

REDUCING FEMALE INCARCERATION THROUGH DRUG LAW REFORM IN COSTA RICA

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In 2011, Costa Rica revised its drug legislation to introduce greater proportionality of sentencing and gender sensitivity. The reform reduced the length of incarceration for vulnerable women accused of bringing drugs into prison. The program initially benefited 150 women who were immediately released from prison. All of them were poor, with low levels of education, lacked employment opportunities, and most were heads of household responsible for several children. The reform not only benefited them but also their families.

Context and Description

The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders² (known as the "Bangkok Rules"), approved by the UN General Assembly in December 2010, recognizes that "a number of female offenders do not pose a risk to society and, as with all offenders, their imprisonment may render their social reintegration more difficult." Rule 57 emphasizes that "gender-specific options for diversionary measures and pretrial and sentencing alternatives shall be developed... taking account of the history of victimization of many women offenders and their caretaking responsibilities."³

In February 2011, in the framework of the implementation of the Bangkok Rules, a bill was presented in the national Legislative Assembly titled, "Reform to the Law on narcotics, psychotropic substances, banned drugs, related activities, money laundering, and financing of terrorism, Law No. 8204

of December 25, 2001, to introduce proportionality and gender specificity."⁴

The National Liberation Party and Public Defender's Office presented the bill before the Legislative Assembly's Security and Drug Trafficking Commission in June 2012.⁵ It was approved in 2013. The new article, known as "77 bis," underwent various revisions before passing with a large parliamentary majority.

The final version of the article was approved by the Special Permanent Editorial Committee in July 2013⁶ and states:

"The sentence provided for in the previous article will be from 3 to 8 years in prison, when a woman is the perpetrator or accomplice in introducing toxic substances, narcotics, or psychotropic substances into penitentiary facilities and when she meets one or several of the following conditions:

The reform ensured more proportionate penalties for vulnerable women involved in the drug trade.

- *She is in a situation of poverty;*
- *She is the head of household in conditions of vulnerability;*
- *She is responsible for minors, older adults, or people with any kind of disability that justify dependence on their caretaker;*
- *She is an elderly adult in conditions of vulnerability."*



Buen Pastor prison for women in San José, Costa Rica. Source: Jessamine Bartley-Matthews, WOLA

Before the reform was introduced, people detained and convicted for drug offenses received sentences of 8 to 20 years in prison, which prompted an increase in the overall prison population and resulted in overcrowding. In the case of women, 511 of the 780 incarcerated women – or 66% of the female prison population – were deprived of their liberty for violating the Psychotropic Substances Law. Of the 511 women incarcerated for drug offenses, about 150 (approximately one in four) were serving sentences for introducing drugs inside a prison. An analysis of the social profile of this group of women concluded that 24% were between 18 and 25 years of age and 39% were between 25 and 35 – meaning that the majority of the women detained for this type of offense were young. In addition, 95% of the women reported having children and

being responsible for them, without paternal support. Their incarceration created significant barriers to their familial responsibilities and their involvement in community life.⁷

This legal reform is a good example of how to introduce the principle of proportionality of sentencing for people accused of drug offenses – taking into consideration gender and vulnerability factors, instead of focusing on quantities or types of substance.

Results and Impact

After the "77 bis" reform of the Law on psychotropic substances was passed, the women then incarcerated for introducing drugs into prison were gradually released. This has directly contributed to addressing the problem of overcrowding in the *Buen Pastor* women's prison. They all shared the same social and educational profile (the majority had little to no schooling), which reflected their conditions of vulnerability and poverty. These were women coming from marginalized contexts with a dearth of education and employment opportunities, with no possibility of obtaining good jobs.⁸ The women who benefited from the reform were released from prison, and many were invited to participate in an innovative social support program – the "Inter-Institutional Network" – which seeks to redress the human rights violations that occurred as women were processed through the criminal justice system.⁹

For more information about the Inter-Institutional Network, its authorities, the nature of its work, and the repercussions it has had to date, please see Briefing No. 3 of this series: *Costa Rica's Inter-Institutional Network in Support of Women Caught in the Criminal Justice System*.

Key Resources

United Nations Office on Drugs and Crime, *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders with their Commentary*, A/RES/65/229, March 16, 2011, https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf

Cortés, E., *Drug Law Reform in Costa Rica Benefits Vulnerable Women and Their Families*, IDPC Blog, August 2013, <http://idpc.net/blog/2013/08/drug-law-reform-in-costa-rica-benefits-vulnerable-women-and-their-families>

Cortés, E., *Política criminal y encarcelamiento por delitos relacionados con drogas en Costa Rica*, Colectivo de Estudios de Drogas y Derechos / Asociación Costarricense de Estudios e Intervención en Drogas. San José, Costa Rica 2016, http://www.drogasyderecho.org/files/Costa_Rica.pdf

Aguado Correa, T., *Proporcionalidad y especificidad de género: a propósito de la reforma de la Ley Psicotrópicos*, Revista Digital de la Maestría en Ciencias Penales, Vol. 5, 2013, <http://revistas.ucr.ac.cr/index.php/RDMCP/article/view/12447/11701>

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Endnotes

1. Gender Specialist, Inter-American Commission of Women, Organization of American States.
2. United Nations Office on Drugs and Crime (UNODC), *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders with their Commentary*, A/RES/65/229, March 16, 2011, https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf
3. *Ibid.*
4. Asamblea Legislativa República de Costa Rica, http://www.asamblea.go.cr/Centro_de_Informacion/Consultas_SIL/Pginas/Detalle%20Proyectos%20de%20Ley.aspx?Numero_Proyecto=17980
5. Cortés, E., *Drug law reform in Costa Rica benefits vulnerable women and their families*, IDPC Blog, August 2013, <http://idpc.net/blog/2013/08/drug-law-reform-in-costa-rica-benefits-vulnerable-women-and-their-families>
6. Aguado Correa, T., *Proporcionalidad y especificidad de género: a propósito de la reforma de la Ley Psicotrópicos*, Revista Digital de la Maestría en Ciencias Penales, Vol. 5, 2013, <http://revistas.ucr.ac.cr/index.php/RDMCP/article/view/12447/11701>
7. Costa Rican Public Defender's Office (*Defensa Pública de Costa Rica*), *Estudio sobre el perfil de la población femenina privada de libertad por introducir droga a los centros penales*, April 2012, p. 21.
8. *Ibid.*, p. 5.
9. Instituto sobre Alcoholismo y Farmacodependencia, *Reforma de Ley de Psicotrópicos apoya a mujeres mediante Red Interinstitucional*, <http://www.iafa.go.cr/novedades/170-reforma-de-ley-de-psicotropicos-apoya-a-mujeres-mediante-red-interinstitucional.html>

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This series aims to share examples of innovative approaches that incorporate a gender perspective and the principles of public health and human rights into drug policy. Such innovations will have the best possible outcomes only when they are accompanied by more fundamental drug law and policy reform. However, in the absence of broader reforms, or carried out in conjunction with such reforms, these innovations can help break the vicious cycles of poverty, social exclusion, drug use, involvement in the drug trade, and incarceration that plague so many poor communities across the Americas today. Global Innovative Approaches is a tool that accompanies the publication [Women, Drug Policies and Incarceration: A Guide for Policy Reform in Latin America and the Caribbean](#).