

National Drug Board

Impact of the World Drug Problem in the exercise of Human Rights

Uruguayan contribution to the implementation of the resolution
"Contribution of the Human Rights Council
to the Special Session of the UN
Assembly the World Drug Problem 2016 "

responding to the drug problem
with a commitment to health, harmony and development

Report drafted by the National Drug Board and the Ministry of Foreign Affairs in collaboration with the National Human Rights Institution and Ombudsman, submitted to the Office of the High Commissioner on Human Rights of the United Nations in Geneva, Switzerland, 15 May 2015.

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I. Introduction

Uruguay has the honor of addressing the High Commissioner for Human Rights (OHCHR) to express its position in response to the inquiry made by Post 0204 "Implementation of the resolution" Contribution of the Human Rights Council to the Special Session of the General Assembly on the World Drug Problem 2016 ", referring to the resolution of the Human Rights Council A/HRC/28/L.22 on the contribution of the Human Rights Council to the special session of the General Assembly on the world drug problem, to be held in 2016, adopted by the Council on Human Rights on April 3, 2015.

We reaffirm the importance of ensuring the human rights system, stressing that human rights are universal, intrinsic, interdependent and inalienable, and that is the obligation of States to ensure their priority over other international agreements emphasizing the Drug Control Conventions. In this regard, Uruguay ratifies its statement from the 57th session of the Commission on Narcotic Drugs in Vienna in March 2014, in that we advocate for and encourage an integrated and balanced approach to drug policy. As well as their proper alignment with international human rights instruments, as stated in Resolution 51/12 of 2008 which was sponsored by our country.

Uruguay has led the critical and realistic reflection on the negative impacts on human rights brought about by the implementation of drug policies agreed at international level in the last 50 years.

Uruguay is concerned with the unexpected effects of these policies, which have deepened health, social and cultural vulnerability issues, coexistence problems, increased violence associated with drug trafficking and related crimes and the expansion of related crimes such as arms and human trafficking, among others. These situations are forms of violation of fundamental rights and require clear answers from the international community.

Our country believes that it is the responsibility of States to ensure the rule of law, democratic institutions and fundamental rights, and to review international instruments when their application generates restrictions and even aggravated damages to their communities. We acknowledge the importance of international collaborative effort, common and shared responsibility and cooperation among States in implementing drug policy.

Uruguay proposes the adoption of guidelines and mechanisms to promote, protect and respect human rights in the context of drug policy.

II. Acknowledgment of the importance of Human Rights in the context of drug policies nationwide

Uruguay has strongly promoted the full enjoyment of Human Rights in relation to the global drug problem, appealing to the consistency between the System of Human Rights and drug policies. In this regard Uruguay sponsored the Declaration on "Adequate Integration of United Nations human rights instruments and international Drug Control programs" (resolution 51/12, 2008) at the 51st Session of the Commission on Narcotic Drugs in Vienna in March 2008,

The 2010 Hemispheric Drug Strategy of the Inter-American Commission for Drug Abuse Control (CICAD) of the Organization of American States (OAS) adopted among its principles the "Full respect for international law and the Universal Declaration of Human Rights, observing the principles of sovereignty and territorial integrity of States, non-intervention in the internal affairs of States, fundamental freedoms and the inherent dignity of persons and equal rights and mutual respect among States. "

In the Declaration of Antigua in June 2013, the 43rd OAS General Assembly declared "That it is essential that the Hemisphere continue to advance in a coordinated manner in the search for effective solutions to the world drug problem with a comprehensive integrated, strengthened, balanced and multidisciplinary approach with full respect for human rights and fundamental freedoms that fully incorporates public health, education, and social inclusion, together with preventive actions to address transnational organized crime, and the strengthening of democratic institutions, as well as the promotion of local and national development. That drug policies must have a crosscutting human rights perspective consistent with the obligations of parties under international law, including the American Convention on Human Rights and other applicable human rights instruments, as well as the American Declaration of the Rights and Duties of Man, in order to promote and achieve, inter alia, the well-being of individuals, their social inclusion, access to justice and health. "

