

Drug legislation and the prison situation in Mexico

Ana Paula Hernández

Ana Paula Hernández, sociologist, has worked for more than 12 years in the area of human rights. She worked for six-and-a-half years with the Centro de Derechos Humanos Miguel Agustín Pro Juárez in Mexico City, and for four years she served as deputy director of the Centro de Derechos Humanos de la Montaña 'Tlachinollan.' She has been a consultant for the Office in Mexico of the United Nations High Commissioner for Human Rights, the Ford Foundation, and the Open Society Institute. For the last two years she has been a consultant with the Fundación Angélica. She is also the founder of and works with the Colectivo por una Política Integral hacia las Drogas (CUPIHD).

Introduction

Mexico is currently undergoing one of the worst crises in its history in terms of violence and insecurity. This crisis is directly related to the strengthening of organized crime in Mexico associated with drug trafficking, the divisions within the leading drug trafficking cartels, and their diversification. All this has resulted in a bloody struggle to control the key markets for the trafficking routes. The response of the administration of President Felipe Calderón has been a "war on organized crime" with two key elements: the growing use of the armed forces in public security tasks, and legal reforms aimed at more effectively fighting organized crime and, in particular, those involved in the trafficking, commerce, and supply of drugs.

The most visible cost of this war is seen in the unacceptable levels of violence in the country. Yet there are other costs too, such as the number and profile of people incarcerated as a result of drug legislation. The fact that fighting drugs is considered a national security issue has led to enhanced penalties, has modified the procedures so as to give greater discretion to the police, prosecutors, and judges, and has allowed for setbacks in the recognition of fundamental due process rights. Nonetheless, a large number of persons imprisoned for drug-related offenses do not fit within the category of large-scale trafficker, and have not even committed offenses related to the commerce, production, supply, or trafficking of drugs; many of them are in prison for simple possession of minor amounts of some drug, mainly marijuana, followed by cocaine. This document analyzes the relationship between drug legislation and the prison situation in Mexico.

Historical development of Mexico's drug legislation

Mexico's drug strategy is tied to the prohibitionist approach that has marked the global anti-drug effort since the early 20th century. Whereas initially the emphasis was on fighting and criminalizing the planting, growing, and harvesting, in particular, of marijuana, in the late 1980s the emphasis became fighting and criminalizing drug production, trafficking, supply, and commerce. Since then there has been a clear increase in the penalties for this latter group of offenses.

In the 1920s, the prohibition on the import and export of drugs had the undesired effect of generating illegal trafficking in substances along the Mexico-U.S. border. In 1931, the Federal Regulation on Drug Addiction (Reglamento Federal de Toxicomanía) went into effect; it classified as a "toxicómano" one who habitually uses drugs without any therapeutic purpose. The 1940 reform to the Federal Criminal Code introduced a new regulation according to which "the vice-ridden person should be conceived of more as a patient who must be cared for and cured than as a true criminal who should suffer a penalty."

In 1947, the Federal Security Directorate (Dirección Federal de Seguridad) was established, with legal powers to become involved in drug-related matters. It was accompanied by reforms to the Federal Criminal Code that began a process of stiffening penalties for "crimes against health," as drug-related crimes are categorized in Mexico, that are still in effect today. In 1948, Mexico began the first national campaign for the eradication of illicit crops. Ever since, eradication has been a permanent program.

In 1961, Mexico participated in the meeting to draw up and adopt the United Nations Single Convention on Narcotic Drugs. In 1975, when Mexico ratified the Convention on Psychotropic Substances of 1971, it was the principal supplier of heroin and marijuana to the United States. New reforms were introduced to the Federal Criminal Code in 1978, in particular with regard to drug use and the treatment of "addicts," as the term 'adicto' came to replace toxicómano. Beginning in 1978, drug use, even in amounts for strictly personal use, was clearly criminalized, except in certain cases related to personal drug use by addicts. In particular in the case of cannabis, simple possession without intent to sell, commercialize, or traffic was punished by two to eight years in prison. In 1990, Mexico ratified the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

The reforms made to the Federal Criminal Code in 1994 account for a large part of Mexico's current drug legislation. One important change is that since 1994 controlled substances and the various offenses related to them are no longer dealt with in a single article. The penalties for

production, transport, trafficking, commerce, and supply were significantly increased to a minimum of ten years and a maximum of twenty-five years. Yet the penalty for planting, growing, and harvesting was reduced. Regarding drug use – in a significant change with respect to the earlier legislation – the law establishes that “No action shall be taken against one who, not being a drug addict, is found in possession of one of the narcotics indicated in Article 193, just once and in an amount that one may presume is for personal use,” and that “no penalty whatsoever shall be applied to a drug addict who possesses any of the narcotics indicated in Article 193 strictly for his or her personal use.”

