

Criminal Record Reform in Costa Rica: A Step toward Proportionality and Improved Prospects For Women's Lives after Prison

This commentary is a joint publication between the Costa Rican Association for Research and Intervention in Drugs (Asociación Costarricense para el Estudio e Intervención en Drogas, ACEID) and WOLA.

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Ana Chaves was one of the hundreds of women who benefited from the “77 bis” reform, which reduced prison sentences to between 3 and 8 years for the crime of bringing drugs into penitentiaries in Costa Rica, allowing her to be released early from prison in 2013. Yet, despite the fact that she took advantage of each day of her incarceration to study and gain more skills, her criminal record kept her from acquiring a formal job. Thanks to another recent legislative reform that went into effect in January 2017, Ana was one of the first women to have her criminal record wiped clean rather than waiting for 10 years after her release from prison as stipulated by previous legislation.

Law 9361 recently reformed the court registry in Costa Rica [\[1\]](#), allowing people with criminal convictions to eliminate their criminal records from the registry more quickly, based on criteria that takes into account sentencing length and the offense committed. If it can be shown during the criminal justice process that the person convicted was in a situation of vulnerability at the time they committed the offense, the judge presiding over the sentence can order that the criminal record be removed once the sentence has been served. This is another way in which the Costa Rican State has introduced the principles of proportionality and rationality into criminal justice policy, including for drug-related offenses, which undoubtedly constitutes an important precedent for preventing social and labor discrimination against people with criminal convictions.

The Penitentiary Situation in Costa Rica

Although it has just under 5 million inhabitants, Costa Rica has one of the highest incarceration rates in Latin America and faces many challenges both in terms of prison infrastructure and legislation. More than 40 years since the Criminal Code was promulgated, the country still does not have laws regarding sentence execution or for regulating the penitentiary system. The fact that people's criminal records remained for 10 years after they finished serving their sentences, without distinguishing between short and long prison terms, was another element of the criminal justice system that directly harmed the re-entry of incarcerated individuals, even though they had already done their time.

According to information from the Ministry of Justice and Peace, as of June 2016 there were 13,230 people deprived of their liberty, 96% of whom were men and 4% women (notably, 53.8% of the women were incarcerated for drug-related offenses). There was an overcrowding rate of 40.6%, principally affecting the male prison population, as the number of women incarcerated for drug-related offenses fell due to the approval of Law 9161, which reformed the Psychotropic Substances Law. [\[2\]](#) This reform,

known as “77 bis” and implemented in 2013, reduced prison terms for women who smuggle drugs into prisons to a minimum of three to eight years, if they meet certain conditions.^[3] This change also permits the use of alternatives to incarceration, as the law permits such alternatives for three-year sentences. The immediate result of this reform was the initial release of approximately 120 women. This also addressed the problem of overcrowding in the women’s prison, which was known as the *Buen Pastor* at that time and was renamed the Vilma Curling Rivera Center for Institutional Attention (*Centro de Atención Institucional*, CAI)^[4] in early 2017.

The Impact of Having a “Criminal Record”

Before the approval of Law 9361, anyone deprived of liberty who served their sentence had to wait ten years after their release from prison for their criminal records to be eliminated from the court registry.^[5] This law did not distinguish between serious crimes such as homicide and organized crime and those offenses carrying lighter sanctions, such as minor theft or non-violent criminal behavior. These criminal records were disproportionate and harmful to the people who left prison to seek employment and resume their life outside of prison.

Criminal records, in effect, serve as a second sentence, with very serious consequences for women, their families, and dependents. Women already suffer from labor market exclusion and social discrimination, which is compounded by the fact that both the government and private companies request to review a person’s criminal record in the hiring process. A research study^[6] carried out by students at the Psychology Department of the National University (*Universidad Nacional*, UNA) who interviewed a sample of women released in 2013 under the “77 bis” legal reform demonstrated that their main obstacle to labor insertion was having their conviction appear on their “certificate of delinquency,” as it is called in Costa Rica. Despite these women’s efforts to study, learn a trade, and restart their lives, their criminal records limited their possibilities for social reintegration.

