

Drug policy and the prison situation in Colombia¹

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Introduction

During the 20th century, drug policies in Colombia were increasingly repressive, largely ineffective, and heavily influenced by the international legal framework that was put in place. In effect, in just a few years Colombia went from having a scattered set of regulations, with an emphasis on prevention and medical-administrative treatment, to having legislation abundant in definitions of criminal conduct and sanctions that included the full drug cycle, from production through marketing and trafficking to consumption.

Moreover, the increased emphasis on repression reflects the growing influence of international legislation that evolved over the same period, generally promoted by the United States. Especially over the last decades of the 20th century, as drug trafficking became increasingly important in Colombian economy and society, Colombia began to follow the agenda developed by the United States to fight trafficking, resulting in an internalization of the “war on drugs.”

But increasingly harsh policies, including zero-tolerance measures, have not put an end to the organized criminal networks. Supply-reduction drug policies have not only proven ineffective, but have had a major impact on the prison system as a result of the considerable increase in repressive approaches, including measures entailing deprivation of liberty. At present, Colombia’s prison population includes a large number of persons incarcerated for drug-

related offenses who, for the most part, are among the least important links in the chain of growing, production, and trafficking of drugs.

This document is intended to show some of the ways in which drug policies impact the country’s prison system. To that end, we focus our analysis on what appears to be the sector hardest hit by these policies: persons only minimally involved in the drug business, playing small or marginal roles, and not benefiting from the truly substantial profits. All of which occurs in the context of a prison system characterized by major restrictions on human rights stemming from the precarious conditions of incarceration.

Developments in Colombian drug policies

Colombia’s drug policies are in line with the international legal framework; accompanied by the adoption of a number of laws, particularly criminal statutes, the provisions of this framework have been incorporated into domestic law.

In the 20th century, the international legal framework evolved from a system lacking drug control to a regime of “fighting” drugs head on, manifesting itself in prohibitionist and highly repressive strategies. From 1909 to 1988, several international conferences were held and many agreements were signed aimed at strengthening an international system to control certain drugs and to divert precursors for their production. Throughout this process, the United States played a fundamental role as the driving force behind the conferences and treaties.

Incorporation into domestic law

The general evolution of Colombian anti-drug policy could be characterized, in keeping with the terminology proposed by Boaventura De Sousa Santos, as a “localized globalism,” which is, in turn, the effect of a “globalized localism” in the law.² Accordingly, international drug law is a type of globalized localism, since domestic laws in the United States were transformed into binding treaties, which in turn have not only reinforced prohibitionist trends at home, but have also, through the exclusion or marginalization of any other options, strongly influenced other national policies. This localized globalism has gone through various stages.

The first, from the 1920s to the 1970s, saw the evolution from regulations to prevent drug offenses to the passage of the first repressive laws; the second, in the 1970s, was the reinforcement of the repressive approach in response to the growing influence of international treaties and the quest of various governments to coordinate their repressive policies; the third, in the 1980s, was the search for comprehensive regulation and the adoption in 1986 of Law 30, or the National Narcotics Statute (Estatuto Nacional de Estupefacentes); the fourth was the ratification of the 1988 Vienna

Convention, with reservations; and finally, the evolution from the decriminalization of possession and consumption of the personal dose, mandated by Judgment C-221 of 1994 of the Constitutional Court, to the return to prohibition with the constitutional amendment of 2009.

Colombian domestic law

Colombia's legal framework on drugs today has four fundamental pillars: (i) the prohibition of consumption; (ii) the fight against drug trafficking as organized crime through the use of criminal law; (iii) repressive administrative tools, such as crop eradication; and (iv) prevention and education.

Some of the sentences for drug-related offenses are presented in Table 1.

In addition to having relatively stiff penalties, these and other drug offenses do not allow access to various procedural benefits provided for by law; among others, according to Article 1 of Decree 177 of 2003, the benefit of electronic surveillance as a substitute for imprisonment does not apply to drug-trafficking crimes. Even more complicated in relation to the penalties imposed on such offenses is that the fine is considered the principal penalty and paying the fine is therefore a requirement for securing one's release. This has created enormous difficulties for those unable to pay their fines because even if they have served the required prison sentence, they still have to pay the fine in order to regain their liberty.

Institutional framework

The main institutions in charge of designing policies to address drugs in Colombia are concentrated in the executive and judicial branches. The most important institutions responsible for implementing these policies perform functions of containment and punishment, and together they constitute a highly repressive model.

The National Narcotics Council (Consejo Nacional de Estupefacientes): An executive-branch agency, under the Ministry of Interior and Justice (Article 89, Law 30 of 1986), entrusted with defining the policy aimed at controlling and eliminating production, trafficking, and consumption of psychoactive substances.

The National Narcotics Bureau (Dirección Nacional de Estupefacientes): An institution entrusted with advising on, coordinating, and executing "the policy of the National Government focused on controlling and reducing the production, trafficking, and consumption of psychoactive substances."