In 1996, the Federal Organized Crime Law was adopted; it increased exponentially the penalties for any offense considered to be committed as part of organized crime (or

conspiracy, as defined in the law). This statute established the rule of ‘arraigo’ (a restraining order prohibiting a suspect or defendant from leaving the jurisdiction of the court while a criminal investigation is in process), which in 2008 was incorporated into the Mexican constitution. The rule of arraigo allows for the detention and deprivation of liberty of a person for up to 80 days, without any accusation or arrest warrant, and without having committed an offense in fraganti, merely on suspicion of having committed an offense related to organized crime.

The penalties and offenses established in the 1990s remain to this day, although as of August 21, 2009, they only apply to large-scale drug trafficking cases.

Institutional structure of the drug control system

Mexico does not have a single office entrusted with conducting the country’s counter-drug strategy. Responsibility is “distributed” among various ministries – the Ministries of Public Security and Defense – and in turn distributed among various secretariats and the federal Ministry of Health. As Mexico has a federal system, most of the administrative arrangements are also replicated at the three levels of government: federal, state, and municipal.

The security and defense strategy is entrusted to four main agencies: the Ministry of Public Security (SSP), the Ministry of the Navy (SEMAR), the Ministry of Defense (SEDENA), and the Office of the Attorney General of the Republic (PGR), with all four under the federal Executive Branch.

The operation of the system is complex due, among other factors, to the enormous bureaucracy involved in the implementation and enforcement of the legislation, which clearly has repercussions on the prison situation. Moreover, the drug legislation itself is problematic insofar as the laws establish lists of grave offenses that require pre-trial detention. In the Federal District, the 2003 reforms led to an aggravation of penalties applicable to almost all offenses: while before there were 16 different forms of criminal conduct that were considered grave offenses, there are now 200. According to Article 194 of the Federal Code of Criminal Procedure, all drug-related offenses are considered grave, with the exception of the offense of planting, growing, or harvesting plants known as ‘enervantes’ (stimulants), where the objective is not narcotics production, supply, commerce, or trafficking, or their entry to or removal from the country. Accordingly, anyone accused of one of these crimes must remain in prison for the duration of the trial (pre-trial detention), even if innocent. This situation is aggravated by corruption, bonuses provided to the police for having made more arrests, and quotas of indictments imposed by top-level prosecutorial authorities on the district attorneys.

Historical development of drug legislation in Mexico

- **1916** - Production, commerce, and use made illegal. Establishment of the General Public Health Board (Consejo de la Salubridad General).
- **1923** - Prohibition on the import of narcotics.
- **1927** - Prohibition on the export of heroin and marijuana. Beginning of illegal cross-border traffic.
- **1931** - Drafting of Title Seven of the Federal Criminal Code of Mexico, which regulates crimes against health.
- **1940** - Reform of the Federal Criminal Code. Title Seven includes the chapter “On the possession of and trafficking in stimulants.”
- **1947** - Federal Security Directorate (Dirección Federal de Seguridad) is created. Tougher penalties for crimes against health.
- **1948** - “Great Campaign” to eradicate illicit crops.
- **1978** - Criminalization of drug use.
- **1984** - General Health Law.
- **1994** - Increased penalties for drug production, transport, trafficking, commerce, or supply, and their entry to or removal from the country. Reduction in penalties for growing.
- **1996** - Federal Organized Crime Law.
- **2009** - The Law against Small-Scale Drug Dealing (Ley de narcomenudeo).

Table 1 – Drug legislation until August 2009

Possession or transport not for commerce or supply	Possession for commerce or supply	Commerce, supply, transport, production, traffic, entry to or removal from the country	Planting, growing or harvesting
According to a table that determined the penalty by type of substance, amount, and whether first time or recidivist	5 to 15 years	10 to 25 years	One to six years (when accompanied by low level of education and extreme economic need) Otherwise, two to eight years.

source: Federal Criminal Code, 2009

Current drug legislation in Mexico

At present, Article 193 of the Federal Criminal Code establishes that ‘narcóticos’ are considered “narcotic, psychotropic, and other substances or plants as determined by the General Health Act and international treaties in force in Mexico.”

