

## IDPC Briefing Paper

# Mexico: drug policy and security in the first six months of the Enrique Peña Nieto Administration

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### Introduction

In July 2012, the Partido Revolucionario Institucional (PRI) won the Mexican presidential elections after twelve years of government by the Partido de Acción Nacional (PAN). President Enrique Peña Nieto took office on 1 December. This paper analyzes the first six months of his administration from the standpoint of Mexican drug policy. Because drug policy in Mexico is closely tied to security, both issues are examined.

This report begins with a brief analysis of the context in which Peña Nieto began his term. It then analyzes government rhetoric on security and drugs. The next section examines some institutional changes that are part of the security strategy, the Social Prevention of Violence and Crime program, its link with drug policy and bilateral relations with the United States. The paper ends with a series of conclusions and recommendations.

In the first months of the Peña Nieto Administration, there has been a change in government discourse, compared to the preceding administration. Although security ranks high on the government's agenda, there is more talk of prevention and reduction of violence than of "war" or "fighting" organized

crime. Nevertheless, there are no differences in terms of actions, the use of the armed forces or the goals pursued.

Regarding drug policy, the president has constantly stressed his opposition to legalization and his openness to a "worldwide debate," but without specifying when that debate might happen or who might organize it. In general, the president has shown little interest in or knowledge of the issue, including of national legislation currently in force.

The president has not joined the Latin American debate; instead, he has ignored or distanced himself from statements by his counterparts in the region and the conclusions of the Organization of American States (OAS) report, *The Drug Problem in the Americas*,<sup>1</sup> as well as the results of the OAS General Assembly meeting held June 4-6, 2013 in Guatemala.

It is still impossible to predict with certainty how bilateral cooperation with the United States will develop. The government seems interested in keeping its drug policy aligned with that of its neighbor and not making waves in that area, although some reframing of institutional cooperation could raise old suspicions.

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The Mexican government should undertake changes in its drug policy. A comprehensive review of the strategy and traditional approaches could lead to a reform of the legal framework, which could result in full decriminalization of drug use, as it did in Portugal.<sup>2</sup> In addition, a closer relationship with Latin American countries interested in talking about a change in strategy for handling the drug issue (Guatemala, Colombia and Uruguay) could promote comprehensive partnerships and new approaches that are more closely aligned with the region's needs.

## Background

In Mexico, there is no official public discourse that provides objective information about the properties of various psychoactive substances, the harm associated with each, the different types of drug use and the differences between: i) drug use as a recreational activity or a health problem; ii) the retail market; iii) international trafficking; and iv) possible ties between drug-trafficking organizations and other criminal enterprises.

Nor is there a “drug policy” per se – a series of objectives, actions and public policies aimed at addressing the issue of licit and illicit substances in a comprehensive way and as a state policy. Provisions in this area are scattered throughout a series of texts that focus on either health (the norm for prevention, treatment and control of addictions, NOM-028<sup>3</sup>), sanctions and enforcement of sentences (the Federal Criminal Code,<sup>4</sup> Federal Criminal Procedures Code<sup>5</sup> and Organized Crime Law<sup>6</sup>), or both (such as the General Health Law<sup>7</sup>).

Drug-related crimes in Mexico are defined as “crimes against health” and refer to behaviors (cultivation, production, sale,

commercialization, provision, introduction and transport, etc.) involving psychoactive substances that are included in the classification lists of the General Health Law.<sup>8</sup>

In general, the issue of psychoactive substances in Mexico has mainly been addressed from a punitive rather than a health perspective, and, in recent years, from the standpoint of national security. In contrast, there has been little attention to prevention, care and treatment, and no systematic implementation of risk- and harm-reduction policies, although they are referred to in NOM-020.

The security strategy implemented by former President Felipe Calderón (2006-2012) left the country in a state of generalized insecurity. During his six years in office, there were at least 60,000 deaths connected with violence related to organized crime, and some 25,000 people disappeared.<sup>9</sup> The deployment of military personnel (Army and Navy) occurred with no legal framework that authorized or regulated it.<sup>10</sup> The use of the armed forces led to an increase in human rights violations and the use of deadly violence by security forces.<sup>11</sup>

As part of the penal reform undertaken in 2008, a form of detention known as “*arraigo*” was added to the Constitution. *Arraigo* refers to arbitrary detention in special centers for a maximum of eighty days, while the Public Ministry seeks grounds for charging the person suspected of having committed an illicit act. Although *arraigo* already existed, with Calderón it became constitutional.<sup>12</sup>

Nevertheless, during the previous six years, legal changes were made that were aimed at separating the area of drug use from that of criminal justice. In August 2009, the “Decree by which various provisions of the General Health Law, Federal Criminal Code and Federal Criminal Procedures Code are reformed, added and overturned,”<sup>13</sup> known

in the media as the “Small-Scale Drug-Trafficking Law” (“*Ley del Narcomenudeo*”), was published.