The National Police: In pursuing its constitutional func-

Main developments in Colombian drug legislation

- **1920** - Law 11 of 1920 did not punish trafficking or consumption by deprivation of liberty, only by fines.
- **1928** - Law 128 of 1928 established repressive sanctions and made it possible to seize controlled substances.
- **1936** - The Criminal Code of 1936 punished by minor sentences carried out in low-level security prisons those who participate in the preparation, distribution, sale, or supply of narcotic substances.
- **1946** - Law 45 of 1946 increased the penalties with longer sentences and periods of solitary confinement carried out in medium-level security prisons.
- **1964** - None of these laws criminalized consumption, but there was a registry of drug addicts at the departmental health offices. In the 1950s, the first laws criminalizing the consumption of marijuana were adopted. Decree 1669 of 1964 criminalized the consumption of any narcotic substance.
- **1971** - Decree 522 of 1971 punished the trafficking and cultivation of marijuana, cocaine, morphine, and any drug that causes dependency, but decriminalized their possession and use in private; public use was punished by detention of one to three months.
- **1974** - Decree 1188 of 1974 increased the penalties for trafficking and criminalized consumption. From 1974 to 1980 Colombia ratified international agreements on drugs.
- **1986** - Law 30 of 1986, known as the National Narcotics Statute (ENE: Estatuto Nacional de Estupefacientes), is purely an instrument of control and repression without the preventive and rehabilitative dimensions of the previous legislation.
- **1993** - Law 67 of 1993 approved the 1988 Vienna Convention. It is of major symbolic value, as the government was seeking to show that it was responding to the challenges of the major drug traffickers.
- **1994** - Judgment C-221 of 1994 of the Constitutional Court found those articles of Law 30 of 1986 that punish possession and consumption of the personal dose to be unconstitutional.
- **2009** - A 2009 constitutional amendment prohibits possession and consumption of the personal dose.

Table 1

| Article | Criminal conduct | Typical description and modalities | Penalty |
|---------|--|---|---|
| 375 | Maintaining or financing plantations | One who, without the permission of the competent authority, cultivates, conserves, or finances plantations of marijuana or any other plant of those from which cocaine, morphine, heroine, or any other drug that causes dependency, or more than 1 kilogram of seeds of those plants can be produced. | Prison term: 96 to 216 months Fine: 266.66 to 2,250 Colombian pesos, current legal monthly minimum salaries (SMLMV) ¹ |
| | | If the number of plants exceeds 20 without surpassing 100. | Prison term: 64 to 108 months Fine: 13.33 to 75 SMLMV |
| 376 | Manufacture, trafficking, or possession of drugs | One who, without the permission of the competent authority, except as provided with regard to a dose for personal use, brings into the country, even in transit or removes from it, transports, takes with him or her, stores, maintains, produces, sells, offers, acquires, finances, or supplies a drug that causes dependency in any capacity. | Prison term: 128 to 360 months Fine: 1,333.33 to 50,000 SMLMV |
| | | If the amount of drug does not exceed 1,000 grams of marijuana, 200 grams of hashish, 100 grams of cocaine, or cocaine-based drug, or 20 grams of poppy-derivative, 200 grams of methaqualone or synthetic drug. | Prison term: 64 to 108 months Fine: 2.66 to 150 SMLMV |
| | | If the amount of drug exceeds the maximum limits provided for in the previous subsection, without surpassing 10,000 grams of marijuana, 3,000 grams of hashish, 2,000 grams of cocaine or cocaine-based drug, or 60 grams of poppy-derivative, 4,000 grams of methaqualone or synthetic drug. | Prison term: 96 to 144 months Fine: 133.33 to 1,500 SMLMV |
| 377 | Illicit use of movable and real property | One who unlawfully designates movable or real property for use in the production, storage, transport, sale, and use of any of the drugs referred to in Articles 375 and 376 and/or authorizes or tolerates such use thereof. | Prison term: 96 to 216 months Fine: 1,333.33 to 50,000 SMLMV |
| 378 | Encouraging illicit use | One who in any way encourages or propagates the illicit use of drugs or medicines that cause dependency. | Prison term: 48 to 144 months. Fine: 133.33 to 1,500 SMLMV |
| 383 | Possession of substances | One who in a public or open place and without justification possesses scopolamine or any similar substance used to render persons defenseless. | Prison term: 16 to 36 months, unless the conduct constitutes an offense punished by a higher prison term. |

Source: INPEC

tions, and in order to maintain public order, this force may detain those who engage in criminal conduct. In the case of drug-related offenses, members of the National Police may detain persons who are caught in possession of or consuming drugs and take them before a competent prosecutor to determine whether the person should be released or have charges brought against him or her.

Other such institutions include the National Army, which performs functions in the eradication of illicit crops; the ministries of health, education, and communications, which are in charge of promoting and carrying out prevention campaigns and contributing to rehabilitation; and the

judicial system, whose criminal justice institutions assume responsibility for enforcing the penalties provided for in the domestic law.