Prior to August 21, 2009, criminalization was as described in Table 1.

On August 21, 2009, a decree came into force that reforms the General Health Law, the Federal Criminal Code, and the Federal Code of Criminal Procedure. Following its approval, the decree has been known in common parlance as the ‘Ley de narcomenudeo,’ or the Law against Small-Scale

Drug Dealing, as its main objective is precisely to combat the retail mode of trading in drugs.

The decree determines maximum quantities of the various drugs permitted for personal use, as illustrated in Table 2 using the amounts in Article 479 of the General Health Act.

Based on these amounts, a distinction is made between large-scale drug traffickers (‘narcomayorista’) and small-scale, street-level dealers (‘narcomenudista’). The first is when the amount is equal to or greater than the amounts provided for in the table multiplied by 1,000, the second, when the amount is less than the amounts in the table, multiplied by 1,000.

Table 2

Table of maximum doses for personal and immediate consumption		
Substance	Maximum dose for personal and immediate consumption	
Opium	2 grams	
Diacetylmorphine or heroin	50 milligrams	
Cannabis sativa, cannabis indica, or marijuana	5 grams	
Cocaine	500 milligrams	
Lysergide (LSD)	0.0015 milligrams	
MDA Methylenedioxyamphetamine	Powder, granulate or crystal	Tablets or capsules
	40 milligrams	One unit
MDMA3,4-Methylenedioxymethamphetamine	40 milligrams	One unit
Methamphetamine	40 milligrams	One unit

Source: General Health Act, 2010

The decree establishes the scope of authority of the various levels of government in the drug control effort. Previously, only federal authorities had jurisdiction over these offenses, but the new law intends that state and municipal authorities also participate actively. According to Article 474 of the General Health Act, in those cases of small-scale dealing that lack sufficient elements to be considered as organized crime, “the authorities in charge of public security, prosecution, and administration of justice, as well as enforcement of sanctions of the states, shall take cognizance of and resolve the offenses and shall enforce the sanctions and security measures.” In other words, the state and municipal authorities will detain, investigate, prosecute, and enforce the sanctions. The federal authorities will continue to be in charge of all aspects related to large-scale drug-trafficking and cases of organized crime.

With the reforms in place, the penalties listed in Table 3 apply from now on.

At the same time, the Health Act now defines (at the beginning of the new chapter “Offenses against health in the modality of small-scale dealing”) what is understood by such conduct:

Possession: physical holding of narcotics or when they are nearby and available to the person.

Supply: physical transmission, directly or indirectly, by any means, of the possession of narcotics.

Commerce: sale, purchase, procurement, or conveyance of a narcotic.

Furthermore, in Articles 192 and 473 of the General Health Act, the decree defines and differentiates user and addict as follows:

Drug addict: any person who shows some sign or symptom of dependency on narcotic drugs or psychotropic substances.

User: any person who consumes or uses narcotic drugs or

psychotropic substances and who does not show signs or symptoms of dependency.

Analysis of the law against small-scale drug dealing

While this law appears to decriminalize personal use, it is consistent with the strategy of the Mexican government of continuing to emphasize criminalization and incarceration as the main solution to the drug problem in Mexico. Nonetheless it has some positive features, such as the distinctions it draws between the above-noted concepts. It also “allows” minimal quantities for personal use, and recognizes and permits the use of peyote and hallucinogenic mushrooms for the ceremonial and cultural uses of indigenous peoples.

Its negative aspects and main risks are found in the new way of prosecuting drug offenses and meting out penalties. If a person has in his or her possession the amount established for personal use, then the prosecutorial authorities “shall not bring a criminal action against the offense.” What this wording indicates is that use continues to constitute an offense. The difference is that no criminal action will be brought, no accusation will be brought, and charges will not be filed before a judge, if the amounts are those permitted in the Act. Nonetheless, given the way the criminal justice system works in Mexico, a person in possession of such amounts may still be detained by the preventive or prosecutorial police or taken before authorities of the Public Ministry, which have 48 hours to investigate and determine whether to file charges. This user will be treated as an “offender” until the Public Ministry releases him.

