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Mexico: The Law Against Small-Scale Drug Dealing

A Doubtful Venture

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In 2008, in the face of exponential growth in organised crime, violence and the alarming rise in drug consumption in Mexico over the preceding years, President Felipe Calderón Hinojosa proposed a bill to the Congress of the Union as part of his general security strategy. Its aim is to fight small-scale drug dealing, known in Mexico as “narcomenudeo”.

The law against small-scale drug dealing is the term coined by the media that refers to the proposal to reform, add to and repeal various orders of three Mexican federal laws: the General Health Law (LGS), the Federal Penal Code (CPF), and the Federal Code of Penal Proceedings (CFPP). The law was passed by both legislative Houses of Congress in April 2009,² and came into effect on August 21.³

The new law undoubtedly represents some significant advances, at least theoretically, in key subjects such as the recognising of and distinguishing between user, drug addict and dealer, which could open a door to the development of the rights of consumers. The law also represents the possibility of initiating a public debate on the subject of drugs consumer rights.

Equally important is this law’s inclusion of harm reduction as a state policy, which guarantees obtaining resources for the implementation of the policies. What is



more, the law allows the indigenous peoples to continue their traditional use of certain drugs, in accordance with the 2007 United Nations Declaration on the rights of indigenous peoples.

In spite of the above, in this report we wanted above all to stress the negative aspects of this law, given that they are many and that they could signify a threat to the most basic rights of all Mexicans.

The law establishes tougher penalties for crimes of “small-scale drug dealing” and forces state police to persecute this activity, whilst drug trafficking crimes in Mexico are exclusively under federal law.

At the same time, it creates the legal categories of “consumer” and “drug addict” as different from “small-scale drug dealer”, and establishes that in the case of the first no penal action be taken, in exchange for guidance on the subject of treatment of

Mexican vocabulary:

Velas: Cylindrical packages wrapped in newspaper.

Huatos: Quantities of undetermined weight that can be used for bargaining purposes between dealers and clients.

Bolsas: Amounts sold in plastic bags; which are classified not by their contents (20, 50 or 100 grams), but by their price, 25, 50 or 200 pesos.

addiction, and obligatory rehabilitation in the case of relapse for the second.

However, and despite the fact that nationally and internationally this law has been hailed to decriminalize consumers, we believe that the passed legal amendments create more questions and problems than they resolve.

In this respect, it is necessary to stress that the law has not been designed to protect the rights of drug users or to establish a rational and effective public health system, rather that it is mainly directed at toughening sentences for small-scale drug trafficking related crime. That is to say, the law aims to strengthen police legal faculties against the link in the trafficking chain in which the user inevitably finds himself and which involves him in new risks. Thus, the legal distinction between users and dealers is merely a product of the need to establish who, and under what circumstances would be considered a criminal.

Likewise, the law means to control small-scale drug trafficking only from the perspective of supply, a strategy that is probably useless judging from historical experience and economic logic. What is more, the above mentioned strategy goes against Mexico's formal international stance of demanding of the main consumer countries, and in particular the United States, an effective reduction of demand for illegal drugs as the only realistic way of effectively fighting organized crime which makes its profit from this illegal market.

CONSEQUENCES

Next we will point out the probable consequences of the implementation of this law in two crucial areas; public security and human rights.

Public security

The law will exert new pressure on local and national public security systems. This will entail more resources and new skills for local police forces, who are already lacking in professional staff and sufficient material resources, whilst at the same time showing inadequate institutional capacities.

Since the reform does not indicate the specific authority of either the federal or local police forces on the subject of small-scale drug dealing, it disables control and anti-corruption mechanisms, and will distract these police forces from other more important crimes, striving to halt the supply of drugs to small-scale drug dealing without the existence of a parallel strategy to reduce demand. It will create new incentives for the corruption of local police and the extortion of consumers and small-time dealers.

It will unleash friction between the various government laws for the persecution of these crimes, especially on the subject of resources and responsibilities, given that the reform doesn't make any explicit reference to the Sectorial Programme of Public Security, thus increasing the possibility of incongruence or contradiction in the work strategies and objectives of both agendas.

On the other hand it will not reduce the availability of drugs on the streets, nor will it have an effect on this market, as the demand for drugs continues to grow and the economic reality of millions of Mexicans means that for every small-time dealer captured there will always be someone willing to take their place.

The law will emphasise the persecution of crimes that are relatively irrelevant to

public security, to the detriment of more important security tasks. The only measure of the success rate of this policy will be the number of people tried and imprisoned, not taking into account the availability of drugs or the indicators of consumption.