That decree decriminalized drug use through a system of thresholds on amounts possessed and reduced penalties for some types of crimes against health.<sup>14</sup> The quantities used to determine the acceptable amount for personal and immediate consumption are extremely low, however, which has resulted in corruption, extortion and arrests of users, as well as operations against small-scale trafficking networks. In addition, if a person is caught more than two times with amounts for personal and immediate use, he or she could be referred for compulsory treatment. The Mexican law may therefore be an example of “empty decriminalization,”<sup>15</sup> which, to be effective, would require subsequent changes based on a comprehensive view of drug policy.

At the end of his term, President Calderón made a sharp change in his discourse, joining the other Latin American presidents who have urged a change in international drug policies.<sup>16</sup> The calls from Mexico, Colombia and Guatemala in the United Nations General Assembly in September 2012 led to the convening of a special session of the United Nations (UNGASS) on “the global drug problem,” which will be held in 2016.

It is amid these structural contexts and events that President Enrique Peña Nieto began his term.

## “Security” and “drugs” in government rhetoric

### A change of rhetoric

From its earliest days, the Peña Nieto Administration’s discourse has been different from that of its predecessor. It has stated that

its main goal is to reduce violence and crime, especially the crimes of murder, kidnapping and extortion. On various occasions, the president has insisted that the Army stay on the streets until control of the country is regained. There is, however, no more talk of open war against drug trafficking; instead, the emphasis is on prevention, economic growth, structural reforms and the creation of broad-based political alliances to accomplish the institutional and legislative reforms that the country needs. Within the framework of an alliance among the three main parties (the *Partido Revolucionario Institucional*, PRI; the *Partido de Acción Nacional*, PAN; and the *Partido de la Revolución Democrática*, PRD), called the “Pact for Mexico,” the initiatives approved so far include the areas of labor, education and telecommunications, among others.

In April 2013, the Chamber of Deputies’ Constitutional Points Commission approved a draft decree to reform *arraigo* detention. It was agreed that *arraigo* would be reduced<sup>17</sup> to a maximum of twenty days; it could be extended by another 15, but never to more than 35 days. Nevertheless, *arraigo* remains a way of using pre-trial detention to compensate for the inefficiency of the institutions responsible for investigating crimes. This must still be approved by the Senate before it becomes official.

### The government’s media strategy

The government’s communication strategy has consisted of not providing the media with information about operations, arrests, killings and confrontations with organized crime. The previous government filled the media with bulletins and images that described a country in chaos, scourged by violence and confrontations between soldiers and “criminals.” People who were arrested were displayed before the public, and their roles were exaggerated to give the impression

that the heads of criminal networks were being captured. Nearly every day, a suspect identified as a *capo*, a leader of a drug trafficking organization, was arrested and marched before the media. During the first months of the Peña Nieto Administration, however, the government's communiqués have avoided showing images of captures and operations. Officials have said publicly that suspects who are arrested will not be displayed to the press.

The argument is not based on a discourse of rights; rather, the logic is that the government does not want to turn criminals into celebrities. In April, Enrique Galindo Ceballos, commissioner general of the Federal Police, said that criminals will not get “press or an audience,” and he used a disparaging term when insisting that officials will not make “scumbags” famous.<sup>18</sup>

According to a journalist source who requested anonymity,<sup>19</sup> control of the media agenda has two aims: the dissemination of other types of news that is more focused on economic, social or political issues, and the pursuit of people unconnected with organized crime. With some media, there is a relationship based on corruption, in which the media outlet negotiates with the government what news will be published and from what angle. Some media, as well as blogs and social networks, also practice self-censorship for safety reasons.

When Inés Coronel,<sup>20</sup> father-in-law and operative of Chapo Guzmán, was arrested, the government could not resist and took the media route: not only was his capture announced, but the video of his arrival in Mexico City in a Federal Police plane was circulated.

In the early hours of Monday, 15 July 2013, the Mexican Navy captured Miguel Ángel Treviño Morales, *alias* “Z-40,” who became

leader of the criminal group *Los Zetas* after the death of Heriberto Lazcano Lazcano, *alias* “El Lazca,” in 2012.<sup>21</sup> In announcing the news, Mexican authorities stressed that no shots were fired during the arrest. Images of the prisoner released after the arrest, however, showed him with his face beaten.<sup>22</sup> The news was celebrated internationally and the capture is considered the Peña Nieto Administration's greatest victory so far in the area of security.

Despite the importance of these arrests and the political capital they could create, the cases that have received the most publicity are those connected with public officials accused of corruption and related crimes,<sup>23</sup> in an effort to break with the rhetoric of the previous government which focused on trumpeting the arrests and killings of leaders of criminal groups.

### **Drug policy rhetoric: decriminalization and legalization**

The president has maintained a consistent discourse about drugs during these months: “against legalization” but “open to debate.”

In light of the legalization of marijuana in Washington and Colorado, Luis Videgaray,<sup>24</sup> who was Peña Nieto's right-hand man during the transition and is now minister of the economy, said that although the president is opposed to legalization, the result of balloting in the two U.S. states changed the rules of the game and could force Mexico to modify its drug-policy strategy. No further statements were forthcoming, however, and there appears to have been no change in the Mexican government's view of or approach to drug trafficking.

