs or possession for personal use by someone who, in the terms of the law, “has in his or her possession a reasonable quantity, exclusively for his or her personal consumption.” But the law does not define “a reasonable quantity,” leading to problems in police and judicial practice, where the judge enjoys full discretion to reach his or her own findings. On the one hand, this discretion gives judges the opportunity to consider the broader circumstances of a detention, but it also results in a situation in which police arrest many

users. Most of the cases appear to involve the possession of drugs in amounts near the limit of what could be interpreted as possession for use. Indeed, more than half of the persons in prison for drug offenses possessed between 0 and 9 grams of a prohibited substance. Here the problem is not strictly in the law itself, but in its application by the police and the courts.

Even in cases where the law defines the amounts that correspond to personal use, it may harm users. In **Mexico**, the decree commonly known as the law against small-scale drug dealing (“Ley de narcomenudeo”), given that its main purpose is precisely to address retail-level drug distribution, establishes maximum amounts allowed for personal use of the various illegal drugs. But because the amounts established by the law are so small, it is very likely that a consumer will carry larger quantities than are permitted. In addition, the permitted quantities do not correspond to the reality of the retail-level drug markets; for example, while a consumer may possess only half a gram of cocaine, in the street the drug is sold by the gram. It is therefore quite possible that more users will end up in prison as one result of this law and its enforcement.

Throughout the region, smokers of cannabis are particularly stigmatized and harassed by the police, and many people are incarcerated for growing or simple possession of cannabis. One of the most alarming examples is **Mexico**. In a selection of courts in the Federal District and the states of Chihuahua and Jalisco, possession of marijuana gener-

ates the largest number of convictions in drug cases. It is followed by: possession of cocaine, possession of cocaine for sale or commerce, and possession of marijuana for sale or commerce.

Conclusion IX

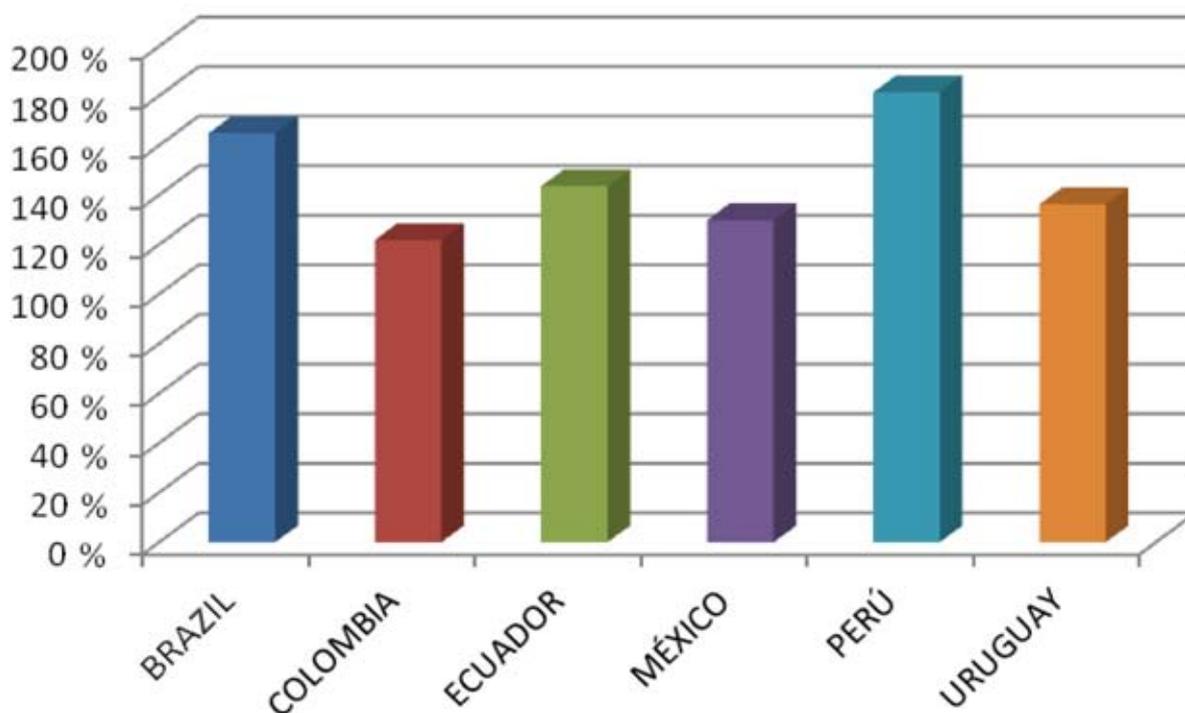
- **Those imprisoned on drug charges come from the lowest ranks of the drug trafficking chain – consumers, couriers and street level dealers. The available data indicate that very few high-level drug trafficking operatives are behind bars.**