Likewise, we consider it problematic that it is the Public Ministry (public prosecutor) who decides for every case whether the quantity of drugs actually falls within the maximum allowed amount or not. This will not only saturate the workload of this authority, but it will also force police to persecute and detain consumers, many of whom are young people, citizens of a society which views its legal system as quite useless.

On average around 75% of crime goes unreported, and of those who have reported crime, 68% expressed dissatisfaction with the Public Ministry.⁴ If they are arrested and treated as criminals, these people will have difficulty trusting the authorities, with the resulting weakening of the relationship between the State and society. Which means that in order to be consistent with the recognition of the legal category of consumer and for a better distribution of legal system efforts, ideally there should exist legal ways of accessing drugs.

Human Rights and drugs consumers

The law includes obvious risks with respect to the rights and responsibilities of consumers. Although it is possible to consider the recognition of the consumer legal category a step forward, especially as “the Public Ministry will not exert penal action... against those with drug dependency or consumers who possess some of the drugs that appear in the table in equal or lesser quantity to the limits stated for their strict personal consumption and not within the places that appear in section ii of article 475⁵ of this law...” (Art. 478 of the LGS) this progress is limited, as the law only considers a consumer to be someone who “consumes or uses narcotics or psy-

Positive aspects of the new law

- The law recognises and distinguishes between user, drug addict and dealer, which opens a door to future development of the rights of consumers, whether they are addicts or not.
- Allows the possibility of initiating a public debate on individual rights and limits of the State on the subject of freedom of personal choice and of consumer rights
- Includes harm reduction as a State policy, which signifies the possibility of demanding increased resources for this policy on a national level;
- Preserves the traditional use of certain drugs by the country's indigenous peoples.

Negative aspects of the new law

- It lacks an integral approach for dealing with the demand and supply of drugs as a cultural and health phenomenon as much a criminal and market one.
- It installs encouragement to crime, as it allows undercover police to simulate buying drugs in order to incriminate traffickers.
- It does not resolve the intrinsic illegality of the consumer as it does not consider a safe and legal way for people to access the drugs they are allowed to possess.
- It ignores real police capacity to confront the economic violence of drug trafficking and exposes more police to their capacity of corruption and co-option.
- It criminalizes and gives hard-line penalties to consumers caught and brought before the authorities for crimes which are inherent to the act of consumption.
- It establishes disproportionate prison sentences for those who enter the illegal drug market due to lack of economic opportunity, which signifies an obvious risk for the most vulnerable layers of the community such as peasants, young people and women.

chotropics and who does not present signs or symptoms of dependency”, whilst it considers “drug dependent” any person who presents some sign or symptom of dependency” (Arts. 192 bis and 473 of the LGS).

In other words, in order to officially declare any consumer “drug dependent” it will suffice to determine one symptom of dependency, going against the established norms of medical diagnosis used worldwide. These norms advise establishing a group of symptoms to diagnose dependency (DSM-IV) or dependency syndrome (CIE-10).⁶ Which means that, as well as labelling many consumers “drug addicts”, they would be legalizing diagnosis without scientific support.

Likewise, by increasing the penalties, there is an increased risk of extortion for “growing” and/or carrying quantities of drugs superior to those established in the possession table.

Contrary to global trends, whose legislative guidelines aim to decriminalize drug consumption, in Mexico’s case the law against small-scale drug dealing proposes that drug users who exceed the quantities established in the “Guideline Table of Maximum Quantities for Personal and Immediate Consumption” (Art. 479 of the LGS, see Annex 1) be treated as criminals. Also it does not oblige the authority to prove that the carried drug was for supply and not for consumption.

In this sense, it is very worrying that the punishment for consumers who carry a larger quantity than that established in the table is 10 to 36 months of prison even “when because of the circumstances of the event the drug can not be considered destined for marketing or supplying, even for free” (Art. 477 of the LGS), as this legalizes the criminalization of consumers.

To this incongruity can be added the fact that, although referring to the same actions, the reform to the Federal Penal Code (art. 195bis) proposes different sentences to

those established in the General Health law (LGS).

With regards to Human Rights this law does not resolve the legal ambiguity of consumers:

- Even when the legal category of “consumer” is established, the possibility of getting a criminal record remains, which implies the increased possibility of professional and social discrimination.
- Involuntary treatment is made legal as the law decrees that “on the third report from the Public Ministry treatment for the drug addict becomes mandatory” (Art 193bis of the LGS); as it is for incarcerated “drug addicts”, as “for the concession of the conditional sentence or the benefit of parole when they initiate proceedings, anything related to the drug addiction will not be considered a criminal record, but the prisoner will be obliged anyway to undergo the medical treatment appropriate for their rehabilitation, under the surveillance of the authority in charge” (Art. 199 of the CPF).