Drug policies and the prison system

The methodology used in this document includes both quantitative and qualitative components: a review and analysis of the information in the administrative record produced by the National Penitentiary and Prison Institute (INPEC: Instituto Nacional Penitenciario y Carcelario) of Colombia, and information obtained from 19 semi-struct-

tured interviews with women incarcerated for drug-related offenses. We opted to interview women because, even though most of the prison population is made up of males 18 to 40 years of age, on analyzing the quantitative information we realized there appears to be a sort of “feminization” of drug offenses.

We identified 30 women at El Buen Pastor Prison who were being represented at the time by female attorneys from the Defensoría Pública, the public defenders’ office. Going into the prison made it possible not only to conduct interviews but also to get to know some of the internal dynamics and identify key elements of the situation for women incarcerated on drug charges. This sample has several evident biases due to the way in which we gained access to them; nonetheless, the prisoners provided qualitative information that we consider relevant.

The results have been grouped around three central elements. The first is the number of people deprived of liberty for drug-related offenses. The second is who is imprisoned in Colombia for drug-related offenses, showing the socio-demographic characteristics of such persons and seeking to establish their level of participation in the drug business in Colombia. The final element is the impact of criminalization in the lives of persons imprisoned for having had only marginal participation in the drug business, which we refer to as “the ones on the bottom.”

Prison population behind bars for drug-related offenses

In Colombia, the share of the prison population behind bars for drug-related offenses is quite high. According to the INPEC, it is the third leading category of crime, surpassed only by offenses against economic property – in which different forms of theft play a major part – and

Nidia is a 43-year-old woman who was responsible for three of her five children, all minors, to which end she worked as a domestic employee on a per-day basis. Her daily income was approximately 20,000 Colombian pesos (equivalent to less than \$10 USD). Over time, the work became less and less reliable, and her expenses began to consume her.

“I wouldn’t mind having just one cup of agua de panela (a hot drink based on brown sugar) all day, but my children... They were suffering and telling me they were hungry.”

In her words, that is what led her to accept the proposal of a female friend to sell ‘bazuco’ (a derivative of cocaine). For her, each unit sold represented an additional income of 400 pesos (only \$0.20 USD). Though not much, it became a “fixed” source of income that enabled her to meet some of her family’s basic needs. Still, she continued washing dishes and clothes.

crimes against life and personal integrity, in which the main crime is homicide. This group includes all the crimes defined in Colombia’s Criminal Code under the title of “narcotics trafficking and other infractions,” as well as the infractions included in Law 30 of 1986. From 2003 to 2009, the proportion of the prison population behind bars for drug-related offenses fluctuated from 16 percent to 19 percent of all persons held in the country’s prisons, which in net figures represents about 11,000 persons. At the end of 2009, 12,616 persons were incarcerated for drug-related offenses, equal to 17 percent of the country’s prison population.

The number of persons reported as deprived of liberty corresponds both to persons indicted and persons convicted. While Colombia’s policies on fighting drugs have brought significant pressure to bear on the prison system, in recent

Table 2 - Makeup of the prison population behind bars for drug-related offenses

| Year | Men | | Women | | Total |
|------|--------|-------|-------|-------|--------|
| | Total | % | Total | % | |
| | 2003 | 9,485 | 83% | 1,969 | |
| 2004 | 10,686 | 83% | 2,218 | 17% | 12,904 |
| 2005 | 10,260 | 84% | 1,891 | 16% | 12,151 |
| 2006 | 8,311 | 85% | 1,488 | 15% | 9,799 |
| 2007 | 8,787 | 85% | 1,526 | 15% | 10,313 |
| 2008 | 9,870 | 84% | 1,938 | 16% | 11,808 |
| 2009 | 10,492 | 83% | 2,124 | 17% | 12,616 |

Source: INPEC

years there has been an interesting evolution in relation to the make-up of the prison population: The percentage of persons deprived of liberty who are defendants has diminished significantly. While in 2003, 49 percent of the prison population was made up of persons indicted but not convicted, by 2009 that figure had fallen to 29 percent. With respect to sentencing, in 2003, 51 percent of the persons in prison for drug-related offenses had been convicted and sentenced, whereas in 2009 convicts accounted for 71 percent of such persons.⁴ This trend coincides with the dynamics of the prison population in general.

Who is deprived of liberty for drug-related offenses?

Drug-related offenses clearly account for a major share of the prison population. This is consistent with the repressive philosophy that is reflected in the “drug war” policies adopted and carried out by the Colombian State.

In order to have greater in-depth knowledge of the impact of those policies, more and better data is needed regard-

ing the socio-demographic characteristics of the persons effectively criminalized and deprived of liberty. In this part of the document we seek to identify criteria for characterizing the population locked up for drug-related offenses. Specifically, we include information on a range of socio-demographic characteristics, including, sex, age, occupation, income, belonging to vulnerable groups, and level of participation in the offense.