One of the key conclusions of this study is that a large number of persons are behind bars for minor drug offenses with disproportionately long sentences. In most of the countries studied, it is the exception to find anyone with decision-making authority in the drug-trafficking networks in prison. The information we were able to obtain points to enormous disparities. The most worrisome cases are **Colombia** and **Mexico** – two countries that have declared total war on drug trafficking.

In the case of **Colombia**, the vast majority of those incarcerated for drug offenses have only limited involvement in the drug cycle; these individuals are easily replaced in drug production and trafficking networks. They are the weakest, most vulnerable links in the chain – composed of those who participate in the least lucrative activities of the

Graph 6. Overcrowding Rate of Prisons

Ecuador and Mexico (2009); Brazil, Colombia, Peru and Uruguay (2010)



Source: International Centre for Prison Studies, King's College London

business or who are only marginally involved, such as the ‘raspachinnes’ or coca leaf pickers, the small-scale growers, the ‘mules,’ and the small-scale distributors. According to the calculations by the study’s Colombia researchers, only about 2 percent of those behind bars for drug offenses are mid- and upper-level trafficking operatives. In other words, about 98 percent of the persons deprived of liberty for drug offenses apparently did not have – or it would likely not be possible to prove they had – significant involvement in drug-trafficking networks.

Similarly, in **Mexico** the government has used the indicator of the number of persons incarcerated to show that its effort to fight drugs and organized crime is yielding encouraging results. Nonetheless, according to the CIDE research center, in 2009 in the Federal District and in the state of México, 50 percent of the prisoners locked up for drug sales were detained for possessing merchandise with a value of \$100 USD or less, and 25 percent for possession of merchandise with a value of \$18 USD or less. In other words, 75 percent had been detained with a minimal amount of drugs. Hence, the government’s strategy for fighting organized crime appears to have resulted in the criminalization of drug users, especially of less dangerous drugs such as

marijuana, and small-scale sellers – but with far less impact on the medium- and large-scale drug traffickers.

Furthermore, it is important to emphasize that, in most countries, low-level drug offenders are put into the same facilities as hardened criminals. Prisons function as a school for crime; low-level offenders usually enter jail with no direct connections to organized crime, often knowing only who gave them the job. But they can emerge from prison as part of criminal bands or networks.