The distinction between user and addict is important, though not very clear as it bases the difference on the drug addict showing “some symptom of dependency.” With this, the risk exists of a user being labeled an addict and being required to undergo the treatment established by law. In addition, the law may result in greater persecution of use. For simple possession of amounts greater than those stipulated by law, not for commerce or supply, a person can

Table 3: Drugs legislation as of August 21, 2009

	Possession not for commerce or supply	Possession for commerce or supply	Commerce, supply, transport, production, traffic	Planting, growing, or harvesting
Small-scale dealing (narcomenu-deo)	10 months to 3 years	3 to 6 years	4 to 8 years	Kept at one to six years (when low level of education and extreme economic need) Otherwise, two to eight years
Large-scale trafficking (narco-mayoreo)	4 to 7 years and 6 months	5 to 15 years	10 to 25 years	

Source: Federal Criminal Code, 2009

receive ten months to three years in prison. Given that the amounts established are so small, it is highly likely that a user would carry amounts greater than those allowed by law. In addition, those amounts do not correspond to the reality of the drug market in the streets, given that a user can only possess half a gram of cocaine, yet it is sold in the street by the gram.

Another problem is that in Mexico the biggest corruption problem among the police forces and the judicial sector is at the state and municipal levels. Yet it is precisely the state and municipal administrations that are being entrusted with implementing the new legislation on street-level drug dealing.

The prison situation in Mexico

In Mexico, the Federal Penitentiary System is under the direct authority of the Ministry of Public Security, which has a Vice-Ministry for the Federal Penitentiary System en-

trusted with administering the federal prisons. A similar arrangement is reproduced at the state level, where an Office of Deputy Secretary of the State Penitentiary System or a General Bureau of Prevention and Social Readaptation exists in each state under the state's Secretariat of Public Security. These offices are in charge of creating, organizing, and administering the Centers for Social Readaptation in each state. There is a 'jefe de ejecución,' or court officer in charge of the enforcement of judgments, under the judicial branch, who is responsible for ensuring the legality of the enforcement of criminal sanctions, and the adequate implementation of the penitentiary regime, in keeping with the federal (or, as the case may be, state) Criminal Sanctions Enforcement Act.

According to official data from the Ministry of Public Security, in the last 11 years the prison population in Mexico has evolved as illustrated in Table 4.

As Table 4 makes clear, a significant increase in the total prison population occurred during the past decade. In 2008, there were approximately 90,000 more persons in

Table 4 - Mexico's prison population: persons convicted and persons facing trial, 1998-2009

Year	Existing prisons	Total spaces available	Total prison population	Total population in pre-trial detention	Total population convicted
1998	445	103,916	128,902	54,403	74,499
1999	447	108,808	142,800	61,424	81,376
2000	444	121,135	154,765	63,724	91,041
2001	446	134,567	165,687	71,501	94,186
2002	448	140,415	172,888	73,685	99,203
2003	449	147,809	182,530	80,134	102,396
2004	454	154,825	193,889	80,661	113,228
2005	455	159,628	205,821	87,844	117,977
2006	454	164,929	210,140	89,601	120,539
2007	445	169,970	212,841	88,136	124,705
2008	438	171,437	219,754	88,935	130,819
2009	433	170,924	227,021	91,128	133,893

Source: Ministry of Public Security

Table 5 - Persons detained for crimes against health in 2008

	Production	Supply	Commerce	Use	Trafficking	Transport	Possession	Other	Total
Chihuahua	10	4	31	639	5	96	697	492	1,974
Federal District	0	0	4	31	0	0	2,083	5,886	8,004
Jalisco	14	8	747	13,589	1	12	1,473	636	16,480
TOTAL (all 32 states)	90	114	3,324	31,112	40	471	24,212	16,198	75,561

Source: Legal and International Affairs Office, Office of the Attorney General of the Republic

prison than in 1998. In places such as the Federal District, the prison population has increased 84 percent in the last seven years.¹ According to King's College London, Mexico has the sixth largest prison population, trailing only the United States, China, Russia, Brazil, and India.² Some 40 percent of the incarcerated population does not have a verdict, due largely to the excessive use of pre-trial detention.