Socio-demographic characteristics

Women – Table 2 shows the make-up of the prison population behind bars for drug-related offenses broken down by sex. The number of women deprived of liberty for drug-related offenses is significantly less than the number of men. Indeed, an analysis of the composition of the prison population by sex shows that since 2003 women have never accounted for more than 17 percent of the total.

Even though the percentage of women deprived of liberty on drug charges has not been greater than 17 percent in recent years, one notes a sort of feminization of such

Table 3 - Makeup of the prison population by sex (2003-2009)

| Year | | | | | |
|------|--------|-----|-------|----|--------|
| | Men | | Women | | Total |
| | Total | % | Total | % | |
| 2003 | 58,098 | 93% | 4,179 | 7% | 62,277 |
| 2004 | 63,385 | 93% | 4,635 | 7% | 68,020 |
| 2005 | 62,707 | 94% | 4,122 | 6% | 66,829 |
| 2006 | 56,626 | 94% | 3,395 | 6% | 60,021 |
| 2007 | 59,971 | 94% | 3,632 | 6% | 63,603 |
| 2008 | 65,786 | 94% | 4,193 | 6% | 69,979 |
| 2009 | 71,204 | 94% | 4,788 | 6% | 75,992 |

Source: INPEC

Table 4 - Women deprived of liberty for drugs as a percentage of the general population of women inmates

| Year | Women | | |
|------|---------|-------|-----|
| | General | Drugs | % |
| 2003 | 4,179 | 1,969 | 47% |
| 2004 | 4,635 | 2,218 | 48% |
| 2005 | 4,122 | 1,891 | 46% |
| 2006 | 3,395 | 1,488 | 44% |
| 2007 | 3,632 | 1,526 | 42% |
| 2008 | 4,193 | 1,938 | 46% |
| 2009 | 4,788 | 2,124 | 44% |

Source: INPEC

crimes. Compared to the figures for the prison population as a whole (Table 3), women account for a larger share of the persons in prison for drug-related offenses. The total breakdown of the prison population shows that men account for nearly 93 percent of all persons deprived of liberty, and women comprise the remaining 6 to 7 percent. But among those persons imprisoned for drug-related offenses, women account for as much as 17 percent.

Although this data may be considered not very representative, if one analyzes the breakdown of the prison population for other crimes by sex, it clearly appears to show a trend. There are very few crimes in which women consistently and representatively account for more than 10 percent of the prison population. Perhaps the only crime in which women have accounted for a large part of the prison population is procuring, or prostitution-related offenses, where it has been as high as 40 percent.

Table 4 shows the proportion of women incarcerated for drug-related crimes compared to all crimes. Between 42 and 48 percent of the female population deprived of liberty are behind bars for drug-related crimes.

This shows that while the majority of persons detained for drugs are not women, most women in prison have been locked up on charges related to drugs. This statistic reinforces the thesis that there appears to be a feminization of drug-related crimes.

Age – Although most persons imprisoned for drug offenses fall within the range of 26 to 35 years old, there is a high percentage (22 percent) of very young people – 18 to 25 years old – deprived of liberty for this crime. The other group with major participation ranges in age from 36 to 45 years, and accounts for 23 percent of the total. The lion’s share of the persons incarcerated on account of drugs – both men and women – are 18 to 45 years old. Data could only be obtained from 2007 to 2009, therefore it is not possible to distinguish between years or determine which persons left prison, only those who entered prison during those years.

Table 7 - Number of persons deprived of liberty due to drug-related crimes who meet the characteristics of vulnerability defined by the INPEC, compared to the total number of persons deprived of liberty with the same characteristics (2007-2009)

| Characteristic | Persons deprived of liberty for drug-related crimes who have the characteristic | Total number of persons deprived of liberty who have the characteristic |
|----------------|---|---|
| Nursing mother | 67 | 151 |
| Older adult | 530 | 2,242 |
| Afro-Colombian | 475 | 2,844 |
| Disability | 141 | 682 |
| Foreigner | 237 | 320 |
| Indigenous | 164 | 637 |

Source: INPEC

Table 5 - Makeup of the persons deprived of liberty for drug-related offenses from 2007 to 2009, broken down by age bracket

| Age | | | | |
|-------|-------|-------|-------|-------------|
| 18-25 | 26-35 | 36-45 | 46-55 | 56 and over |
| 4,788 | 8,060 | 5,063 | 2,778 | 1,055 |
| 22% | 37% | 23% | 13% | 5% |

Source: SISIPPEC, of the INPEC

Table 6 - Makeup of the persons deprived of liberty for all crimes from 2007 to 2009, broken down by age group

| Age | | | | |
|--------|--------|--------|-------|-------------|
| 18-25 | 26-35 | 36-45 | 46-55 | 56 and over |
| 22,262 | 35,535 | 19,887 | 9,249 | 4,398 |
| 24% | 39% | 22% | 10% | 5% |

Source: SISIPPEC, of the INPEC

Criteria of vulnerability – One important element in characterizing persons deprived of liberty for drug-related crimes is whether they belong to a population group that makes them especially vulnerable. The INPEC has defined five criteria of vulnerability that are taken into consideration in its database: (i) nursing or pregnant mother; (ii) belonging to an ethnic minority; (iii) having some disability; (iv) being an older adult; and (v) being a foreigner. As Table 7 shows, the number of persons deprived of liberty who meet any of the characteristics defined by the INPEC is low. As mentioned earlier, the prison population behind bars for drug offenses for the period in question is 21,746, and the total prison population is 91,331.