Upon analyzing the profile of non-violent offenders who committed property crimes or small-scale drug-related offenses, many situations of risk and social vulnerability arise as factors associated with the commission of a crime – and these situations worsen with incarceration. Once the sentence has been served, the existence of a criminal record creates another obstacle, hindering the “social adaptation”^[7] objectives that the criminal justice system should promote, at least in principle. These objectives are hindered in practice, as many people are not offered employment because of their “tainted criminal record,” despite their work experience and knowledge.

In conclusion, while the State is in charge of overseeing sentence execution and the training and reentry of convicted persons into society and the job market, contradictorily, the law in Costa Rica made no distinctions regarding the seriousness of the offense committed and, in practice, kept people with criminal histories who had served their time from being able to obtain employment.

Reforming the Law on Criminal Records

This reform got its start several years ago through discussions and debate promoted by civil society organizations, the Public Defender’s Office, and Deputy Oscar Alfaro (representing the National

Liberation Party, *Partido Liberación Nacional* from 2010 to 2014), who introduced bill number 18650 in the Legislative Assembly in March 2014.

However, several deputies disagreed with the original version of the bill, and in May 2015, Deputy Marco Vinicio Redondo (representing the Citizen Action Party, *Partido Acción Ciudadana*, and elected for the 2014-2018 legislative period) convened an inter-institutional and multiparty working group to draft a new text. Thanks to this process of analysis and discussion, a draft bill was ultimately introduced that could be agreed upon in the plenary legislative session.

By July 2016, bill 18650 had become Law 9361, which reformed article 11 of Law 6723 on the Judicial Registry and Archives (*Ley 6723 del Registro y Archivos Judiciales*) dating from March 10, 1982. [\[8\]](#) This paved the way for the Judicial Registry to finally have criteria (beyond the 10 years established by law) for eliminating the criminal records of people convicted after they served their sentences, according to the following parameters:

- Immediately after serving a sentence of less than three years or for a misdemeanor.
- One year after serving a sentence of three to five years.
- Three years after serving a sentence of five to ten years.
- Ten years after serving a sentence for a serious offense such as organized crime, terrorism, sexual crimes against minors, aggravated murder, femicide and crimes against the public administration.
- In the case of offenses committed by people in situations of vulnerability, the judge executing the sentence will order the removal of the criminal record once the sentence has been served.

Of particular note, the legislators introduced the concept of differentiating among crimes based on the level of violence involved and the penalties imposed for the crime, as well as provisions that consider the situation of vulnerability of the defendant. With regards to the latter, the individual's criminal record is removed once the sentence is fulfilled (provided that the offense is not one of the serious ones specified). This also reaffirms the incorporation of the principles of proportionality, reentry, and humanity into sentencing policy.

The Potential Impact of this Reform

Because the reform went into effect on January 13, 2017, it is still too early to assess its impact. That said, there is no doubt that this law marks a pivotal moment in the lives of many men and women who have convictions and are eager to rebuild their lives. In addition, it marks a structural change in that it prevents labor discrimination both in the private and public sectors by enhancing employment opportunities for people in situations of greater social vulnerability and who need more support.

In Costa Rica [\[9\]](#) and other countries, available evidence shows that more than 90% of women who violate the law do so for reasons associated with their situations of poverty and vulnerability, and that

the majority are the main source of income for their households. Criminal records are an obstacle for them to be able to gain employment, take on family obligations and thereby break the link between poverty and crime. This is the main reason why this law will have a positive impact, both for people who committed a crime for the first time as well as for repeat offenders.