According to research by Guillermo Zepeda, an analyst of the Mexican criminal justice system, in 2007 the average daily cost per prisoner was the equivalent of \$10 USD. Considering that in that year there were more than 212,000 prisoners, the approximate daily cost would be in excess of \$2 million USD, or nearly \$775 million USD annually.³

The Mexican government could argue that the cost is necessary in the logic of fighting drugs and organized crime. Yet an analysis of the prison population based on the offense committed shows that a large number of those in prison are persons whose dangerousness and role in drug trafficking is minimal. The Centro de Investigaciones y Docencia Económica (CIDE) has undertaken surveys of the prison population in the Federal District and the state of México since 2002; together these account for 28 percent of the prison population nationally. Though these figures are not representative of the whole country, they provide important data that can be compared to other states of Mexico:

- The system of imparting justice results mainly in the arrest of the poor and the marginal.
- Approximately two of every three prisoners are from households with major unmet needs.
- Some 40 percent of the prisoners are 18 to 30 years old.
- 21 percent of the prisoners never went to school or never finished primary school.
- Approximately 40 percent of the prisoners are behind bars for petty thievery or street-level drug dealing.
- In 2009, 50 percent of the prisoners locked up for selling drugs were detained for possession of merchandise with a value of \$100 USD or less, and 25 percent for merchandise with a value of \$18 USD or less. In 2002, this situation was even more serious: 67 percent of those imprisoned for drug trafficking were selling drugs whose value was less than \$70 USD.
- There was a worrisome increase in the proportion of recidivists from 2005 to 2009, during which time this percentage climbed 17 percent.⁴

The trend in Mexico is to fill the prisons with minor offenders where, according to Zepeda, “the sanction costs society more than the harm caused by the person convicted

or accused.”⁵ The new legislation on small-scale trafficking could accentuate this trend, and more minor offenders, street-level dealers, or consumers who are not criminals will be imprisoned, further aggravating the situation of prison overpopulation, another serious problem of the Mexican prisons.

Prison population for crimes against health in Mexico

Based on official figures, the total prison population in 2008 was 219,752 persons, approximately 20,000 of whom were incarcerated for crimes against health. To illustrate the situation, we have selected three emblematic states: Chihuahua, along the U.S. border, and one of the hardest hit by drug trafficking, including Ciudad Juárez, considered the most violent city in the world; Jalisco, the state with the largest number of persons detained for crimes against health; and the Federal District, as it is the largest federal entity in the country, with a population of more than 8 million.

One major limitation for the objectives of this research project is the inconsistency in the information provided by the authorities, which means that one cannot consider it entirely reliable. There is no clarity or consistency in the classification of the specific criminal conduct, since in some records arrests are based on use (not criminalized in the Federal Criminal Code) and in others they are based on possession. The data presented by the Federal District are particularly inconsistent.

Based on the data provided, in 2008 not a single person was detained in the Federal District for transport, supply, production, or trafficking. Nonetheless, in 2008 there are 5,886 classified under “other,” which once again calls into question how the authorities are classifying crimes against health.

The data provided indicate that the vast majority of persons detained for crimes against health are men, at least for the crimes for which demographic data was provided: planting, growing, and harvesting, and possession.

The inefficiency or lack of investigation by the country's prosecutorial authorities often leads to a large number of persons being arrested before the authorities have pulled together the necessary evidence to be able to file charges or indict and convict them. This has been a major criticism leveled by various sectors against the Calderón administration. Despite the governmental discourse with respect to persons detained in the drug control effort, relatively few of those detained actually end up in prison, and fewer still are convicted. As observed in Table 6, the state of Jalisco has the most alarming data in this regard: Of 43,153 persons detained for crimes against health during the administration of President Calderón, only 3,500 have had charges

filed against them and only 2,173 have been convicted. To find out what explains the alarming number of arrests on such charges, one would need additional information; however, what is clear both in Jalisco and in the Federal District is that of the total number of detainees, less than 10 percent have been convicted.

The data in Table 5 also show that those who have been most pursued and detained are not drug traffickers or dealers, but the possessors and users who have no intent to engage in commerce or supply. These data help clarify the reality of Mexico's current drug war strategy in Mexico:

- The offense of growing, harvesting, and planting is hardly prosecuted in Mexico.

- The offense most prosecuted continues to be possession, with the number of persons detained much greater than those detained for other offenses. Even considering the inconsistency and confusion in the way in which use and simple possession are defined in the law, it is clear that simple possession accounts for the largest number of detainees and persons charged in the last ten years.

Verdicts in crimes against health

Tables 7 and 8 illustrate the situation with regard to verdicts in 1998 and 2008.