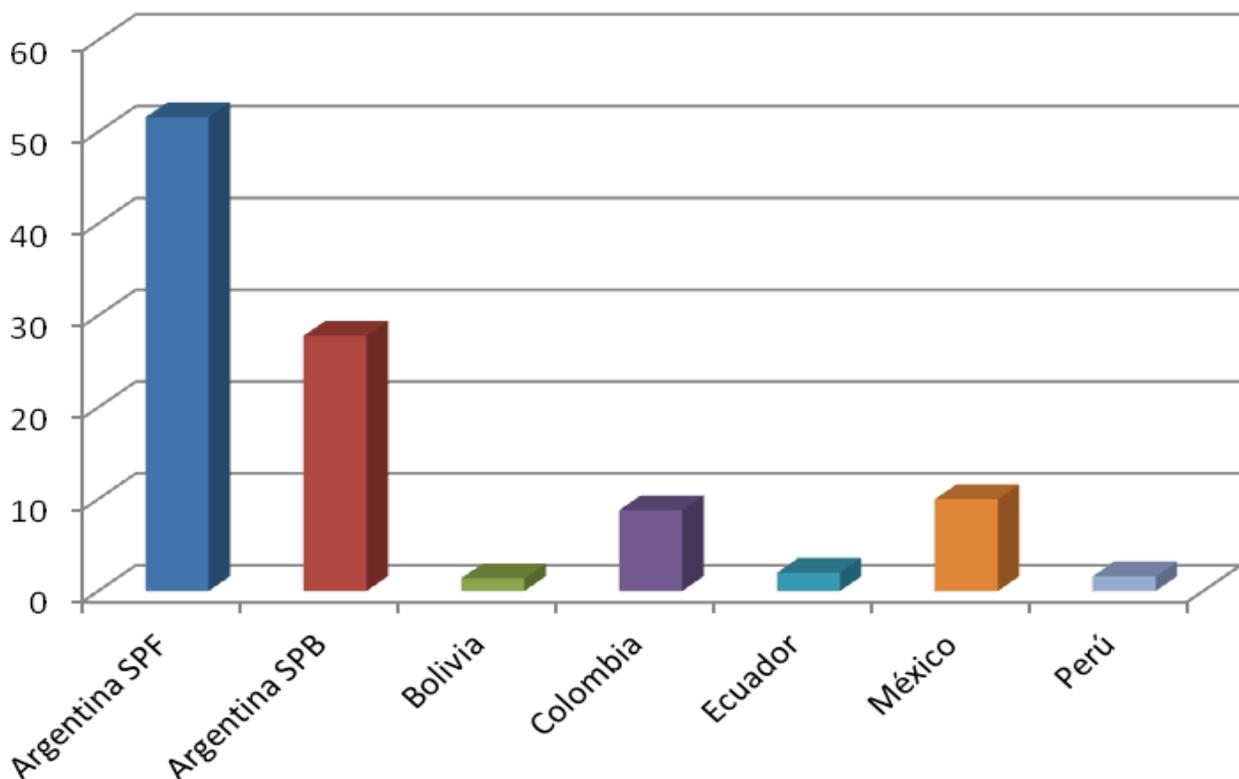
Conclusion X

- **Those imprisoned on drug charges tend to come from the most vulnerable sectors of society, with little formal education, low incomes, and limited employment opportunities.**

The socioeconomic profile of the vast majority of persons incarcerated for drug offenses – whether convicted or not – is a low level of education, little money, unemployed or working in the informal sector, and coming from broken homes and/or in charge of raising children (most often the

Graph 7. Daily expenditure per prison inmate (in US dollars)

Bolivia (2006); Ecuador (2007); Mexico (2007); Argentina (Sistema Federal Penal de Argentina and Sistema Penitencial de Buenos Aires), Colombia and Peru (2009)



Sources: Argentina – SPF and SPB, 2009; Bolivia – Dirección General de Régimen Penitenciario (DGRP, 2006); Colombia – Instituto Nacional Penitenciario y Carcelario (INPEC, 2009); Ecuador – Estrella, Pontón, Pontón and Núñez, Análisis de la ley de drogas desde una perspectiva socio-política: Diagnóstico de la ley de sustancias estupefacientes y psicotrópicas, Quito, October 2008; Mexico – Guillermo Zepeda, analyst of the Mexican penal system, 2007; Peru – La Realidad del Sistema Penitenciario en el Perú. Diagnóstico, Limitaciones y Retos, Informe CEAS, Defensoría del Pueblo, 2006.

mother). Our research confirms the perception that the weight of the law comes down most heavily on these especially vulnerable sectors of the population.

In most of the countries under study, either the authorities do not collect meaningful statistics on the socioeconomic characteristics of the imprisoned population, or it was not possible to obtain such information. Indeed, we have only been able to obtain official data in three countries, and only for some years. In the other countries, the researchers conducted interviews with inmates to develop a profile of those detained.