Though in general the number of persons behind bars with the vulnerability characteristics defined by the INPEC is low, the data indicate that most (74 percent) of the foreigners who went to prison from 2007 to 2009 are behind bars for drug-related offenses.

Schooling, occupation, and income – Solid quantitative information on these areas was not available. Due to the precarious nature of the data we were able to obtain on these aspects, we emphasized them in the interviews. The results obtained in this field work cannot be generalized to the entire population deprived of liberty because only women prisoners were interviewed. Nonetheless, we believe that the qualitative information obtained is valuable and enriches the analysis.

Regarding their socioeconomic profile, the interviews made it possible to determine that these women do not have steady employment, have low levels of schooling, and earn little income. There is an important relationship between socioeconomic profile and the motivation to participate in some way in drug-related offenses. Accepting the possibility of losing one's liberty was, for one of the women interviewed, a very low price to pay in relation to what it meant to get money to support her family.

Participation in the offenses

It is also important to establish which participants in the drug-trafficking networks are affected by the repressive policies; i.e., whether the policies only reach the weakest links in the chain – made up of those who participate in the least profitable activities of the business or do so marginally, such as the ‘raspachines’ (coca leaf pickers), the small-scale cultivators, the ‘mulas’ or petty smugglers, and the small-scale distributors – or whether they reach persons who play a significant role in the drug-trafficking business.

Though this is especially important, the quantitative data available does not allow one to make such a determination. The INPEC’s information system reports the offense or offenses for which persons are deprived of liberty, but does not indicate the extent of their participation in the criminal conduct, nor the amount of drugs with which the person was caught. In addition, in Colombia it is possible for both small distributors and large-scale traffickers to be tried for the same crime: trafficking, manufacture, or possession of narcotics (tráfico, fabricación o porte de estupefacientes). This encompasses practically the entire drug trafficking cycle and carries differentiated penalties based on the amount of drugs involved in the particular prosecution.

Table 8 - Persons deprived of liberty from 2007 to 2009, based on the crime of trafficking, manufacture, or possession of narcotics, broken down into whether they were prosecuted for concurrence with other criminal conduct

| Narcotics trafficking | |
|------------------------------|---------------|
| Without concurrence | 16,695 |
| With concurrence | 1,348 |
| Total | 18,403 |

Source: SISIPPEC, of the INPEC

Any illness is even more painful in prison. This was noted by Yaneth, who suffered from varicose ulcers which, after several complications, developed into an even more serious illness that affected her for months. Claudia describes the difficulties she has had when it comes to receiving care for the afflictions affecting her leg in prison, for even though they have doctors and do receive some medicines, the restrictions on liberty also affect her access to health care.

In order to overcome this difficulty, we have designed a proxy indicator that takes into account whether the person has been deprived of liberty for drug trafficking, for the concurrence of more than one type of criminal conduct, and in particular, if that concurrence is with the crime of ‘concierto para delinquir,’ or conspiracy to engage in criminal conduct. The starting point of this measurement is that if a person who has been prosecuted for trafficking has been found to have participated in a major way in a criminal drug-trafficking organization, he or she should also be prosecuted for concierto para delinquir. In addition, if a person is simply prosecuted for possession and does not appear to have major ties with trafficking networks, there would be no grounds for charging them with concurrence with any other criminal conduct. Although this approach entails a very tentative measurement that may not capture relevant elements, it may help evaluate who ends up feeling the pressure applied by the judicial system when carrying out anti-drug policies. Table 8 shows the results.

Of the total number of persons deprived of liberty for drug trafficking, manufacture, or possession, only 1,348 were prosecuted in concurrence with other crimes. Of those individuals, only 428 were prosecuted for concurrence with conspiracy to engage in criminal conduct, which is equivalent to 2 percent of all persons deprived of liberty in the period in question. This could imply that 98 percent of the persons deprived of liberty for this crime had not had – or it had not been possible to prove that they had – major participation in drug-trafficking networks.

The women we interviewed who recognized they had somehow participated in the “drug business” said they had done so as dealers or mulas. Even though they knew they were “the women at the bottom” and not the owners of the merchandise seized from them, they were nevertheless not willing to reveal the names of their contacts or bosses out of fear of reprisals against them or their children.