At the Summit of Heads of State of Latin America and the Caribbean and the European Union<sup>25</sup> (Chile, January 2013), President Peña Nieto said that legalization would not solve

the problem of violence, and that Mexico would not choose that path. Nevertheless, he said he was in favor of debate.

In an interview with the Colombian magazine *Semana* in May,<sup>26</sup> he said he was “open” to debate about the legalization of certain drugs, although personally he was “not convinced” that would solve the problem, because organized crime groups have diversified their activities and legalization would not stop that.

In Cali,<sup>27</sup> at the signing of the Pacific Alliance with Peru, Colombia and Costa Rica in late May, Peña Nieto said he opposed not only legalization, but also the decriminalization of drug use.

In response to the OAS report, *The Drug Problem in the Americas*,<sup>28</sup> he called decriminalization a “false” and “facile” solution. He reiterated that he was open to debate, but made no reference to any date or forum and did not say what type of role Mexico might play. As noted at the beginning of this report, drug use is currently decriminalized in Mexico. The president therefore appears not to know or fully understand Mexico’s current legal framework on psychoactive substances.

At the June 2013 OAS General Assembly meeting, the Mexican delegation insisted on the need to prevent crime and drug use and not to criminalize users “in some cases.” Mexico was part of the group of countries that proposed holding an Extraordinary Session of the OAS General Assembly in 2014 to continue discussing the drug issue and how to address it; that proposal was approved unanimously at the end of the assembly.

On 6 June, the Assembly issued the Declaration of Antigua, “For a Comprehensive Policy against the World Drug Problem in the Americas.”<sup>29</sup> Commitment 7 of the declaration calls for member countries to “encourage broad and

open debate on the world drug problem so that all sectors of society participate and continue offering, as the case may be, their experience and knowledge of the different aspects of the phenomenon and thereby contribute to the strengthening of national strategies, as fundamental elements for the effectiveness of public policies.” Points 10 and 11 emphasize the importance of human rights as a crosscutting issue and ensuring gender awareness in the design and implementation of drug policies. It is the government’s responsibility to adapt its policies to the declaration’s principles and to respect the commitments it assumed as a signatory. President Peña Nieto has made no reference to it, however, and none of those issues appears to be on the federal government’s agenda.

In a speech before the members of Chatham House in London in June 2013, Peña Nieto reiterated that “Mexico is not in favor of the legalization of drugs,” because, unlike his counterparts in Guatemala and Colombia, he does not believe that is the way to reduce violence and organized crime. He added, “Nevertheless, we are in favor, and we want to insist and speak out about this, of having a broad-based debate soon about this issue and the consensus that a new policy is needed in this area.”<sup>30</sup> However, the vagueness of terminology and the lack of references to specific meetings – for example, the UNGASS meeting in 2016 – raise doubts about his real interest in and knowledge of the issue.

Another government official who has spoken out on the drug issue is Roberto Campa, vice minister for prevention and civic participation in the Interior Ministry. In April, he announced that drug courts would be established in Mexico.<sup>31</sup> These currently exist in the state of Nuevo León, with support from the Mérida Initiative. The idea is to expand them to other parts of the country using the same model and also with funds from the Mérida Initiative, as

in the previous six-year period. After the OAS report was published, the undersecretary spoke out in support of Mexico's current policy, saying that country has already decriminalized drug use and implemented a public health approach, which coincides with the report's recommendations.<sup>32</sup> The discrepancies between the president's statements and those of other government officials reflect the profound lack of knowledge about the issue.

### **Assistance programs for people who use drugs**

The commissioner of the National Council against Addictions (*Consejo Nacional contra las Adicciones*, CONADIC),<sup>33</sup> Fernando Cano, was named five months after the current government took office. Some experts see this as a sign of the president's lack of interest in the issue. On various occasions, the commissioner has urged a change in the way in which dependent use is addressed.<sup>34</sup> The current administration's strategy would include prioritizing rehabilitation rather than imprisonment of "addicts" (the term with which the commissioner tends to refer to dependent users) and eliminating support for private organizations, so only the government would provide services. Currently, most assistance centers operating in Mexico are run by civil society.

During the last administration, more than 300 New Life Centers (*Centros Nueva Vida*) were established. These are public primary care centers that offer free ambulatory service and focus on the primary detection and brief treatment of drug dependency problems.<sup>35</sup> These centers, however, were launched without trained staff or the necessary equipment.

The commissioner has said that the number of drug courts will be increased so that people who commit crimes under the influence of psychoactive substances will be channeled to rehabilitation services instead of prison.

So far, the government's approach to the drug issue appears not to have changed: the terms "addict" and "addiction" are still used and a harm-reduction approach has not been included. The government still links drug use to crime, and various federal government agencies have proposed the implementation of drug courts as an alleged strategy for addressing crimes related to drug use. As discussed below, there are several reasons why drug courts should be avoided, as they have many collateral effects and are very expensive.