Given the lack of official information in Bolivia, a survey was conducted of a group of prisoners locked up for drug offenses in the men's prison of San Pedro, in the city of La Paz. The survey revealed a population with little opportunity to earn income sufficient for the subsistence of an average-size family within the legal labor markets. Only 13 percent of those surveyed have had some university or graduate-level education, whereas 60 percent had primary or secondary education. In general, the average income of the prisoners before being detained was 1,080 bolivianos, equivalent to \$155 USD per month – not even 50 percent of the cost of the basic food basket in **Bolivia**. The histories of the prisoners at San Pedro are characterized by the situation of poverty and family or health crisis that they found themselves in when the possibility arose to obtain extraordinary income and overcome these fundamental problems in exchange for accepting the risk of losing their liberty and endangering their physical integrity.

Similar results were found in a government-sponsored census of prisoners in **Ecuador**. The majority of those incarcerated on drug offenses are either people with patterns of problematic drug use or poor people and members of minority groups. Socioeconomic indicators for those in

prison for drug offenses are also available in **Argentina**, as indicated in graphs 8 and 9 on education and employment levels.

Conclusion XI

- A growing number of women, couriers, and foreigners are imprisoned for drug offenses.

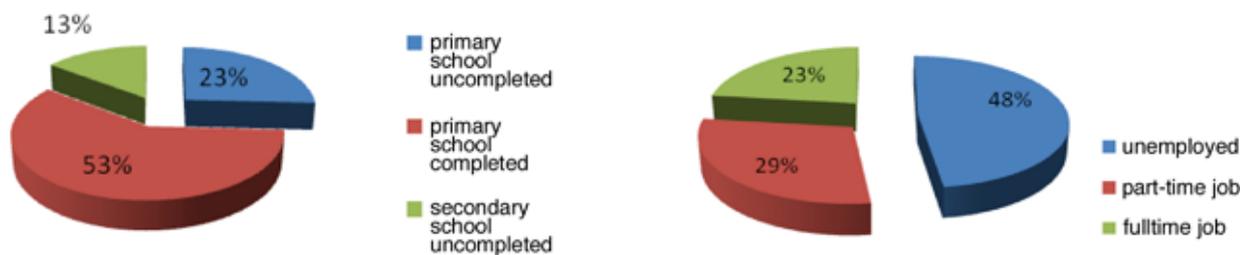
In almost all the countries under study, one finds three relatively new and somehow inter-related phenomena. The first has to do with gender: there is an increase in the population of incarcerated women generally, and a large percentage of them have been detained for drug-related offenses. Though it is still considerably smaller than the population of male prisoners, the percentage of prisoners who are women has increased, and most of them are behind bars for offenses involving drugs.

For example, in the last 15 years, from 65 to 79 percent of the women prisoners in **Ecuador** were incarcerated for drug offenses. In 2009, some 80 percent of all women held at El Inca, the largest women's prison in the country, were detained for drug offenses. Similarly, in **Argentina**, the percentage of women in jail on drug offenses ranges from 65 to 80 percent, depending on the prison facility.

Women are more vulnerable to becoming “mules” and/or micro-vendors of drugs due to the high rates of unemployment among women, and their economic responsibilities for their children. More often than men, women are victims of deceit and violence at the hands of their husbands, lovers, or family members, and end up becoming accomplices.

