

Instituto RIA submission to the Office of the High Commissioner on Human Rights' report on UNGASS implementation and human rights

Instituto RIA is a Mexican-based organization that undertakes high quality research, highlighting and proposing innovations in order to advocate for public policies with a social justice framework. We see drug control policies and their devastating consequences as being at the crux of many of the issues in our country and region. The protection of human rights must stand at the center of public policies and we welcome the call for inputs by the United Nations Office of the High Commissioner on Human Rights to better understand the impacts of these policies.

The UNGASS outcome document provides a clear path for Member States to implement policies that include a gendered perspective, that improve access to essential medicines, that promote and protect human rights, and which are aligned with the Sustainable Development Goals. Civil Society is here to support Member States in their implementation through innovative and evidence informed policies, generating best practices from the ground up.

Chapter 2: Operational recommendations on ensuring the availability of and access to controlled substances exclusively for medical and scientific purposes, while preventing their diversion

OPs 2.c, 2.b establishes that the process of issuing import and export authorizations for controlled substances for medical and scientific purposes should be expedited in accordance with national legislation, establishing that issues related to the affordability of controlled substances for medical and scientific purposes should be addressed at the national and international levels. After a legislative process in Mexico initiated by the President, the Congress decided to allow the import of cannabis-based medicines. The outcome document suggests that access to these essential medicines should be expanded to a national coverage of distribution, but the legislation only allows imports, which makes it difficult to be financially accessible for rural areas in the country and fails to take into account that Mexico is a traditionally (illegally) producing country of cannabis. Mexico could begin producing for medical purposes within the conventions and in that way, support and protect the human rights of producing communities.

Moreover, the paragraph clearly expresses that trained and qualified professionals should be allowed to prescribe, dispense and administer controlled medicines based on their general professional license. However, Mexican legal norms on this matter established that these medicines can only be prescribed by surgeons, dentists or medical graduates with a professional license issued by the competent authorities and that comply with the provisions and requirements determined by the Secretary (Ministry) of Health, which is evidently not based solely on their general professional license (**OP2.d**), and can open the possibility to impose more restrictions on medical professionals for prescribing, even though the outcome

document expresses that restrictive regulations and impediments to ensure access to controlled substances for medical and scientific purposes must be removed (**OP2.a**).

So far, it has not been determined whether the Mexican Social Security Institute (IMSS in Spanish) or the Institute for Social Security and Services for Social Security and Services for State Workers (ISSSTE in Spanish) will cover this type of treatment free of charge for its members. Therefore, patients can privately access medical marijuana treatment, as long as they have their current license authorizing the use and expedited by the Federal Commission for the Protection against Sanitary Risk (COFEPRIS in Spanish).

The announcement of the COFEPRIS allowing the importation and marketing of medical cannabis in the first quarter of 2018 does not resolve the needs of people who require such medicines, because their cost and requirements may not make it accessible for most people in the country.

Chapter 3: Operational recommendations on supply reduction and related measures; effective law enforcement; responses to drug-related crime; and countering money-laundering and promoting judicial cooperation

OP3.a mentions that multidisciplinary measures should be carried out to prevent drug-related crime; 3.b aims to promote comprehensive supply reduction efforts; and 3.k encourages responses to the serious challenges posed by the increasing links between drug trafficking, corruption and other forms of organized crime. Mexico is carrying out a strategy based on the participation of military bodies in civilian public security tasks. The congress recently approved the Ley de Seguridad Interior (Interior Security Law), which is legitimizing this situation, allowing military forces to patrol the streets, while having devastating consequences on the protection of human rights in the country.

Mexico is not applying multidisciplinary measures to prevent drug-related crime, and the strategy it has implemented is fostering violence and human rights violations. There is some data that allow us to confirm the abuses of the armed forces, for example, when using torture against civilians as a method of investigation. There are 2,418 investigations initiated by the Attorney General's Office (PGR) against the armed forces, for that crime. Around 5,600 complaints have been filed with the National Human Rights Commission for acts of torture committed by the military.

The outcome document is promoting supply reduction efforts (**OP3.b**), but the militarization process has done little to impact supply and instead has contributed to increased violence. Since December 2006 arbitrary arrests by military personnel have been common in the country; that is, from that date until February 2017, the military - SEDENA and SEMAR - detained 80,259 people, around 21 people per day. In all the detentions, "criminal flagrancy" was argued, that means that the military directly observed how more than 80 thousand people in 11 years

committing some crime or through “objective means”, they could identify it and corroborate that, in the previous moment, the person was committing the crime¹. It is clear that the authorities are not promoting, nor implementing effective criminal justice responses to drug-related crimes, including practical measures to uphold the prohibition of arbitrary arrests and detentions and of torture and other cruel inhuman or degrading treatment or punishment and to eliminate impunity (**OP4.o**).