Regarding decriminalization, there are no indications of a desire to improve and deepen the 2009 reform, at least at the federal level. On the contrary, in early June, Commissioner Cano announced<sup>36</sup> that the hallucinogenic plant known as *Salvia divinorum* – which has been used for centuries by indigenous peoples in Mexico and is easily obtained in markets and by Internet – would be added to the list of controlled substances.

### **Movements for cannabis policy reform**

Nevertheless, some dissonant voices are attempting to break through the dominant rhetoric.

In November 2012, PRD Federal Deputy Fernando Belaunzarán presented a proposal for a "General Law for the Control of Cannabis, Assistance for Addiction and Rehabilitation." The purpose of the initiative is mainly to open up debate and seek a "Mexican" way of legalizing the plant and its market. The draft measure contains a series of provisions that make it impractical, however,<sup>37</sup> and it appears to have no chance of success.

At the local level, some steps could point in a new direction. In late June, federal and Mexico City PRD legislators began a series of public consultations with the idea of presenting an initiative in November that would legalize

the cannabis plant in the capital.<sup>38</sup> The purpose of the initiative would be to regulate the production and commercialization of the plant and its derivatives; among other things, it proposes the formation of social clubs, cultivation for personal use, and the establishment of reasonable quantities to distinguish between possession for personal use and possession for sale. It would also legalize medical and recreational use.

The proposal, which is currently in the consultation phase, has sparked various reactions.<sup>39</sup> Commissioner Cano has said that legalization would increase dependent use and that the health service would be overwhelmed. Those comments demonstrate a lack of information about the different types of use and about successful examples of decriminalization and regulation, such as those of Portugal and the Cannabis Social Clubs in Spain.<sup>40</sup> As a survey on people who use drugs in Mexico City by the Collective for a Comprehensive Drug Policy (*Colectivo por una Política Integral Hacia las Drogas*, CUPiHD) shows,<sup>41</sup> 92 percent of illicit people who use drugs consume marijuana and most are functional people who include consumption among their normal activities. Decriminalizing use and regulating the production and sale of cannabis would distance these people from the illegal market, because they would be able to obtain the plant legally. The health system would assist people with dependent or problematic use, who tend to be a minority.

The Mexico City Human Rights Commission (*Comisión de Derechos Humanos del Distrito Federal*, CDHDF) has been more open to the issue and is aware that any discussion must include the views of users.<sup>42</sup> The commission signed an agreement with CUPiHD, and the two organizations are working together on a report on drugs and human rights in Mexico City.

Despite the initiative and the policy change it could imply, there are signs that a punitive approach persists in Mexico City. Jorge Hernández Tinajero, president of CUPiHD, said in an interview for this report<sup>43</sup> that the local government is also working for the implementation of a drug court system. This is not the first time that has been proposed,<sup>44</sup> although this time the initiative would probably have the support of the federal government, which is also in favor of expanding the model to the entire country. The collective also notes that since February 2013, Mexico City has had a special 200-person police force to combat small-scale drug trafficking.<sup>45</sup>

## Federal drug policy in light of security strategy

### Elimination of the Secretariat of Public Security

One of the president's first actions was to eliminate the Public Security Ministry (*Secretaría de Seguridad Pública*, SSP). The result is a concentration of power in the Interior Ministry (*Secretaría de Gobernación*, SEGOB) and *ad hoc* agencies, including the National Security Commission (*Comisión Nacional de Seguridad*), which is under SEGOB.<sup>46</sup> This commission oversees the Federal Police, the Decentralized Administrative Body for Prevention and Social Readaptation (*Órgano Administrativo Desconcentrado de Prevención y Readaptación Social*, OADPRS, which is the federal penitentiary system) and the Federal Protection Service (*Servicio de Protección Federal*).

During these months, there has been no change in the number or quality of federal police officers deployed throughout the country, nor is this force expected, in the short term, to be able to replace the Army

and Navy in security tasks. One innovation of this administration is the introduction of the “handout on rights to assist people in detention,”<sup>47</sup> which was presented in January. This handout consists of a list of nine points that the 36,000 Federal Police officers must read to people when they are arrested.

### “Gendarmería”

One issue that has raised concerns<sup>48</sup> is the creation of a new police force, the “Gendarmería.” Since his election campaign, the president has announced the creation of the “Gendarmería,” a police force that would consist initially of members of the armed forces and, subsequently, of new members led by a civilian commander. The *Gendarmería* would fall under the Public Security Commissioner, and the Army and Federal Police would be responsible for training the force.<sup>49</sup> These apparently would be police in contact with the public, deployed at key points and in places where there is currently a lack of public security personnel, such as ports, Customs facilities and airports. For example, of the approximately 29,000 security agents at Mexico City’s international airport, 25,000 are from private security firms.

In early May, the inspector general of the National Security Commission<sup>50</sup> announced that the first members of the new force – from the Army and Navy – were being trained and that their uniforms were ready. He said that the first members of the *Gendarmería* could be ready to march on 16 September, national Independence Day. In June, National Security Commissioner Manuel Mondragón y Kalb<sup>51</sup> denied the earlier announcements and said the *Gendarmería* was still in the planning stage and that its members had not been selected or trained. He added that the government would present the idea to civil society organizations and ask for opinions.