Furthermore, the reform could invigorate the criminal justice process into promoting the use of alternatives to incarceration, such as reconciliation, comprehensive reparation and pretrial diversion efforts, and orient Costa Rica's judicial system more toward a restorative justice approach. The law promotes the need for judges, defense lawyers, and prosecutors to analyze each specific case and the circumstances of the person who committed the offense, so that these factors can be weighed in the criminal justice process, included in the sentence, and taken into consideration in the sentence execution phase. This reform does not foster impunity but instead serves to rationalize the impact of sentencing policies on the lives of many offenders, and provide added value to the institutional programs designed to support those in the penitentiary system.

We hope that in the short term, this law will be the precedent for continuing to incorporate principles of humanism, reasonableness, gender specificity, and proportionality into legislation regarding property crimes and drug-related offenses, as these laws currently do not distinguish between small scale offenses or those that have been committed under threat, coercion, violence, extreme poverty or the problematic use of psychoactive substances. Additionally, no criteria has been established to give criminal courts or the Public Ministry leeway to assess the reasons behind the individuals' behavior, as there is a rigid scheme of minimum sentencing guidelines. As a result, the personal, social, and economic situations that influenced the person in question to commit the offense are not usually taken into consideration during the sentencing process.

Finally, these reforms should continue being coupled with programs promoting reentry and employment, both during and after sentencing, taking into account the particular needs of each person, as well as gender, and generational and cultural perspectives. It is also important to ensure coordinated responses from institutions, civil society organizations, and other actors who provide the opportunities and tools that formerly incarcerated individuals need to improve their quality of life in the long run, benefitting their families, the community, and society in general.

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This brief was translated by Hilary Burke and edited by Caroline Buhse and Coletta A. Youngers.

ENDNOTES

[1] Reform of Article 11 of Law 6723, the Judicial Registry and Archives Law (*Ley del Registro y Archivos Judiciales*) dating from March 10, 1982.

[2] Law 9161, reforms Law 8204, “Comprehensive reform Law on narcotics, psychotropic substances, banned drugs, related activities, money laundering and financing of terrorism,” to introduce proportionality and gender specificity.

[3] Law 9161 added an article to Law 8204, to introduce proportionality and gender specificity: “Article 77 bis. The sentence provided for in the previous article will be from three to eight 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:

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

In the case that one of the previous conditions is met, the competent judge or the judge executing the sentence will be able to order that the sentence be served under the modality of house arrest, conditional liberty, Confidence Centers, restricted liberty with non-stigmatizing electronic monitoring devices or any other alternative measure to incarceration.”

[4] <http://presidencia.go.cr/comunicados/2017/03/carcel-de-mujeres-llevara-nombre-de-enfermera-que-lucho-por-privadas-de-libertad-y-sus-hijos/>

[5] Article 11 of Law 6723 on the Judicial Registry and Archives, dating from March 10, 1982, established that: “The Head of the Registry will remove the records of the convicts when ten years have passed since the serving of the sentence as long as no new offense is made.”

[6] Cruz Pablo, Arce Katherine and others: “Socio-occupational Situation of Women Benefited by the Modification of Article 77 bis of the Psychotropic Law who used the Public Defender’s Office from March through June 2014.”

[7] The General Directorate of Social Adaptation (*Dirección General de Adaptación Social*) is the public institution charged with penitentiary administration in Costa Rica and is a division of the Ministry of Justice and Peace. Based on a critical criminological perspective, the term “social adaptation” takes us back to concepts such as “normalization” and “rehabilitation,” promoted after the Second World War and refer to the State’s task of maintaining total control (also called biopolitics) over people who are “maladjusted” or “deviant,” through social, health, and criminal justice policies. With regard to drug-related offenses, criminal justice policies are primarily used.

[8] Reform of the Law of the Judicial Registry and Archives, *Sistema Costarricense de Información Jurídica*, http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=81915&nValor3=104664&strTipM=TC.

[9] Study of Incarcerated People, April 2012, <http://www.poder-judicial.go.cr/defensapublica/index.php/noticias/152-estudio-privadas-de-libertad-abril-2012>