Table 6 – Total detentions for crimes against health during the Calderón administration (2006-2009)

State	Persons arrested	Charged	Convicted
Chihuahua	5,856	2,942	1,040
Federal District	27,366	2,313	1,797
Jalisco	43,153	3,500	2,173
TOTAL (all 32 states not shown here)	226,667	51,282	33,500

Source: Legal and International Affairs Office, Office of the Attorney General of the Republic

Table 7 – Drug verdicts 1998

State	Total	Convictions	Acquittals
Chihuahua	1,023	922	101
Federal District	241	221	20
Jalisco	734	634	100
Total (the 32 states)	9,307	8,313	994

Table 8 – Drug Verdicts 2008

State	Total	Convictions	Acquittals
Chihuahua	820	762	58
Federal District	1,028	851	177
Jalisco	1,226	1,128	98
Total (the 32 states)	14,532	12,228	2,304

Source: INEGI

The Federal District has 18 federal district courts for criminal matters, Chihuahua has ten, and Jalisco has nine. Not all of these courts provided the information requested, thus the information presented next is only suggestive of how verdicts play out in crimes against health. In addition, most of the courts did not provide information on 1998, stating it was non-existent, and in several cases indicating that this was because the court itself did not exist at that time. For this reason, insufficient information was available for this period to make an analysis.

Eight courts of the Federal District, four courts of Jalisco, and three courts of Chihuahua provided more detailed information on verdicts in crimes against health, indicating the article and section of the Federal Criminal Code that contains the offense at issue in the criminal case. Only seven courts indicated the specific offense (possession, supply, etc.) as well as the drug involved. All the courts indicated the penalty or sanction, in years and months, imposed for the offense committed.

We cannot say that the information provided by these courts is representative of all the courts in the country. Nonetheless, it does give us an idea of how verdicts were handed down in crimes against health in Mexico before the reform in the legislation on small-scale drug dealing in August 2009, and the data suggest patterns that should be researched in greater depth.

To get an idea of the number of verdicts for each offense, Table 9 presents detailed information provided by three courts, one from each state. Similarly, the sentence imposed for each offense is presented, in most cases, by these three courts.

In the case of the three courts, the possession of marijuana results in the largest number of verdicts. It is followed by possession of cocaine, possession of cocaine for sale or commerce, and possession of marijuana for sale or commerce. In terms of possession for use, the main drug involved is marijuana, whereas in terms of sale or commerce, it is cocaine. Most of the convictions in the three courts are for possession or sale. There are no convictions for trafficking and very few for supplying, transporting, or bringing drugs into or removing them from the country.

In almost every case, the offender received the minimum sentence. In most cases, in these three courts as well as in the others that provided detailed information, the sentence for possession is from ten months to one year and four months, the sentence for possession with intent to sell is five years, the same as for sale or commerce, and the sentence for supply, transport, removal from or bringing into the country is ten years; these are the minimum sentences for all of these offenses. The longest sentence reported is 17 years.

The fact that in most cases the minimum sentence is being imposed for drug-related offenses may reflect that the amounts involved were minor. This appears to indicate that most of the persons imprisoned in Mexico for drug-related crimes are users picked up for simple possession or street-level dealers of some drug. There are very few convictions for serious offenses such as supply, trafficking, bringing into or removing from the country, or transport, and similarly there are few convictions involving longer terms that would indicate larger amounts involved in the offense.

Women in prison – Although the prison population for crimes against health has remained more or less stable over the last ten years, accounting for approximately 10 percent of the total prison population, there has been a significant change in the involvement of women.⁶ Whereas before, most women in prison were there for robbery, in the last decade drug-related offenses became the main grounds for prosecuting women.

While only 15 percent of men in prison are there for drug-related crimes, for women the figure is approximately 48 percent. In the case of indigenous women, who account for 5 percent of all women incarcerated, 43 percent are in prison for drug-related offenses.⁷ Many of these women are in prison with very stiff and disproportionate penalties. Most of the women prisoners match the following profile: they are young, poor, illiterate or have little schooling, and almost all are single women who are their children's principal caretaker. In most cases these women do not have a prominent role in drug-trafficking networks. Many of them

My golden dream was to come to the city and buy seeds and plants to reproduce there. I was able to pull together 800 pesos; my cousins were here, they'd come to study.... One sunny day I came to buy a bus ticket and I never imagined that it was going to be a ticket for a life with no return, a crude life far from my loved ones.