Finally, in late June and early July, the Security Commission announced that the *Gendarmería* would not be a separate police force, but would be part of the Federal Police,<sup>52</sup> and that its members would be civilians – not military personnel – with military training. The plan is to train between 4,000 and 5,000 members, who would be ready by early next year.<sup>53</sup>

So far, no details are known about the functions of this new group and its possible intervention in or impact on drug-related issues.

### Penitentiary system

The capacity of the federal penitentiary system expanded under the last administration. The policy of mass transfers, often by force or deceit,<sup>54</sup> as part of the penitentiary strategy between 2008 and 2012,<sup>55</sup> resulted in hundreds of inmates being transferred to federal prisons, which have a maximum or super-maximum security regime that has no basis in current legislation.

The effects of this policy are reflected in the percentage of people accused of crimes against health who are incarcerated in these centers. According to the first survey of the federal penitentiary system’s prison population (*Primera Encuesta a Población en Reclusión del Sistema Penitenciario Federal*), carried out by the Center for Economic Research and Teaching (*Centro de Investigación y Docencia Económicas, CIDE*),<sup>56</sup> 80 percent of women and 57.6 percent of men in those prisons are accused of crimes against health.

In March 2013, Commissioner Mondragón announced that during the next six years, 10 federal prisons would be established with private funds.<sup>57</sup> In mid-May, Federal Social Reinsertion Center (*Centro Federal de Reinserción Social*) number 13 was opened in Oaxaca.<sup>58</sup> So far, it seems that this government

will continue to expand the federal system, through concessions to private firms that will be responsible for building the centers. The Interior Ministry will still be responsible for internal management.

According to the most recent information about the size and population of the penitentiary system, from January 2013,<sup>59</sup> there are 420 centers, of which 15 are federal centers, 11 are in Mexico City, 303 are state centers and 91 are municipal centers. Twenty-five percent of the total penitentiary population is incarcerated in Mexico City. The entire system has a capacity of 195,278 people, which means there is an overcrowding rate of about 23 percent.

The total penitentiary population is 242,754 people, of whom approximately 41 percent are in preventive detention, still awaiting sentencing or acquittal. Some 95.2 percent of the population is male and 4.8 percent is female; 79.58 percent of inmates are incarcerated for common crimes and 21.42 percent for federal offenses.

The first month of the current administration coincided with an even more notable increase in the prison population, compared to the previous year. The population rose from 239,089 (December 2012) to 242,754 (January 2013). The increase was mainly in common crimes, which includes small-scale drug trafficking.<sup>60</sup>

Between January and May 2013,<sup>61</sup> the National Human Rights Commission (*Comisión Nacional de los Derechos Humanos*, CNDH) received 624 complaints about OADPRS, a number second only to complaints against the Mexican Social Security Institute (*Instituto Mexicano del Seguro Social*).

### Restructuring of the Attorney General's Office

The Attorney General's Office was perhaps the most ill-used institution under the government of former President Felipe Calderón, who heavily backed Genaro García Luna, a highly questioned minister of public security. The Attorney General's Office was used to carry out *arraigo* detentions of real or assumed criminals and to strike political blows. Instead of dedicating themselves to investigative activities, the Ministerial Police, which are under the authority of the attorney general, were used to escort public officials and guests. U.S. agencies and the Army had unrestricted access to the facilities.

Since his appointment, the current attorney general, Jesús Murillo Karam, a long-time PRI politician with extensive experience, has convened a group of experts to develop a plan for restructuring the office.<sup>62</sup> During these months, the attorney general has also announced various measures, including changes in the use of protected witnesses (often used by the last government to fabricate suspects or to justify accusations without other evidence), creation of a unit to seek disappeared persons, and strengthening of the Ministerial Police. The strategy for combating organized crime will focus on investigating the financing that sustains it.

As with other areas of security strategy, the emphasis is on institutional strengthening and addressing problems left by the last government. The issue of drugs does not appear to carry much weight in the office's public statements.

According to analyst Alejandro Hope, who was interviewed for this report,<sup>63</sup> since July 2012, there has been a decrease in the number of inquiries into crimes against health at the federal level. Hope sees that as a sign that such crimes are being handled at the local

level, as established under the 2009 reform. Government press bulletins that appear on the federal government agency's Web page<sup>64</sup> appear to support that hypothesis, as they concern the arrest or sentencing of people accused of various crimes against health related to small-scale drug trafficking.

In discussing this topic in the interview, the president of CUIHD said that people are no longer prosecuted for possessing drugs for personal use. He clarified, however, that this does not mean that there are no longer cases of police arresting users or even "planting" drugs to extort them and ultimately accuse them of selling drugs.

Crime rate data published on the Attorney General's Office web page<sup>65</sup> show that during the first months of 2013, crimes against health represented 10.19 percent of all federal crimes. More than 50 percent involved possession (the statistics do not specify if this is simple possession or for supplying, dealing or selling). Although some forms of crimes against health are being pursued locally, therefore, the federal Public Ministry is also prosecuting cases of possession.