Subsequently, the OAS General Assembly of June 2014 decided to "reaffirm that drug policies must be implemented with full respect for national and international law, including due process and full respect for human rights, comprising their obligations regarding civil, political, economic, social, and cultural rights, as well as for democratic institutions, so as to promote and preserve the rule of law and democratic freedoms and values in the Hemisphere. To reaffirm the commitment to continue advancing in a coordinated manner in the search for effective solutions to the world drug problem with a comprehensive, balanced, and multidisciplinary approach with full respect for human rights and fundamental freedoms, which are directly related to the right of people to live with dignity, and so their purpose is to promote and secure the well-being of people, their social inclusion, and their access to justice, education, and health, together with preventive actions to address transnational organized crime and the strengthening of democratic institutions, as well as promotion of local and national development. To urge member states to consider policies that promote adequate social and health care for incarcerated persons, including those involved in drug abuse. To invite the Inter-American Commission on Human Rights (IACHR) to continue promoting respect for and the defense of human rights by supporting the efforts of member states that so request to comply appropriately with their international human rights commitments when developing and executing measures to address the world drug problem, and to invite it to pay attention to the possible negative effects on human rights".

The States Parties to the UNASUR under the "Statute of the South American Council on the World Drug Problem" approved in Quito, Ecuador in April 2010 agreed to include among its principles "the respect for human rights and fundamental freedoms".

The Committee on the Rights of the Child (CRC/C/URY/CO/3 to 5 March 2015) states: "The Committee recommends that the State party address the prevalence of substance abuse, including tobacco and alcohol abuse, provide

children and adolescents with objective information in this respect, and develop accessible, tailored and youth-friendly drug dependence treatment and harm reduction services”.

At the aforementioned 43rd General Assembly of the Organization of American States (OAS) the first roundtable organized by the Inter-American Commission of Women (CIM) to discuss the impact of drug micro-trafficking networks in vulnerable populations, particularly focused on women prisoners for committing crimes related to micro-trafficking and who were subject to the application of disproportionate penalties with respect to the offense committed. Uruguay calls for the revision of the privilege granted to the imprisonment of other penalties, particularly in the case of women, and especially those who are in charge of young children and are their family's main support. Uruguay co-organized two major roundtables via its Permanent Mission to the OAS and in coordination with CIM/OAS, the International Drug Policy Consortium (IDPC), and the Washington Office on Latin America (WOLA), under the slogan "Women, drug policy and incarceration in the Americas." At the events, the increased participation of women in all spheres of the illicit drug market, the dynamics of their involvement and the urgent need to reflect and rework a hemispheric approach to this problem from the perspective of human rights protection and gender equality were analyzed.

Similarly, our country remains committed to the issue and integrates the working group for the project "Women, Drug Policy and Incarceration in the Americas: Promoting more humane and effective policies" sponsored by the International Consortium on Drug Policy (IDPC), the Washington Office on Latin America (WOLA) and Dejusticia, with the support of the Inter-American Commission of Women (CIM) of the Organization of American States. The Group aims to address distinct aspects of the participation of women in the issue of drugs, and analyze the violations of their human rights when incarcerated for drug offenses such as micro-trafficking, distribution and individual use. In that regard, Uruguay promotes attention to the recommendations contained in the Bangkok Rules¹ in the sense of ensuring that governments adhere to the United Nations Rules for the Treatment of Women Prisoners, in cases when women are deprived of freedom, as well as raising the issue of non-custodial measures for cases where this is feasible.