In this context, it is easy to suppose that many consumers with dependency problems will be arrested and imprisoned and that, in order to obtain conditional release and bail, will be under duress to receive treatment; which goes against the medical principles which establish voluntary care as the basic requisite of any treatment, as well as being injurious to the rights of consumers. So it is ironic that for consumers in prison their drug addiction will not be considered a motive for bad conduct, when it is precisely because of their dependency that many drug users are and will continue to be found carrying larger quantities of drugs than the maximum doses established in the new law.

But what is more, having no legal alternative to obtaining drugs other than by means of those who commit a crime by selling them, the law will force consumers to expose themselves to the criminal world in two ways:

GUIDELINE TABLE OF MAXIMUM QUANTITIES FOR PERSONAL AND IMMEDIATE CONSUMPTION		
Narcotic	Maximum amount for personal and immediate use	
Opium	2 gr.	
Diacetylmorphine or Heroin	50 mg.	
Cannabis Sativa, Indica or Marihuana	5 gr.	
Cocaine	500 mg.	
Lysergide (LSD)	0.015 mg.	
MDA Methylene dioxyamphetamine	Powder, granules or crystals	Tablets or capsules
	40 mg.	One unit weighing no more than 200 mg.
MDMA, 3,4 methylenedioxymethamphetamine	40 mg.	One unit weighing no more than 200 mg.
Methamphetamine	40 mg.	One unit weighing no more than 200 mg.

a) By buying an equal or lesser amount than the maximum established quantity with the aim of avoiding prison if they are arrested, which will force them to frequent criminals; or,

b) By buying a larger quantity than the maximum permitted amount with the aim of avoiding regular contact with the criminals, which would end them up in prison if they are arrested. This decision is particularly relevant to regular users and/or addicts. According to preliminary figures from the 2008 National Addictions Survey there are approximately half a million addicts in the country.

This is particularly important considering that the drug sellers are criminals who weave complex relationships with users through tests of trust, by which they usually condition their clients to laws of complicity getting them to participate in criminal actions which distance them from the State institutions, forcing the user to deal with criminals each time the "maximum dose" is used up.

Another consequence for the rights of consumers is that it will perpetuate their criminalization. The reform in fact legalises this discrimination- a recurrent judicial practise which violates the rights of the individual in Mexico. In effect it is common practice for (real or alleged) consumers to be detained and searched without a legal warrant - as stated in Mexican law- so that they can then appear as "alleged drug traffickers" in the official statistics that justify the war against drugs.

An example of this police abuse is the statistics of people under arrest "for possession of drugs" in Mexico City, which show that of the 21.456 detainees brought before the Public Ministry, only 1.085 were charged (5.0%) and 465 imprisoned (2.2%),⁷ which creates suspicion regarding the legality of the police arrests. However, the chief of the Federal District's Estado Mayor Police throws light on the matter when he says that in the framework of the programme "Escuela y Sendero Seguro", on average 25 people per day are arrested for the possession or sale of drugs, which

shows that police activity focuses on capturing anyone in possession of drugs, whatever the quantity, as dealers use the strategy of passing themselves off as users before the ministerial authorities.⁸ In other words, it confirms that the police act with a logic based on classifying everyone who possesses drugs as a criminal, a practise that will very probably increase in the face of the absence of any regulating counter-balance in the amendments to the laws.

In Mexico, the war against drugs has become, amongst other things, a criminalization of the weakest human links in the chain in order to achieve the results that justify the war.

In the cities, these links are the young and/or poor users who by being doubly discriminated, for using drugs and/or for their appearance have become the authorities' favourite target. These authorities abuse their power in the framework of the war against drugs, including turning the former into the main pretext of much police activity which violates basic rights. An example of this is the case of the discotheque "New's Divine" where, with the motive of the alleged drugs and alcohol sales to minors, an illegal police raid was carried out resulting in the deaths of 6 youths and 3 federal preventative police.⁹

But on top of police discrimination, the new law does not take into account that many drug dealers are marginalised young people who see a concrete possibility of becoming rich in the world of crime, and that many of these youths are employed by other traffickers – nearly always adults – who use the young people's knowledge of the area's users or the neighbourhood they are dealing in, but who also use them as scapegoats in the case of any police action or operation they find themselves the object of. This will almost certainly mean the continued prevalence of the arrest of these young people over anyone else involved.