It seems reasonable to conclude that although the decriminalization of possession for personal use could be reducing the number of people prosecuted for possession of small quantities, operations against small-scale drug trafficking continue to be pursued by local and, to a lesser extent, federal prosecutors. The punitive approach appears not to have changed, and authorities continue to arrest small-scale dealers or users caught with small amounts of substances that are above the threshold that separates personal use from trafficking. As noted previously, this is one of the weaknesses of the current law, because the thresholds for possession are extremely low and are not accompanied by other criteria for distinguishing users from

dealers. For a clearer assessment of the state of implementation of the reform, studies are needed at the state and federal level.<sup>66</sup>

### **Use of the armed forces in public security**

So far, there have been no changes in the use of the armed forces in security tasks. The Army continues to report the same type of results as during the Calderón Administration: confiscation of drugs, weapons and vehicles, destruction of laboratories and arrests. Some 3,180 people were arrested by the Army in the first five months of the Peña Nieto Administration.<sup>67</sup>

In the area of human rights violations, in 2012, the CNDH received 1,503 complaints against the National Defense Ministry (*Secretaría de Defensa Nacional, SEDENA*).<sup>68</sup> Between January and May,<sup>69</sup> the number of complaints was 405, a slight decrease in proportional terms, although it is too soon to draw conclusions. The same is true in the case of the Navy Ministry (*Secretaría de Marina, SERMAR*), which was named in 1,227 complaints in 2012 and 170 between January and May 2013.

The first months brought various challenges for governance in the country. Two occurred in the states of Guerrero and Michoacán, where community police forces appeared. In Guerrero, the appearance of community guards preceded protests by the teacher's union. The Interior Ministry<sup>70</sup> began a dialogue process that could lead to the regularization of hundreds of community police in Guerrero. The dialogue would exclude only those groups that carry weapons reserved exclusively to the Army, which is a crime.

In Michoacán, self-defense groups appeared in February 2013 in the districts of Buenavista and Tepalcatepec, and in May in Coalcomán.

On May 20, Army, Navy and Federal Police forces entered Michoacán to take charge of security. The Defense Ministry is responsible for coordinating the federal forces, which creates constitutional problems. The constitutionality of the use of armed forces, therefore, remains an issue during the first months of the Peña Nieto government.<sup>71</sup>

In short, in the early months of this administration, there has been no change or reduction in the use of the armed forces in security tasks, related problems of constitutionality have not been resolved, and apparently no progress has been made in the prosecution of military personnel involved in human rights violations.<sup>72</sup>

### Initial outcomes in violence reduction

So far, there has been no improvement in levels of violence or crime. On the contrary, kidnapping and extortion were up in the administration's first three months in office.<sup>73</sup>

Lethal violence in Mexico peaked in 2011 and began to decline in 2012, for reasons that are still not clear, possibly dropping by more than 25 percent. Violence has mainly occurred in areas of drug production and transit and has been concentrated in less than 10 percent of the country's districts.<sup>74</sup>

In April, the Interior Ministry announced that between December 2012 and March 2013, homicides were down by 17 percent from the same period a year earlier.<sup>75</sup> It offered that argument as a sign that the current government's security strategy is showing results. Studies by the Mexican Institute for Competitiveness (*Instituto Mexicano para la Competitividad*, IMCO),<sup>76</sup> however, show that if the number of homicides in the last months of 2012 is compared with the number in the first months of 2013, violence had decreased by just 0.6 percent. According to government

data, between December and May, 6,000 murders were recorded, an average of 1,000 a month.<sup>77</sup>

Citing official reports from the executive secretariat of the national Public Security System, a report by the civic organization Mexico United against Crime (*México Unido Contra la Delincuencia*)<sup>78</sup> stresses that high-impact crimes – robberies, criminal injury, homicide, kidnapping and extortion – increased by 8.2 percent between February and April 2013, while in the previous four months, there had been a downward trend for those crimes. In the interview, analyst Alejandro Hope said that this year there could be a total of between 23,000 and 24,000 murder victims, or 2,000 a month.

As during the last administration, government agencies insist that murders are related to organized crime.<sup>79</sup> Nevertheless, they do not repeat the last administration's rhetoric that declared *a priori*, before any investigations began, that the people who died were members of organized crime groups.

### Social prevention of violence and crime

Prevention and assistance programs for dependent people who use drugs are still considered part of the security strategy and are financed with funds allocated to that area. The National Development Plan for 2013 to 2018,<sup>80</sup> which was presented in May, sets five goals.<sup>81</sup> The first, "Mexico at peace," includes public safety and national security.<sup>82</sup>

The National Program for Social Prevention of Violence and Crime (*Programa Nacional de Prevención Social de la Violencia y de la Delincuencia*)<sup>83</sup> is included in that goal, under the area of public safety, and is the responsibility of the Interior Ministry's Vice Ministry of Prevention and Civic Participation, which will coordinate nine ministries through

an inter-agency commission.<sup>84</sup> The plan originally targeted 57 districts and is funded with 2.25 billion Mexican pesos (about US\$175.5 million). The program aims to reach more than 1,000 communities and includes the following areas: prevention of violence in schools; prevention of addictions (the term used in the program); prevention of domestic, gender and dating violence; community cohesion; and prevention campaigns. Vulnerable populations include prison inmates, youth, children and women.