¹ United Nations Rules for the Treatment of Women Prisoners and Non-custodial measures for female offenders (Bangkok Rules) http://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/65_229_Spanish.pdf

III. Impact of the implementation of drug policy in the exercise of Human Rights

Uruguay reaffirms the importance of placing human beings and society at the center of political and international cooperation. Uruguay understands that the areas where abuse to the rights of people and communities in the implementation of drug policy occur are:

The rights to life, liberty and personal security have been violated with drug policies, both when government actions act against fundamental rights, such as when prohibition produces - as unexpected effect - powerful and violent illegal markets that threaten the security of individuals and communities, without the State achieving effective protection measures. The areas of greater violations, of which Uruguay encourages review in the first instance, are:

- a) The adoption of the death penalty as a criminal sanction, directly and irreversibly acts against the right to life. In the field of drug related crimes, executions violate ethical principles when the irreparable damage of taking a life occurs, the death of a person being justified by the alleged benefits it derives for the collective punishment (benefit principle) and individual burden of the implementation of policies is reinforced (principle of justice).
- b) The criminalization of personal use and possession of drugs acts against the right to freedom and autonomy. Decisions about lifestyle, opinions and private actions are part of individual rights, insofar as they do not attack public order or harm others.
- c) The application of policies to control the offer of indiscriminate drugs has led to a high number of precautionary arrests, arbitrary interference with privacy, increased violence in the territories key to drug traffic and worsening of violent conflict

among other interventions that undermine the right to freedom and personal security.

- d) Prohibitionist drug policies have contributed to the creation of illegal markets controlled by criminal organizations with growing economic power, social coercion and cooptation capacity gradually diversifying the field of crime. As a consequence, violence has increased, as has corruption of public officers responsible for law implementation and enforcement and the State has been replaced in its functions of guaranteeing and controlling the market, causing enormous damage to the individual and collective security, democratic institutions and social integration.

In the field of justice, a number of rights are violated: equality before the law and non-discrimination, access to national courts, not to be arbitrarily detained or imprisoned, the presumption of innocence until proven guilty, and the right to liberty.

- a) There are multiple studies that account for the over-representation in drug related crimes of the most vulnerable social groups, including ethnic minorities, people living in poverty, women and youth. This accounts for both the vulnerability of these groups against the drug trafficking networks, and the selective application of the law on police, courts and incarceration procedures. The latter derived from the adoption of extra-legal criteria (based on hegemonic morals producing reinforcing social stigmatization) by magistrates, police officers and other operators, as well as by the conditions of disadvantage of vulnerable groups when facing the justice system (less social, economic and educational capital, public defenders, etc.). Focusing on the situation of women, several studies show that poverty, poor education, and lived experience marked by violence and gender discrimination, are related to the involvement of women in micro-trafficking and drug networks and how women are most vulnerable and affected by these factors- mostly chosen by these networks to form part of the lower links in the chain are. Quoting Corina Giacomello, "... women in prison for drug offenses are affected by three levels of exclusion that result, in prison, in a triple conviction. First, the factors of discrimination that begin outside the prison walls and are linked to the persistence of discriminatory practices and asymmetrical power relations between men and women in the public and private space. Second, as the men involved in drug offenses, they are subjected to disproportionate penalties.

Third, they suffer from specific forms of discrimination within the prison space ..." (Giacomello, 2013: 17)².

- b) The harshness of the penalties stipulated for offenses against drug laws favor the deprivation of liberty and do not allow a differential treatment of micro-trafficking, which violates the principle of proportionality by granting disproportionate sentences for crimes committed, greatly increasing the number of detainees. Deprivation of liberty, involves a kidnapping of social conflicts, which denies the social co-responsibility. Incarceration reproduces the processes of exclusion and stigmatization and usually generates harmful psychosocial effects. Should a penalty be required, drug offenses related to micro-trafficking should address the exceptionality and focus on brevity of imprisonment, favoring non-custodial measures to promote the integration of people into the community, and restorative processes and practices. The study by TNI "Systems Overload. Drug Laws and Prisons in Latin America " showed for Uruguay and other participating countries that the severity of the laws for drug offenses have resulted in overloaded courts and prisons, created enormous public costs and caused suffering to thousands of people for minor offenses (Metaal y Youngers, 2010)³..
- c) Alteration of the burden of proof violates the right to presumption of innocence. Some aspects of drug policy and its judicial application result in the transformation of the criminal process of a probation system (where it is the responsibility of the State to prove the facts as punishable, the participation and involvement of persons charged with crimes and their circumstances) to an adversarial system (where the defendants must prove their innocence or mitigating factors), resulting in an alteration of the burden of proof.

