

ELIMINATING BARRIERS TO RE-ENTRY: CRIMINAL RECORD REFORM IN COSTA RICA¹

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Criminal records constitute a significant barrier for formerly incarcerated people who are seeking employment and wish to resume their lives. Law 9361, passed in January of 2017, reformed the court registry in Costa Rica, providing an option for criminal records to be eliminated. The opportunity to erase one's criminal record is based on criteria that takes into account the length of the sentence, the offense committed and, when relevant, the "situation of vulnerability" of the offender.

Context and Description

Criminal records constitute a significant barrier for formerly incarcerated people who are seeking employment and wish to resume their lives. Criminal records often serve as a second sentence, as both the government and private companies request to review a person's criminal record during the hiring process. Possession of a criminal record may therefore entirely exclude the person from obtaining a job in the formal economy. This can have particularly serious consequences for women, their families, and dependents, as women already suffer from labor market exclusion and social discrimination.

Law 9361, passed in January of 2017, reformed the court registry in Costa Rica,² providing an option for criminal records to be eliminated from the registry. The opportunity to erase one's criminal record is based on criteria that takes into account the length of the sentence, the offense committed and, when relevant, the "situation of vulnerability" of the offender. Prior to the passage of Law 9361 in Costa

Rica, anyone deprived of liberty who served their sentence had to wait ten years after their release from prison for their criminal record to be eliminated.³ Similarly, the prior law did not distinguish between serious crimes such as homicide and organized crime, and those offenses carrying lighter sanctions, such as petty theft and other non-violent criminal behaviors.

Law 9361 provides an opportunity for criminal records to be eliminated from the court registry in Costa Rica.

Law 9361—which applies both retroactively and for new cases entering the criminal justice system—provides comprehensive guidelines for the elimination of criminal records, as follows:

- 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.



Women incarcerated in the Buen Pastor prison in Costa Rica.
Photo by: Jessamine Bartley-Matthews

This last point incorporates the principles of proportionality, reentry into society, and respect for human rights into the criminal justice system. The provision stipulates that people, particularly women, commit crimes because they find themselves in a situation of vulnerability, such as poverty, social exclusion, and discrimination. While the reform does not specifically target women, they are likely to particularly benefit from the provision on vulnerability. In Costa Rica, the vast majority of the non-violent female offenders incarcerated for property crimes or small-scale drug-related offenses were in situations of vulnerability at the time the crime was committed. After their release, many are not offered employment because of their “tainted criminal record,” despite relevant work experience and skills,

which in turn perpetuates cycles of poverty and recidivism. Under Law 9361, 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. Similarly, individuals who have already been sentenced, or who have served their sentence but still have a criminal record, can appeal to have their criminal record eliminated under Law 9361.

Law 9361 goes hand in hand with a sentencing reform related to women who smuggle drugs into prison in Costa Rica, which resulted in a reduction of sentences for women classified as vulnerable in their court proceedings. The sentencing reform was applied retroactively for those who were already imprisoned. Additionally, Costa Rica has also launched an alternative to incarceration program through the Public Defender’s Office, which works to divert women from the criminal justice system and instead offer them counseling, treatment services, and job training. The program also provides support services to women already in the criminal justice system.

Results and Impact

Because Law 9361 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 a criminal record and are eager to rebuild their lives. In addition, it marks a structural change in that it seeks to prevent labor discrimination both in the private and public sectors and thereby enhance employment opportunities for people who come from backgrounds of social vulnerability and who have a criminal record.

In Costa Rica and other countries, available evidence shows that more than 90% of women

who violate the law do so for reasons associated with their situation of poverty and vulnerability, and that the majority supply the main source of income for their households.⁴ Criminal records are an obstacle for them to gain employment, take on family obligations and thereby break the link between poverty and crime. This law will therefore 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 system into promoting the use of alternatives to incarceration – such as reconciliation, comprehensive reparation and pretrial diversion efforts– and orient Costa Rica’s judicial system toward a restorative justice approach. In addition, the Law requests judges, defense lawyers, and prosecutors analyze each specific case and the circumstances of the person who committed the offense so that these factors can be weighed throughout the criminal justice process, including in the sentence execution phase, an essential component of proportionate sentencing. While critics may argue that this reform promotes impunity; on the contrary, it serves to minimize the negative impacts of sentencing policies on the lives of offenders in situations of vulnerability.

That being said, it is important to note that Law 9361 does not specify the parameters that define whether or not a person was in a situation of vulnerability when they committed the crime. As a result, the judge presiding over the case has the discretion to make this determination. The lack of key criteria defining vulnerability in the text of the law is problematic, as each judge may have a different definition of vulnerability or may have a different understanding of their role in executing the law. As a result, while the law is promising and is a step in the right direction, its successful implementation remains to be seen.

Finally, these reforms should continue to be coupled with programs promoting reentry into society and employment, taking into account the particular needs of each person, as well as gender, age, and cultural considerations. 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.

Key Resources

Criminal Record Reform in Costa Rica: A Step toward Proportionality and Improved Prospects For Women’s Lives after Prison, June 29, 2017, <https://www.wola.org/analysis/criminal-record-reform-costa-rica-step-toward-proportionality-improved-prospects-womens-lives-prison/>

Legal Reform for the Record and Judicial Archives (Reforma Ley del Registro y Archivos Judiciales), N° 9361, http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=81915&nValor3=104664&strTipM=TC

Reducing Female Incarceration through Drug Law Reform in Costa Rica, https://www.wola.org/wp-content/uploads/2017/05/DONE-2-Costa-Rica-77bis_ENG_FINAL-.pdf.

Costa Rica’s Inter-Institutional Network in Support of Women Caught in the Criminal Justice System, https://www.wola.org/wp-content/uploads/2017/05/DONE-3-Red-interinstitucional-Costa-Rica_ENG_FINAL-.pdf.

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Endnotes

1. This brief was compiled by Caroline Buhse and is based on the commentary, "Criminal Record Reform in Costa Rica: A Step toward Proportionality and Improved Prospects for Women's Lives after Prison," written by Ernesto Cortés and Zhuyem Molina and jointly published by WOLA and the *Asociación Costarricense para el Estudio e Intervención en Drogas* (ACEID).
2. Reform of Article 11 of Law 6723, the Judicial

Registry and Archives Law (*Ley del Registro y Archivos Judiciales*), March 10, 1982.

3. Article 11 of Law 6723 on the Judicial Registry and Archives, 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."
4. Study of Incarcerated People, April 2012, <http://www.poder-judicial.go.cr/defensapublica/index.php/noticias/152-estudio-privadas-de-libertad-abril-2012>

Disclaimer: The opinions set out in this briefing are those of the author(s) and do not necessarily reflect the official position of the CIM/OAS.

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](#).