Besides the actions outlined in the program, the Vice Ministry of Prevention is proposing other drug policy initiatives. In an interview for this report,<sup>85</sup> Xihuh Tenorio Antiga, who holds the post of director in the Vice Ministry of Prevention, listed some actions that are planned. One is the aforementioned expansion of drug courts. So far, the vice ministry has organized visits to the United States and Nuevo León to see how courts operate and has received advice from Chile. Although the project has not yet taken shape, there appears to be substantial determination to implement it.

The proposal raises concerns for various reasons. According to a report by the International Drug Policy Consortium (IDPC),<sup>86</sup> although there is a wide array of experiences, the drug court system leads to the criminalization of users, suspends procedural rights and leaves access to treatment in the hands of the criminal justice system instead of addressing it as a public health right.

In Mexico, according to Tenorio, the drug courts in Nuevo León mainly handle cases of men accused of domestic violence under the influence of alcohol. Although alcoholism is an illness, domestic violence is a serious crime. A therapeutic approach implies the involvement of the family – the woman

and children who have been the victims of violence. This type of approach can imply that the woman forgives the perpetrator and takes him back into her home. In Mexico, the problem of gender violence is a serious but underestimated public health issue, which is not adequately addressed by prosecutors and the judicial system, mainly for cultural reasons rooted in male chauvinism.<sup>87</sup> The expansion of drug courts could carry the risk of increasing gender violence and making it even more invisible, besides reinforcing stereotypes that say women must support their husbands even at the cost of physical harm.

A study by CUIPHD also indicates that of the first 103 people admitted to the drug court program in Monterrey, Nuevo León, only 18 had completed their treatment. “Experience,” the study concludes, “has shown that this approach is not very sustainable in terms of cost-benefit.”<sup>88</sup>

In the interview, Tenorio also spoke of an assessment of the capacity and current operations of the assistance centers and the creation of a drug observatory. This would be coordinated by the National Center for the Prevention and Control of Addictions (*Centro Nacional para la Prevención y el Control de las Adicciones*, CENADIC).<sup>89</sup> He also said there are plans to develop an informative Web page about drugs, along the line of *Talk to Frank*,<sup>90</sup> an English Web page targeting youth that provides information about psychoactive substances. The vice ministry’s goal is to create a source of reliable, objective information that uses a more attractive and functional format and language, in an effort to reduce the use of licit and illicit substances. So far, there has been no public information about these initiatives.

## Mexican-U.S. bilateral relations on security and drug control

Relations between the United States and Mexico on security and drug control issues have alternated between periods of greater stability and times of tension. Since the 1940s, Mexico's drug control policies have been in line with those of the United States.<sup>91</sup> Since the 1970s, the United States has provided Mexico with equipment and training for the eradication of marijuana and poppy crops. U.S. assistance to Mexico has focused particularly on actions aimed at destroying the drug supply, through eradication and interdiction programs, intelligence for dismantling the top levels of organized crime groups and actions to combat money laundering.

The Mérida Initiative marked a new stage in bilateral cooperation. President Calderón asked the United States for unprecedented assistance.<sup>92</sup> In an initial phase (2007-2010), most funds were devoted to fighting criminal organizations, which explains the previous government's emphasis on the number of arrests and killings of leaders of criminal groups. The U.S. government also provided intelligence and operational support to the Mexican military and police.

According to analysts Claire Ribando and Kristin Finklea,<sup>93</sup> Calderón ignored the issue of sovereignty to allow U.S. involvement in domestic security efforts. Both the CIA and the DEA had full access to Mexican intelligence facilities, participated in operations, placed undercover agents, tapped telephones and flew drones. The United States practically controlled the National Security and Investigation Center (*Centro de Investigación y Seguridad Nacional*, CISEN), the intelligence agency responsible for national security.<sup>94</sup>

At his inauguration on 1 December 2012, President Peña Nieto committed to continuing

U.S.-Mexican cooperation on security, but shifting the focus to reducing violence.<sup>95</sup> During his first months in office, his government has sought more assistance in implementing judicial reform and prevention programs.

According to the analysts cited above,<sup>96</sup> the U.S. Congress will have to consider the changes in Mexico's security strategy and determine whether it is in line with U.S. interests. It is also likely to continue monitoring to see if the Mexican security forces' crime-fighting efforts respect human rights.

Since 2010, the Mérida Initiative has focused on four key areas: i) disrupting organized crime groups; ii) institutionalizing the rule of law; iii) building a 21st Century border; and iv) building resilient communities. Although a change of focus was announced, officials of both governments have said those four pillars will continue to guide cooperation on security.<sup>97</sup>

The dismantling of the Public Security Ministry and the concentration of functions in the Interior Ministry implies that the latter will coordinate and channel requests for training and equipment, as well as intelligence cooperation from U.S. agencies. The Interior Ministry has announced that cooperation with the United States will remain strong, but that any arrangements for information and intelligence between the two countries will be done through a "one-stop window" at the Interior Ministry.<sup>98</sup> One of the new administration's first actions was to prohibit U.S. personnel from entering an intelligence center in Monterrey that had operated as a common center for U.S. and Mexican officials.