Respect and exercise of the right to health as the full enjoyment of physical, mental and social health, in particular considering the care and

treatment of drug users as a right. Violations of these rights can be observed in various forms, which by omission or abuse exacerbate the harm to people.

- a) ~~The inclusion of drug use and personal possession as offenses, represents a displacement of the problem from the field of health to the field of criminal justice and the privilege of punitive responses, contravening the consideration of drug dependence as a matter of public health. This departure from the concept of health for analyzing drug use has violated the right to freedom increasing the number of judicialized and detained persons for drug use. It has also undermined the right to comprehensive health from a bio-psycho-social conception: by limiting access to care and treatment; generating ruptures in the personal biographies that render subjects more vulnerable, breaking their connection with family and social networks; setting breaks in the career paths which prove difficult to overcome and; strengthening social stigmatization.~~

²

Giacomello, Corina. (2013) Women, drug offenses and prison systems in Latin America. IDPC Briefing Paper. UK. <http://idpc.net/es/publications/2013/11/mujeres-delitos-de-drogas-y-sistemas-penitenciarios-en-america-latina>

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Metaal, Pien and Youngers, Coletta. Publishers. (2010) Systems Overload - Drug laws and prisons in Latin America. Transnational Institute (TNI) and the Washington Office on Latin America (WOLA) Amsterdam / Washington, December 2010. http://www.druglawreform.info/images/stories/documents/Sistemas_sobrecargados/sistemas_sobrecargados_web2.pdf

- b) In barriers in access to treatment ranging from mandatory reporting to police authorities, the preference for criminal penalties for drug use, lack of availability of diversified services and the high cost of existing ones as well as discrimination from health care personnel.
- c) Application of therapies without scientific basis which sometimes include physical and psychological abuse, disrespectful and degrading practices, imposition of religious practices and forced labor, among others.
- d) Involuntary treatment and/or forced institutionalization practices that violate the right to self-determination, which cannot be opposed but should rather be integrated with the right to protection of those with diminished autonomy.
- e) Prohibition of risk and damage reduction programs when their efficacy has been scientifically proven.
- f) Limitations on access to controlled substances for medical and scientific uses. In substances such as cannabis, there is worldwide extensive evidence on the restrictions placed on their therapeutic and medicinal use; limiting scientific research; its development as a pharmaceutical, medicinal plant, vegetal specialty and medicinal compound, as well as its medical indication.

Respect and exercise of the right to freedom of conscience, thought and religion and the right to participate in cultural life have been violated with drug policy by the subjugation of native peoples, cultural, religious and spiritual identities, through ignorance of traditional practices, and prohibitions imposed on the cultivation, production, trade and use of substances listed in the Conventions, as well as through crop eradication policies and forced conversion to alternative crops.

The inclusion of the coca leaf in Schedule 1 of the Convention on Narcotic Drugs of 1961 and the promotion of policies to reduce the supply oriented to the eradication of coca crops without specifying their purpose, have violated and denied the right to Andean peoples to their culture, identity and ancestral practices when they incorporate the use of the coca leaf. Moreover these policies have meant that States promoting forced eradication of crops, allocate funds and develop measures of military or police intervention, which violate rights of the peasant populations, compromise their financial support and undermine their ability to exercise millenary cultural traditions.