I ran into a person I'd known my whole life, at my daughter's godparents' home.... He told me that they too were coming to the city, that why didn't I go with them, and they would give me the return ticket, if I helped them bring money ... they had a store.... I didn't hesitate. I told them that even if they didn't pay me, I would help them.... And we came.

We came and we reached Taxqueña ... and my comadre (the goddaughter's mother) told me: "comadre, as you don't have a telephone, no one has come for you." And then they told me to go with them to the airport. We reached the airport ... and, before I entered, they told me "federal police, stop ma'am." How was I going to stop, I felt everything was fine ... my comadre was carrying a bag ... the money wasn't on her person, it was in the bag, I was carrying the bag my comadre gave me, I was carrying the one my compadre (the goddaughter's father) gave me, I was carrying both bags....

When the federal judicial police told me to stop, I did not stop; I didn't know that he was speaking to me. My compadre told me – they were going up some stairs – and he told me "comadre, put your things there, they'll check it there, you'll catch up with us soon." And I put my things down and the policeman asked me "What are you carrying, ma'am." And I told him, "money." And he told me: "Why didn't you declare your valuables?" And I told him "the money isn't mine, it's theirs." And when I said that, they were already lost on the stairs.

When they took me to the police station at the airport, I felt I had fallen into a well. Faster than lightning a person came and told me "beggar bitch, you'll see, you'll be locked up for a fucking lot of years." You have on you what I never imagined. They opened one of the packages and there were brand new dollars; they open the packages and there was the morphine. Years later I found out that my compadre worked for a cartel. That day, the decoy for all the cargo to pass through was me. They needed to find someone as naïve as me for the cargo to go through; the belly of the plane was filled to capacity and everything went through, everything went through.

When you get to prison you feel that soon, soon you'll be out, because you're innocent, and I never got out.... I kept repeating that I was innocent. They sentenced me to 25 years, and thanks to a public defender, they reduced it to 12, and I was in for ten-and-a-half years.

Many of my fellow prisoners ... for example one case that wrenched my soul was that of doña Ame, who was from the Chiapas highlands; her only sin was to work in a home of drug-traffickers, washing their clothes.... And she ended up in prison for that, for being a woman, for working, for not knowing how to read or write, for being vulnerable.

Excerpt of an interview with Rosa Julia Leyva in January 2010. Rosa is from the state of Guerrero and spent more than ten years, from 1993 to 2004, in prison for the crime of transporting drugs.

Table 9 – Convictions and sentences for crimes against health 2008-2009

Offense	First District Court for the State of Chihuahua	Fourth District Court for Criminal Matters in the State of Jalisco	Second District Court in Federal Criminal Trials in Mexico City	Sentences
Possession of cocaine	6	25	11	10 months / 3 years 3 months
Possession of marijuana	19	45	5	10 months / 1 year 4 months
Possession of heroin	7	1		10 months
Possession of clonazepam	1	4	2	10 months
Possession of flunitrazepam			1	5 years 100 days
Possession of methamphetamine	1	5		1 year 9 months
Possession of crystal meth and marijuana		1		5 years 6 months
Possession of cocaine and marijuana		3	2	10 months / 5 years
Possession of psychotropic pills		3		3 years 9 months
Aggravated possession of narcotics (marijuana, cocaine, psychotropic pills, among others)		3		5 years 7 months
Possession of marijuana and free supply of the drug		1		2 years 6 months
Possession of cocaine for sale or commerce		24	10	5 years 100 days / 7 years 6 months / 11 years
Possession of marijuana for sale or commerce	13	22	1	5 years / 7 years / 13 years / 15 years
Possession of psychotropic pills for sale or commerce		3		5 years
Possession of methamphetamine for sale or commerce		4		2 years 9 months / 5 years / 10 years
Possession of heroin for sale		1		5 years
Possession of marijuana and cocaine for sale or commerce	5	1	3	5 years 10 months / 8 years 5 months
Possession of marijuana, cocaine and flunitrazepam for sale or commerce			1	5 years