In early May 2013, U.S. President Barack Obama visited Mexico and Central America. He met with President Peña Nieto at the National Palace in Mexico City. The main topics on the bilateral agenda were cooperation on issues related to economics and education.

Immigration and security were also on the table. Both governments insisted that they were willing to continue to cooperate in the fight against organized crime. President Peña Nieto emphasized that bilateral relations are as good as they ever were, but that there is a need to organize and institutionalize them. President Obama said the United States would continue to support Mexico, but that the decision about how to deal with crime should be made solely by the Mexican people.

Sovereignty issues on the Mexican side and distrust on the U.S. side could again undermine smooth relations. For example, there were reports that the United States participated in the operation that led to the arrest of Z-40.<sup>99</sup> It was even reported that the alleged criminal operated as an informer for the United States, without the knowledge of Mexican authorities.<sup>100</sup> Nevertheless, there have been no *public* expressions of annoyance about this from Mexican officials. It could be that both countries are willing to continue cooperating on security, even with the changes announced by the interior minister. It is also reasonable to assume that President Peña Nieto will keep his drug control policies aligned with those of the United States, so as not to create tension in that area.

## Conclusions

During the initial months of the administration of President Enrique Peña Nieto, a “policy of rhetoric” has predominated in the government’s dealings with civil society. Power is centered in the president and his closest officials; this is reflected even in decisions related to legislation. So far, the government *communicates* to the public, but it *does not engage in dialogue* with society. It may reaffirm a decision or concept one day and say the opposite the next, without

justifying its change of position, as it did with the *Gendarmería*.

The administration has attempted to distance itself from the legacy of the Calderón Administration. When he presented the National Development Plan on 20 May, the president criticized the last administration and the situation in which it left the country. Nevertheless, it does not appear to have taken a new approach to security: Action on drug-related issues has not changed (arrests, confiscation and eradication), nor has the role of the armed forces. Homicide rates have remained stable and could increase.

Mexico currently lacks a state “drug policy.” The president has demonstrated a general lack of knowledge of, disinterest in or even opposition to addressing drug issues and drug policies. That could reflect the president’s personal position, his agenda priorities or a desire to avoid tension with the United States.

Federal agencies continue to use discriminatory language (referring to dependent users as addicts) and a discourse of criminalization, which has led to the proposal for drug courts with no critical and informed discussion that would actively engage members of the Executive Branch and representatives of civil society who are experts on the issue.

There are no signs of significant change in the near future. If initiatives such as the one that could be proposed in Mexico City are successful, that could lead to changes at the local level.

Those, however, could go in one of two ways: toward efforts at regulation, or toward harsher rhetoric and practices, through the expansion of drug courts and operations against small-scale drug trafficking.

## Recommendations

- Mexico should review its legislation on crimes against health and perform an in-depth assessment of the limitations, impact and collateral effects of the current threshold system with regards to personal consumption. The review and proposals for alternative policies could be done by creating a special commission on drug policy reform, following the lead of the commission created by President Juan Manuel Santos in Colombia.<sup>101</sup>
- Federal and local institutions should change their language about, conceptual approach to and public policies on use of psychoactive substances.
- It would be advisable to design and implement a comprehensive drug policy that combines Portugal's model of decriminalization of possession for personal use and the creation of Cannabis Social Clubs.
- Comprehensive and systematic implementation of harm-reduction policies is urgently needed. These should be among the services provided to the penitentiary population.
- Plans to expand drug courts should be suspended.
- The transfer of inmates accused of non-violent crimes to maximum-security centers should be suspended.
- If a Drug Observatory is established, it should be directed in collaboration with members of civil society.
- Strategies for the prevention of drug use should be designed with the support of civil society, especially groups that specialize in working with young people, as they have experience in the design of materials and effective communication strategies for reaching children and adolescents.
- Commitments assumed under the Declaration of Antigua should be respected and implemented promptly.
- The Mexican government should establish partnerships with Latin American leaders on drug-related issues and participate actively in debate in the hemisphere over alternatives for addressing the drug issue.
- The Mexican government, along with its counterparts in the region, should take a leading role in preparations for UNGASS 2016.

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The International Drug Policy Consortium (IDPC) is a global network of NGOs and professional networks that promotes objective and open debate on the effectiveness, direction and content of drug policies at national and international level, and supports evidence-based policies that are effective in reducing drug-related harms. IDPC members have a wide range of experience and expertise in the analysis of drug problems and policies, and contribute to national and international policy debates.

In July 2012, the Partido Revolucionario Institucional (PRI) won the Mexican presidential elections after twelve years of government by the Partido de Acción Nacional (PAN). President Enrique Peña Nieto took office on 1 December. This paper analyzes the first six months of his administration from the standpoint of Mexican drug policy. Because drug policy in Mexico is closely tied to security, both issues are being examined.

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