The new law does not either take into account that the imposition of quantities unconnected to the internal drugs market will have a greater effect on marginalised users than any others. The clearest example is the marijuana market – the largest in Mexico due to the number of consumers- where most of the sales are not usually done in measures of weight but in measures such as "velas", "huatos" and "bolsas", whose weight is often superior to that established in the new regulations; whilst only those users with superior purchasing power buy in grams or ounces, or have home deliveries, thus minimizing their risks.

BENEFITS

In spite of all these considerations, CUIHD (Collective for an Integral Drug Policy) does not rule out the possibility that, with the general understanding that the law allows, for all intents and purposes, the legal possession of drugs in certain circumstances, users of these will contribute to create positive pressure on the Justice system in Mexico by defending and practicing their civil and human rights. In which case, the daily practice of this law will indeed facilitate a new relationship between users and society and its police and legal institutions. A relationship in which rationality and praxis of citizens' rights, as well as imposing limits to State authority over individuals on the subject of illegal drugs, will benefit social coexistence as a whole.

NOTES

1. The authors are members of the Collective for an integral drug policy (CUPIHD).
2. During the legislative process the Chamber of Senators introduced amendments to the president's original bill, essentially to make the quantities of drugs initially proposed as a parameter for distinguishing between consumers and dealers more realistic; but, as we will see further on, such changes do not in any way resolve certain problems that are intrinsic to this legal formula. Also, this same House eliminated obligatory rehabilitation treatment for all consumers upon establishing that such a law would only be applicable to users considered 'addicts'. This perhaps is the reason for which in Mexico this law has been thought of as the "decriminalisation" of drug use.
3. Although the law came into effect the day after its publication in the Official Journal of the Federation (August 20 2009), it should be pointed out that both the federation and its institutions are expecting it to take three years "to carry out the necessary measures, depending on the case, for due compliance of the law's functions
http://dof.gob.mx/nota_detalle.php?codigo=5106093&fecha=20/08/2009
4. ONU and ICESI (2008), *International Crime Victims Survey. ENICRIV-2004*, Mexico, ICESI. Available at:
http://www.icesi.org.mx/documentos/encuestas/encuestasNacionales/encuesta_internacional_sobre_criminalidad_y_victimizacion.pdf
5. Places which the law is referring to are: education, welfare, police or prison centres or within a 300 metre radius of them.
6. The Diagnostic and Statistical Manual of Mental Disorders (DSM) is the American Psychiatric Association's suggested method, whilst the International Classification of Diseases (CDI) is that of the World Health Organisation (WHO); the number refers to the version. In Mexico, the first method is the most commonly used by psychiatrists and drug addiction rehabilitation centres.
7. Ministry of Public Security for the Federal District (2008), *Analysis of people arrested for the possession of drugs (small-scale drug dealing) 2005, 2006 and 2007*, Mexico, SSPDF.
8. "DF: 25 alleged small-scale drug dealers are caught per day outside schools" (23-06-2009) *La Jornada en línea*, Mexico. Available at:
<http://www.jornada.unam.mx/ultimas/2009/06/23/df-reportan-que-al-dia-detienen-a-25-personas-con-drogas-afuera-de-escuelas>
9. The Federal District's Human Rights Commission (CDHDF) (2008) *Special report on violations to Human rights in the News Divine Case* CDHDF. Available at:
http://directorio.cd hdf.org.mx/informes/informe_news_divine.pdf

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Drug Law Reform Project

The project in which a number of Latin American judicial experts and legislators participate, aims to promote more humane, balanced, and effective drug laws. It was created with the realization that after decades of the same drug policy the expanding drug markets did not decline, and instead have led to human rights violations, a crisis in the judicial and penitentiary systems, the consolidation of organized crime, and the marginalization of drug users who are pushed out of reach of the health care systems. It's time for an honest discussion on drug policy strategy, aiming at significant changes in both legislation and implementation.

The project seeks to help shape the policy debate incorporating human rights and harm reduction perspectives into the drug policy debate and stimulating the debate about appropriate legislative reforms by pointing out good practices and lessons learned in areas such as proportionality of sentences, prison reform, and the status of the coca leaf in the international conventions. In addition to coordinating a series of informal drug policy dialogues and workshops in the region, our research team will conduct investigations of anti-drug legislation and the prison situation in seven key countries: Argentina, Brazil, Bolivia, Peru, Ecuador, Colombia and Mexico. We aim to see progress in drug policy reforms in Latin America and increased public support of the need for such reforms.



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