The Interior Security Law is not effectively responding to serious challenges posed by the increasing links between drug trafficking, corruption and other forms of organized crime (3.k), and is not developing and strengthening international mechanisms to address the issue (3.s). The approval of the Law challenges the recommendations of various human rights mechanisms that have recommended the demilitarization of public security. The recommendations of the Special Rapporteur on the right to privacy; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; and the Special Rapporteur for Freedom of Expression; are directed to i) emphasize the primary role of civil authorities, principally responsible for protecting human rights through the inclusion of strict controls, ii) train and strengthen police forces to ensure that the investigation of human rights violations is rapid, independent and impartial; iii) restrict the functions of the Armed Forces to those of its mission; and iv) investigate and duly sanction members of the Armed Forces who have committed human rights violations.

Chapter 4: Operational recommendations on cross-cutting issues: drugs and human rights, youth, children, women and communities

OP4.f indicates that age-appropriate practical measures, tailored to the needs of children, youth and other vulnerable members of society, in the legislative, administrative, social, economic and educational sectors should be implemented to prevent their abuse of narcotic drugs and psychotropic substances. The paragraph also mentions that these measures should also prevent the involvement of youth and other vulnerable populations from the use and exploitation in the illicit manufacturing and trafficking in narcotic drugs, psychotropic substances and other forms of drug related crime. Mexican current legislation for the trafficking and possession of illegal substances that overload the judicial system, neglects the prosecution of high-impact crimes such as homicide, extortion and kidnapping, and is unclear regarding the references made towards the health system². In addition to this, there is a general lack of information and proactive disinformation campaigns regarding psychoactive substances, their effects and the people who use them. This ignorance contributes directly

¹ Vargas, Lucía. México ante la militarización. Animal Político. 2017. Accessed: May 17, 2018. Available at: <https://www.animalpolitico.com/blogueros-verdad-justicia-reparacion/2017/12/04/mexico-militarizacion/>

² Espolea 2011. *Reporte de estudio: Impactos de la Ley de Narcomenudeo en el sistema de salud*. Available at: www.espolea.org/uploads/8/7/2/7/8727772/informe_narcomenudeo.pdf

to the stigma, discrimination and criminalization of people who use illegal psychoactive substances, and it makes the needs of people who use legal drugs invisible.

Chapter 5: Operational recommendations on cross-cutting issues in addressing and countering the world drug problem: evolving reality, trends and existing circumstances, emerging and persistent challenges and threats, including new psychoactive substances, in conformity with the three international drug control conventions and other relevant international instruments

OP5.a Stresses the importance to strengthen national and international action to address the emerging challenge of new psychoactive substances, including their adverse health consequences. It is necessary to note that the emergence of new psychoactive substances is a consequence of the drug prohibition regime, which under an illegal and unsupervised market and a high demand context, the production of new substances and adulteration of existing ones, pose a public health threat.

OP 5.d Pretends to continue identifying and monitoring trends in the composition, production, prevalence and distribution of new psychoactive substances, as well as patterns of use and adverse consequences. However, an unregulated market focused on the reduction of the supply of drugs is not reaching that objective, because the only drugs that are being observed are the one that have been seized, and not the ones that reach the final user. The paragraph continues suggesting that parties should assess the risks to health and safety of individuals and society as a whole and the potential uses of new psychoactive substances.

In Mexico City, according to the Survey of Illegal Drug Users in Mexico City, carried out by drug policy organization CUIPHD, found that almost 40% of respondents do not know about psychoactive substances before using them, while the 60% who knew about them, obtained information through mass media communication (36.4%), friends (32.8%), school (19.4%) and only 9.4% from their families³. The last two sources must be the main communication channels, but mass media has covered much of the information, which can be biased and not realistic.

Substance analysis is a key harm and risk reduction strategy, especially in contexts where obtaining drugs leads to uncertainty because of the need to resort to insecure drug trafficking networks to obtain psychoactive substances, such as in Mexico. The Substance Analysis Program (PAS) is the first program in Mexico that emerged as part of the harm reduction strategies, carried out by a group of civil society organizations such as ReverdeSer⁴. In Mexico, up to now, no support from any academic or government institution for this type of initiative has been received. It is worth mentioning that, despite this, this service is offered free of charge. These and other harm and risk reduction, as well as information based on scientific evidence, should be developed as a local or national policy.

³ Zamudio, Carlos and Lluvia Castillo. Primera encuesta de usuarios de drogas ilegales en la Ciudad de México. CUIPHD. 2012., available at: http://www.cupihd.org/descargas/cupihd_WklOM3y5.pdf

⁴ Programa de Análisis de Sustancias. ReverdeSer Colectivo. Accessed: May 17, 2018. Available at: <http://reverdeser.org/inicio-a/programa-de-analisis-de-sustancias/>

Conclusion

In conclusion, it can be said that Mexico is giving one step forward, and two back. The allowance of the importation of cannabis-based medicines makes the access to the substance possible only for a small amount of people: those who can pay for it. People are only being able to import a product, while living in one of the highest cannabis producing country in the world. Moreover, the recent approval of the Ley de Seguridad Interior is fostering violence by legitimizing the use of military forces in civil public security tasks. It also challenges the recommendations of various human rights mechanisms that have recommended the demilitarization of public security. Finally, there are good practices at the field level that have demonstrated to be effective when giving precise information on drugs, and reducing harms and risks through programs such as the Substance Analysis Program.