The impact of existing drug laws on individuals, their families and their communities can be devastating. The study

Graph 8. Argentina: Federal Penitentiary System

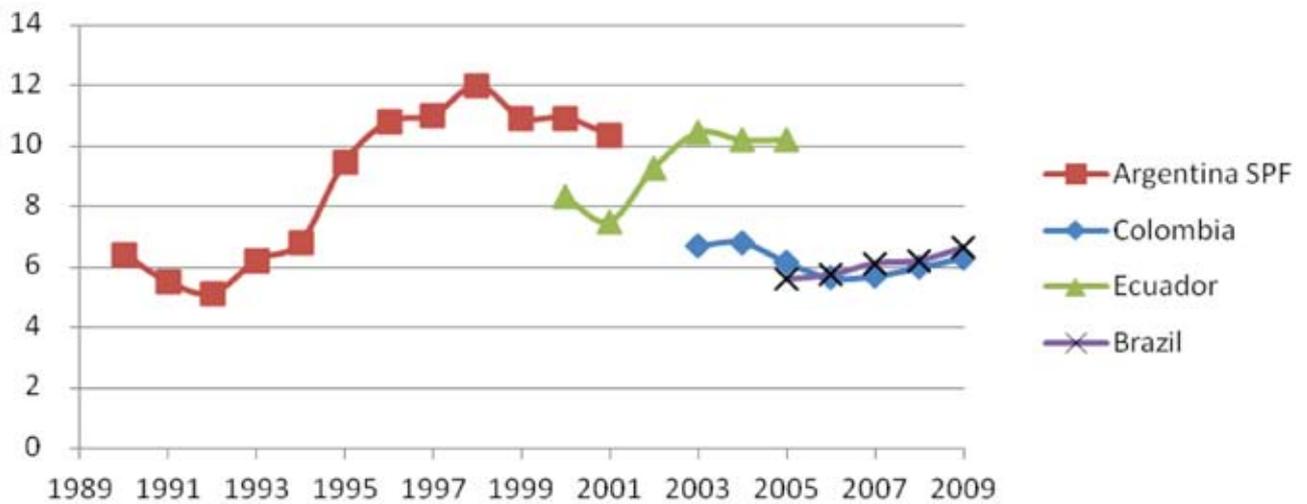


Argentina: Buenos Aires Penitentiary System



Graph 9. Women as a percentage of all prisoners, 1989 to 2009

Argentina (Sistema Federal Penal de Argentina, 1989-2001); Brazil (2005-2009); Colombia (2003-2009); and Ecuador (2000-2005).



Sources: Argentina – Ministry of Justice and Human Rights and SPF (1981-2001); Brazil – Ministry of Justice (2005-2009) and *La cárcel: problemas y desafíos para las Américas*, Lucía Dammert and Uza Zúñiga, FLACSO, 2008; Colombia – Instituto Nacional Penitenciario y Carcelario (INPEC, 2003-2009); and Ecuador – Boletines Estadísticos Dirección Nacional de Rehabilitación Social (2000-2005).

found a growing number of women, often the sole providers for their families, entering the drug trade simply in order to put food on the table for their children. Once convicted on a drug offense, they have even fewer economic opportunities when they leave prison. Children whose parents end up behind bars can be split up among relatives and often end up in the streets, or are forced to live in detention themselves.

Another relatively new phenomenon is the widespread use of drug couriers, or ‘mules.’ Although this kind of transport is not novel, during the past decade more people have been detained and convicted for this offense. These are persons detained in possession of drugs trying to take them from one place to another, within or outside the country. The drugs are transported inside the body (swallowed capsules) or outside the body. Several persons who were recruited as couriers and whom we met through this study were unaware of the risks they were taking. Most of the persons received a payment for transport, but of a relatively small sum compared to the market price of the cargo they were carrying.

It was not possible to identify the number of persons per country detained for this type of trafficking, or to get more indicators on their personal characteristics. However, the studies confirm that the phenomenon exists in all countries and is part of a dynamic of the organizers of drug trafficking, who adapt their routes and methods of transport in response to several factors, the most important being interdiction pressures. The couriers tend to be overrepresented in the prisons in cities with air routes to Europe, such as Lima and Buenos Aires.

The last relatively new phenomenon is the increased numbers of foreigners in the prisons. Drug offenses constitute the leading cause of incarceration of foreigners in the coun-

tries under study. Foreigners face particular challenges with regards to access to adequate legal defense, language, and the lack of family support in countries where prison authorities fail to provide adequate amounts of food and services.