Offense	First District Court for the State of Chihuahua	Fourth District Court for Criminal Matters in the State of Jalisco	Second District Court in Federal Criminal Trials in Mexico City	Sentences
Possession of marijuana, cocaine and methamphetamine for sale or commerce		2		6 years 1 month
Possession of cocaine, flunitrazepam, clonazepam and diazepam for sale or commerce		2	1	6 years 3 months
Possession of marijuana, free supply		1		2 years 6 months
Possession of marijuana for transport		1		5 years
Supply of cocaine		1	1	2 years 6 months / 13 years
Supply of marijuana		1	1	10 years 3 days / 15 years
Supply of crystal meth		1		10 years
Sale or commerce of cocaine		24	12	5 years / 11 years 10 months
Sale or commerce of marijuana		5	1	10 years / 11 years 10 months / 13 years 9 months
Sale or commerce of methamphetamine		3		5 years
Sale or commerce of methamphetamine and cocaine		1		5 years
Bringing heroin into the country			1	10 years
Bringing cocaine into the country			1	10 years 100 days
Removing cocaine from the country			1	10 years
Transporting marijuana	1	3	1	10 years 100 days / 13 years 9 months
Transporting methamphetamines		1		10 years
Planting marijuana	4			1 year
Growing marijuana		1		1 year
Furtherance of crimes against health by helping to make them possible		1		4 años

Source: Courts of Federal districts of Chihuahua and Jalisco

are behind bars for transporting or bringing drugs into the country, and others for bringing drugs into the prisons, often because their husbands or boyfriends asked them to do so.⁸ As they do not hold any important position in the trafficking networks, the women are just the last link in the chain.

Conclusions

The stiffening of penalties for drug-related offenses – or crimes against health – and the use of pre-trial detention are two major factors in the increase in the number of persons imprisoned in Mexico. Most of the prison population is made up of men. Although women account for just 5 percent of this population, about 50 percent of incarcerated women are behind bars for crimes against health.

Based on the available data, two situations stand out in Mexico. The first is that although the number of persons detained and imprisoned has been an indicator used by the government to show that its efforts to fight crime – especially organized crime – are working, there are hundreds of thousands of detentions that do not result in charges being filed and fewer still in convictions. These figures suggest that a large number of innocent people are being detained and also that there is a lack of professional investigations to produce the necessary evidence to allow judges to reach a guilty verdict. The second is that a large number of those who do end up in prison are hardly dangerous and that their role in drug

trafficking is relatively insignificant. The government's strategy to oppose organized crime appears to have as one of its results the criminalization of drug users, in most cases of less dangerous drugs, such as marijuana, and of small-scale dealers, mainly of cocaine and marijuana. At least in the Federal District and the State of México, according to CIDE, 40 percent of the prisoners are behind bars for petty thievery or street-level dealing; in 2009, 50 percent of those in prison for selling drugs were detained for merchandise worth US\$ 100 or less, and 25 percent for merchandise with a value of US\$ 18 or less. In other words, 75 percent had been detained with an extremely small amount of drugs.

Finally, the law against small-scale drug dealing approved in August 2009 will probably further increase the criminalization of consumers and small-scale drug dealers. Accordingly, drug legislation in Mexico has been useful, and apparently will continue to be useful, mainly to detain and imprison those whose dangerousness and role in drug-trafficking is minimal. This helps fill the prisons with users and small-scale criminals, contributing to overpopulation and overcrowding – serious problems in themselves – and investing considerable human and material resources that could be much better used fighting the corruption, inefficiency, and weaknesses of the institutions that prosecute and administer justice and provide public security in the country, as well as for evidence-based drug prevention and education programs.

NOTES

- 1 Centro de Investigación y Docencia Económica CIDE (2009), *Delincuencia, Marginalidad y Desempeño Institucional, Resultados de la tercera encuesta a población en reclusión e el Distrito Federal y El Estado de México*, México D.F.
- 2 Kings College of London (2009), *World Prison Brief*. http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_stats.php?area=all&category=wb_poptotal
- 3 Zepeda, Guillermo (2007), *El uso excesivo e irracional de la prisión preventiva en México*, Paper presented at the Institute for Legal Research, UNAM, Mexico City.
- 4 Centro de Investigación y Docencia Económica, CIDE (2009).
- 5 *Ibid.*
- 6 Interview with Elena Azaola, February 2010.
- 7 Azaola, Elena (2008), *Crimen, y Violencias en México*. Quito: FLACSO.
- 8 Interview with Elena Azaola, February 2010.



Mexico prison riot, AP/Reporters