IV. Initiatives proposed by Uruguay

The prioritization of Human Rights in drug policy requires some specific initiatives:

- 1. Leadership:** Adoption of leadership on their incorporation by international, regional or State bodies.
- 2. Guidelines:** explicit integration of Human Rights in drug policy in the strategies and plans of international organizations or states.
- 3. Basic guidelines:** They are a tool for countries to develop drug policies and comply with international human rights standards. These are aimed at those who legislate, formulate and implement public policies on drugs. The guidelines also allow for the generation of an international framework for monitoring and evaluating of the states parties with regard to human rights issues in the implementation of drug policy by states parties.
- 4. Guidelines of best practices for promotion, implementation and monitoring.** They allow to clearly identify the specific mechanisms and practices for the implementation of human rights standards in the field of drug policy, the adoption of specific measures in accordance and cooperation with the states parties. The Best Practice Guidelines are primarily aimed at those who formulate and implement public policies on drugs.
- 5. Evaluation mechanisms.** The incorporation of Human Rights monitoring to the evaluation mechanisms for the observance of international agreements on drugs promotes monitoring of compliance within the framework of international cooperation. Ensuring the identification of risk situations or violation of

human rights in the application of policy or the lack of specific responses for the protection of the population.

- 6. Reporting mechanisms.** Identification and adoption of ~~measures for the protection of the population~~ requires safe mechanisms for reporting situations of Human Rights violations when implementing drug policy. Reporting mechanisms must have well-defined national and international instances, offering guarantees to individuals or States for research, monitoring and conclusion.

Basic guidelines

Uruguay proposes to consider the following basic guidelines for the recognition of human rights in drug policy:

1. Ensure the effective integration of human rights into the national framework for drug policy.
2. Incorporate ethical principles of respect for persons, welfare and justice to drug policy.
 - § Respect for persons in the recognition of their full autonomy for decision-making and the right to protection in the case of persons with diminished autonomy.
 - § //// Welfare in terms of "do no harm" simultaneously with maximizing benefits and minimizing harms of interventions, considering that it is not justified to injure a person for the alleged benefits that might come to others.
 - § //// Justice in terms of equal access to opportunities and the distribution of costs resulting from the implementation of drug policy.
3. //// Analyze and reformulate national drug legislation in harmony with the guidelines for international Human Rights. With emphasis on:
 - § //// Abolition of death penalty for drug related offenses.
 - § //// Decriminalization of personal use and possession of drugs.
 - § //// The principle of proportionality and the presumption of innocence.
4. //// Ensure the development of policies to reduce drug demand, conditions consistent with the respect for human rights in the field of health. In particular with reference to:
 - § //// Access to information, prevention programs, services for care and treatment and social integration programs.

§ //// Quality of services, programs and plans for reducing drug demand.

§ //// Incorporation of a risk and damage reduction approach to interventions for reducing drug demand.

5. //// Ensure drug policies involving the defense of individual and community rights, respecting the diversity of lifestyles, cultural identities, the worldview of indigenous peoples and spiritual traditions and practices that incorporate the use of controlled substances.
6. //// Ensure justice, respect and protection of human rights and transparency in the operations of supply control. In particular: intelligence procedures, application of special investigative techniques, investigations, precautionary arrests and protective measures.
7. //// Promote guarantees and mediation conditions that foster a protective environment for people and communities affected by the violence of drug trafficking and related crimes, aiming at decreasing the severity and damage of conflicts, building joint alternatives with the community.
8. //// Treatment of persons deprived of liberty (PPL in its Spanish acronym) for crimes related to drugs, particularly micro-trafficking and drug use in line with international legal assistance tools, legitimacy of judicial proceedings, enforcement of minimum standards of treatment of PPL, alternatives to imprisonment and the search for viable alternatives for social reintegration during and after conviction.
9. //// Cooperate at an international level, particularly through cooperation agencies to exchange experiences, knowledge, best practices and lessons learned in the implementation of human rights in the context of drug policy.
10. //// Have mechanisms for consultation, dialogue and collaboration with civil society, community and the various actors involved in the construction, implementation and evaluation of public policies.