Impacts of criminalization

To show the impact of criminalization, we have opted to refer to two complementary dimensions. The first refers to the conditions of confinement itself and the second to how the lives of the persons imprisoned are affected by the

Table 9 - Level of overcrowding

| Year | Population | Capacity | Excess | Overcrowding |
|------|------------|----------|--------|--------------|
| 1997 | 42,454 | 29,217 | 13,237 | 45.3% |
| 1998 | 44,398 | 33,119 | 11,279 | 34.1% |
| 1999 | 45,064 | 33,600 | 11,464 | 34.1% |
| 2000 | 51,548 | 37,986 | 13,562 | 35.7% |
| 2001 | 49,302 | 42,575 | 6,727 | 15.8% |
| 2002 | 52,936 | 45,667 | 7,269 | 15.9% |
| 2003 | 62,277 | 48,291 | 13,986 | 29.0% |
| 2004 | 68,020 | 49,722 | 18,298 | 36.8% |
| 2005 | 66,829 | 49,821 | 17,008 | 34.1% |
| 2006 | 60,021 | 52,414 | 7,607 | 14.5% |
| 2007 | 63,603 | 52,555 | 11,048 | 21.0% |
| 2008 | 69,979 | 54,777 | 15,202 | 27.8% |
| 2009 | 76,471 | 55,042 | 21,429 | 38.9% |

Source: INPEC

deprivation of liberty. The first dimension is useful in two ways. First, it further illustrates the pressure on the prison system resulting from the repressive policies. Second, it facilitates the obtainment of relevant information on the conditions faced by incarcerated persons. To develop this dimension we have taken into account the reported level of overcrowding as a minimum and significant indicator – since there cannot be dignified living conditions if there is overcrowding – as well as qualitative information on life behind bars. We have developed the qualitative dimension based primarily on the information collected in the interviews.

Prison conditions

Determining the conditions in which persons deprived of liberty are held in Colombia is especially important in order to grasp the impact of highly repressive drug policies

on their lives. To this end, we look at overcrowding from the quantitative perspective, and we also include information on the state budget per inmate.

Table 9 shows the evolution of the levels of overcrowding in Colombia from 1997 to 2009. The results point to a major decline around 2001 and 2002, but a subsequent relatively steady increase.

The decline in 2001-2002 appears to have been due to one of the most drastic interventions in Colombia's prison system undertaken by the Constitutional Court. In Judgment C-153 of 1998, which declared an unconstitutional state of affairs in the country's prisons, the Court found: (i) the existence of a situation of overcrowding that violated fundamental rights; (ii) that said violation was generalized, as it affected a large number of persons; and (iii) that the causes of the situation were structural, as they were not attributable exclusively to the authority against whom the action

Table 10 - Projection of the pressure of drug offenses on overcrowding

| Year | General population | Total population for drugs | Difference | Capacity | Excess | Overcrowding |
|------|--------------------|----------------------------|------------|----------|--------|--------------|
| 2003 | 62,277 | 11,454 | 50,823 | 48,291 | 2,532 | 5.2% |
| 2004 | 68,020 | 12,904 | 55,116 | 49,722 | 5,394 | 10.8% |
| 2005 | 66,829 | 12,151 | 54,678 | 49,821 | 4,857 | 9.7% |
| 2006 | 60,021 | 9,799 | 50,222 | 52,414 | -2,192 | -4.2% |
| 2007 | 63,603 | 10,313 | 53,290 | 52,555 | 735 | 1.4% |
| 2008 | 69,979 | 11,808 | 58,171 | 54,777 | 3,394 | 6.2% |
| 2009 | 76,471 | 12,616 | 63,855 | 55,042 | 8,813 | 16.0% |

Source: INPEC

Table 11 - Projection of the pressure of drug offenses on overcrowding, without mid- and high-level traffickers

| Year | General population | Population for drugs, without kingpins | Difference | Capacity | Excess | Overcrowding |
|------|--------------------|--|------------|----------|--------|--------------|
| 2003 | 62,277 | 10,309 | 51,968 | 48,291 | 3,677 | 7.6% |
| 2004 | 68,020 | 11,614 | 56,406 | 49,722 | 6,684 | 13.4% |
| 2005 | 66,829 | 10,900 | 55,929 | 49,821 | 6,108 | 12.3% |
| 2006 | 60,021 | 8,820 | 51,201 | 52,414 | -1,213 | -2.3% |
| 2007 | 63,603 | 9,282 | 54,321 | 52,555 | 1,766 | 3.4% |
| 2008 | 69,979 | 10,628 | 59,351 | 54,777 | 4,574 | 8.4% |
| 2009 | 76,471 | 11,355 | 65,116 | 55,042 | 10,074 | 18.3% |

Source: INPEC

was brought, which is why its solution required the coordinated action of various authorities.

By virtue of the orders issued in the judgment, changes were made in the state's prison policy. As a result, after the judgment was issued, overpopulation in the prisons diminished. Nonetheless, the rate of overcrowding subsequently climbed once again to very high levels. As of 2003, the figures on prison crowding went up once again and maintained an upward trend. In 2009 it reached 38.9 percent.

Overcrowding is a minimum and significant indicator of prison conditions. While fundamental guarantees may be violated in the absence of overcrowding, and it does not take into account the various dimensions of confinement, there cannot be dignified living conditions in the context of overcrowding. Increases in overcrowding therefore point to deterioration in the conditions of confinement.