Conclusion XII

• **For the countries in this study, the quality and quantity of information on drug laws and prisons available from official governmental sources is severely deficient. Such an important arena requires that adequate information be readily available to policy makers and the public.**

In six of the eight countries in this study, statistical information on basic items such as the charges or convictions for which prisoners are in jail, the socioeconomic background of prisoners, and even in some cases basic information about the prison population, was very limited or simply non-existent. Of particular concern, while most countries have data available on the number of prisoners accused of or convicted of drug offenses, little information is available on the specific nature of those charges. Keeping track of what drug offenses individuals are charged with is essential for developing adequate laws and policies.

Certain groups of detainees appear to be invisible in the official data. Several researchers identified the issue of detainees held in police stations and detainees in rural areas, but official data were sparse or non-existent. The first group includes people detained and held in police stations around the region, often under inhuman conditions. Another group includes those held in rural areas, including along national borders, where central governments pay even less attention to prison conditions. The jails in these

areas likely hold many people accused of small-scale trafficking, growing and production.

The two countries where significantly better data is available are **Ecuador** and **Uruguay**. The Ecuadorian government carried out a detailed prison census in 2008 that provides valuable information on the prison population and prison conditions, and on inmates' socioeconomic characteristics; prisoners were surveyed regarding their own concerns. In Uruguay, the Junta Nacional de Drogas has systematized information going back to 2006, including data on police operations related to drugs. These data allow for analyses of those detained and incarcerated for drug offenses. Socioeconomic indicators on the prison population are also available.

RECOMMENDATIONS

The implementation of harsh drug laws has fueled rising incarceration rates and has contributed to severe prison overcrowding. Certain reforms to drug laws and how they are implemented could help alleviate prison overcrowding while protecting public safety and respecting civil and human rights.

- Incorporate drug legislation into a country's criminal law and codes – rather than treat it separately from other offenses – and ensure that it fully respects human rights.
- Establish and expand alternatives to incarceration for those charged with low-level drug offenses, including removing criminal sanctions for possession for personal use.
- Ensure proportionality in sentencing, distinguishing between:
 - drug trafficking and other types of crime;
 - low, medium and high-level drug offenses;
 - rank or position of the accused in drug-trafficking networks;
 - violent and non-violent offenses; and
 - different types of drugs.
- Abolish mandatory minimum sentences.
- Avoid preventive detention in the case of low-level, non-violent offenders following arrest and during the investigative phase to determine whether or not formal charges will be filed.
- Promote justice sector reforms to eliminate corruption and increase the efficiency of local judiciaries, and increase government funding to improve prison infrastructure and conditions.
- Establish equal access for drug offense suspects to

procedural benefits and opportunities for alternative sentencing – such as treatment, educational opportunities or community service – that are offered to those involved in other types of offenses.

- Reorient law enforcement efforts to target high-level drug-trafficking criminal networks, rather than those at the bottom rung of the drug-trafficking ladder, such as consumers, small-scale farmers, low-level dealers and mules.
- Upgrade and expand criminal justice data systems and ensure timely access to criminal justice information for policy makers and the public. Comprehensive prison censuses, such as Ecuador performed recently, should be undertaken periodically in each country, and data systematization as carried out by Uruguay's Junta Nacional de Drogas should be replicated across the region.
- Stimulate an open debate about the advantages and disadvantages of moving towards a legal, regulated market for cannabis.
- Allow natural coca leaf products to be sold on the market.
- Consider applying special amnesties, such as pardons, to people already convicted of drug offenses and who received disproportionately severe sentences.

This study leaves no doubt as to who are the primary victims of the so-called “war on drugs.” The objective of the information, conclusions and recommendations provided in this report is to encourage an urgent debate to achieve a more balanced and humane approach to reduce the harms associated with the illicit production of controlled substances, their distribution and consumption. We hope that *Systems Overload* helps to sound the alarm for reforms.