The following shows the relationship between drug crimes and overcrowding. In a hypothetical exercise, if we subtract from the reported prison population those who have been deprived of liberty for drug-related crimes, we will be able to see the pressure these crimes bring to bear on the Colombian prison system, or in other words, the extent to which drug-related crimes contribute to overcrowding. The results of this exercise are set forth in Table 10.

Table 12 - Annual budget per prisoner

| Year | Budget per prisoner per year | Deflated value | Equivalence in US dollars |
|------|------------------------------|-----------------|---------------------------|
| 2003 | \$ 6,606,712.00 | \$ 6,606,712.00 | US\$ 2,295.99 |
| 2004 | \$ 6,546,160.00 | \$ 6,204,891.00 | US\$ 2,362.67 |
| 2005 | \$ 8,108,922.00 | \$ 7,330,645.68 | US\$ 3,158.71 |
| 2006 | \$ 10,210,670.00 | \$ 8,834,870.38 | US\$ 3,747.91 |
| 2007 | \$ 9,459,495.00 | \$ 7,744,261.26 | US\$ 3,726.16 |
| 2008 | \$ 9,061,923.00 | \$ 6,890,293.13 | US\$ 3,504.26 |
| 2009 | \$ 9,503,144.00 | \$ 7,084,096.51 | US\$ 3,285.32 |

Source: INPEC (\$ = Colombian peso)

The pressure of drug offenses on overcrowding is considerable. When removed, the number of prisoners above capacity diminishes considerably, as does overcrowding. In some years, overcrowding would practically cease to exist.

To this exercise we will add a variable that derives from the results presented previously: Most of the persons imprisoned for drugs make up the weakest link in the drug-trafficking networks. Although there are mid-level and high-level figures deprived of liberty in Colombia,⁵ their participation in the composition of the population imprisoned for drugs appears to be much less in percentage terms. The proxy indicator that we use suggests that it is approximately 2 percent of the total. For the hypothetical exercise we suggest on this point, we will not take the total of all persons deprived of liberty for drug-related crimes, but rather we will subtract 10 percent. We opted to go from 2 percent to 10 percent, so as to allow a larger margin for the possible participation of major traffickers in the national prison population – i.e., those who played a major role in the drug-trafficking networks, kingpins, and mid-level traffickers. Table 11 shows the results of this exercise.

In this case, even subtracting the kingpins, both excess population and overcrowding are reduced significantly. For some years it even disappears. This would support the

The women interviewed provided valuable information on the conditions of detention. For example, for Luz, a recycler, the harshest part of being confined is having to share the cell with persons who humiliate her for her scant education or because she is very humble. Living with different persons in a small space and having to share every day with them, and follow a routine, significantly affects the lives of persons deprived of liberty. Indeed, there have been fights in which the women prisoners were sometimes injured.

idea that the pressure of drug offenses is a very significant contributor to overcrowding and its consequences for the living conditions within Colombia's prisons.

There is another piece of information that may be interesting for the analysis of conditions of confinement. Table 12 shows the evolution of the budget allocated by the state per prisoner, from 2003 to 2009. The data show an increase in the budget allocation per prisoner through 2006, but then a decline through 2009.

Other evidence also suggests that in the case of drug-trafficking, the inequalities between the mid- and upper-level traffickers on the one hand, and "those at the bottom" on the other, are more marked. While the first can gain access to private basic services, the latter must accept such services provided by the state, regardless of the quality.

"Los de abajo," or "Those at the bottom": Some of their stories

"They never catch those at the top."

Losing one's freedom may represent a total break with one's life project. That is the case of Luisa, a university student, now in prison, who was arrested along with her boyfriend, who sold food made with marijuana. Luisa is facing a 54-month sentence as a 'coautora' (accomplice), even though she never sold or distributed any drug. Thanks to her studies, she has decided to make a better life for herself in prison and participates as an instructor in the prison's educational program. In addition, she is continuing her studies and hopes to be able to make progress on her thesis. Nonetheless, she insists that "the dreams are over." After leaving prison, her entire career ahead will be affected by her criminal record.

For Francy, a 32-year-old housewife, her criminal record is a problem. She is concerned that her children will suffer due to the fact that their mother was in prison on drug charges.

Marlene, 50 years old, says that "they ruined my life" ("me dañaron la vida"). She only studied up to the second year of primary school and has held a variety of jobs, though it

became ever more difficult to get work. When she was arrested Marlene was visiting her twin sister, something she did regularly in order to take care of her nephew. "That day the police entered and we didn't understand anything. What we knew was that my sister's tenant sold drugs, but I never knew how much he had in the room." Neither of them had any way to prove their innocence, and they ended up accepting charges. "But me, I swear to God, I am innocent." After pleading guilty, they were sentenced to five years and 800 times the current legal monthly minimum salary. They are now facing another drama: Marlene's 15-year-old daughter has been physically assaulted several times by her father, who turns violent when drunk.

The relationship with one's children and family is a constant concern. Although some interviewees have found in their loss of liberty an opportunity to value their family and improve the relationship with their parents, the greatest concern for women inmates is their children, and how they seem to become ever more distant. Rocío feels sad when talking about her eldest son, who she has not seen since she has been in prison, and from whom she feels separated by a great distance. For Sandra, the worst aspect of her confinement is that she was no longer able to see her small children. Although they are well and have all their needs met, she has not been able to see them grow and feels the growing distance when she speaks with them by phone. At 25 years of age, she is deprived of liberty, far from her children, and submerged in a draining routine. After attempting to bring drugs into the prison in return for pay-

The situation wasn't much different for Rocío, 38 years old and the mother of three children. Her husband was murdered a few years ago and she was victim of forced displacement. This forced her to leave her belongings and the economic activity in her home town to support her family. Upon reaching the city, life became harder and harder for her. She could not find a steady job, and there were not many things she knew how to do, as she had only third-grade primary education. After several months with no fixed income, she agreed to transport drugs to another part of the country. The work consisted of traveling overland with some grams of cocaine; on delivery she would receive 250,000 pesos (equivalent to \$125 USD). She never had problems with the payment and, over time, that activity became her source of income. Rocío became a recidivist in the crime of drug trafficking the day she was caught with 1,500 grams and was prosecuted along with her travelling companion, who was transporting almost 1,000 grams more. During her second stay in prison for transporting drugs, she lamented that her major concern, in addition to her children, is the knowledge that upon leaving prison she would receive no support for getting back on her feet and finding a stable, legal, and sufficient source of income.

ment, Sandra was caught at the entrance, ending the deal and leaving her without the promised pesos.

The life histories encountered describe the rupture in the family faced by the women when they are deprived of liberty for a long time. Concern for their children is very much present in all of them, as noted by the women attorneys from the public defender's office (Defensoría Pública) with whom we were able to speak.

The paradoxical aspect of the deprivation of liberty is that while they entered the "business" because they saw it as their only economic alternative, confinement does not improve their labor conditions or prospects. The incredible weight of a criminal record on the economic life projects of the women who today are inmates is not taken into consideration by drug policies. It is as though the problem is over when the judge concludes that the conduct fits the crime as defined, ignoring the persistence of the conditions of socioeconomic vulnerability that led the persons on trial to sell or transport drugs.

Conclusions

The first finding of this study is that Colombia's legislation copies international trends promoted mainly by the United States and characterized by high doses of repression that take the form of multiple strategies, the most important of which are the use of the criminal law and crop eradication.

Second, the repressive approach does not appear to have had significant effects on the organized crime that has emerged around the drug business. Although there is aggressive repression of the growing, manufacture, and trafficking of drugs, the real and symbolic effectiveness of this policy is very limited. The precarious social conditions that persist in Colombia and the unmet basic needs constitute a propitious environment for drug entrepreneurs to find persons willing to participate in growing, manufacturing, and marketing.

Third, the consequences of the repressive policies are many and manifest themselves in different areas of national life. Nonetheless, the prison system is perhaps one of the most salient, given that drug-related crimes are the third-leading cause for which persons are deprived of liberty in Colombia.

Fourth, the vast majority of persons incarcerated for drug offenses has played only a minor part in the drug cycle, and so are easily replaced in the networks of manufacturing and trafficking; they generally have limited schooling and have lived amidst precarious socioeconomic conditions.

Fifth, overcrowding clearly threatens the effective fulfillment of the rights of the population deprived of liberty.

NOTES

1 We are especially grateful for the valuable assistance of the National Penitentiary and Prison Institute (INPEC: Instituto Nacional Penitenciario y Carcelario) of Colombia, which provided us quantitative information and allowed our visit to the women's prison El Buen Pastor; Ms. Ivonne Lagos, of the INPEC; the directors of the above-mentioned prison, for their assistance with our visit; the Public Defender's Office of Colombia (Defensoría Pública), for facilitating the contact with the women deprived of liberty who participated in the interviews; Ms. Martha del Río, public defender, who facilitated our qualitative work; Libardo Ariza, professor at the Universidad de los Andes, who read our first draft and made valuable comments on it; and the research group, which provided valuable insights.

2 On the concept of "globalized localism" and "localized globalism," see De Sousa Santos, B. (2002) *La globalización del derecho: los nuevos caminos de la regulación y la emancipación*. Bogotá: Universidad Nacional; and (2009) *Sociología Jurídica Crítica. Para un nuevo sentido común en el derecho*. Bogotá: ILSA.

3 The legal monthly minimum wage in Colombia for 2010 is 515,000 Colombian pesos. The equivalent in U.S. dollars is about \$259 (at the May 2010 exchange rate).

4 In Colombia the crime of drug trafficking and other violations fits under a broader category, "crimes against public health."

5 Other mid- and high-level trafficking figures have been extradited or are imprisoned in other countries.

6 The names of the women interviewed have been changed to protect their anonymity.