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NGOS AND DRUG POLICY

Rafael Custódio

- *A look at what human rights NGOs can do to combat prohibitionism.* •

ABSTRACT

Prohibitionism, as a drug policy, is responsible for a range of human rights violations around the world. This article presents some of these violations and suggests what human rights NGOs can do to combat them. The author concludes that the most effective course of action is to seek to expand individual rights and limit the powers of state control.

KEYWORDS

United States | Latin America | Prohibitionism | NGOs | Criminal system

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“It always seems impossible until it’s done.” One of the most famous quotes attributed to Nelson Mandela (1918-2013) perfectly fits the increasingly forceful and persuasive debate that is questioning prohibitionist drug policies all around the world. Among the list of issues informing the debate, one deserves special attention: why should human rights organisations participate in this debate and in what way?

In 1971, then United States President Richard Nixon announced that “America’s public enemy number one is drug abuse.”¹ This moment marked the beginning of the so-called “war on drugs”. Today, however, a young resident of Denver, Colorado can go to the corner and legally purchase up to 28 grams of marijuana per month for recreational use. If the same youth were in San Francisco, California, he would have been able to use medical marijuana to fight chronic pain since 1996.

Why are so many things changing at a relatively fast pace not only in the US, but also in countries as diverse as Portugal, the Netherlands, Finland, Spain and Uruguay? These countries have approved drug policies that move – some more than others – in the opposite direction of prohibitionism.

While it is difficult to identify just one response to an issue informing so many different realities, one thing is clear: if we want a world based on the respect for human rights, anti-prohibitionism should be on everyone’s agenda.

Violations of the rights of communities affected by violence, mass incarceration, capricious criminal justice systems, abusive police practices on the street, the militarisation of security policies and the lack of adequate health policies are just some examples of rights violations that characterise the repressive logic underpinning the war on drugs.

In addition to the violations they perpetuate, prohibitionist policies are one of the main incentives for the formation of armed criminal organisations, since violence is the principle mode of regulating illegal markets. As a result, drug trafficking is necessarily accompanied by arms trafficking, territorial disputes, and the corruption and undermining of democratic institutions, namely the police, the justice system and government institutions. Countries such as Colombia,² Mexico,³ Brazil⁴ and those that make up Central America are (just some) notorious examples of the negative effects of prohibitionist policy.

On the African continent, consideration of countries such as Guinea Bissau, Mozambique and some from West Africa also reveals the failure of prohibitionism. In this new frontier of the illicit narcotics trade, drug trafficking networks have taken root by exploiting these countries' already weak governance systems and gaps in legislation. This, in turn, feeds the belief that the region is a relatively safe refuge for drug traffickers. The criminalisation of drug use and possession puts significant pressure on already overloaded criminal justice systems, fosters corruption of the justice system as well as the police and causes violence and human rights violations to increase.⁵

The war on drug's failure, and the unacceptable levels of human rights violations it causes is not limited to developing or peripheral countries. The US, for example, has less than 5 per cent of the world's population, but accounts for almost 25 per cent of the global prison population, which earns it the title of the biggest incarcerator on the planet. A true *jailhouse nation*.⁶ Analysts of mass incarceration policies frequently describe an unequal and repressive system that disproportionately affects black and Latino people.⁷ According to Loïc Wacquant, the only possible explanation for the racial imbalance in US prisons is precisely the war on drugs policy launched by Nixon and expanded by the subsequent administrations.⁸

What is more, the prohibitionist logic is entirely counterproductive: banning the cultivation and use of a given substance only increases its market value and, consequently, the interest of its dealers.⁹

In general, we can suggest that the prohibitionist policy has generated at least five major global effects: 1. The growth of a sizeable criminal market, which has been financed by the gigantic profits obtained from drug trafficking activities supplying an international demand for illicit drugs; 2. The relocation of drug policies from one region, country or city to another without taking into account local contexts or seeking to ensure coordination and cooperation between actors; 3. The geographic relocation of drug production – known as the balloon effect – which sees production migrate from one region or country to another in order to escape repression and without then seeing a reduction in production or trafficking; 4. Consumers switching from one substance to another as repression often makes it harder to access a particular drug, with sometimes even more harmful effects on people's health and safety; 5. The stigmatisation and marginalisation of drug users who are treated as criminals and excluded from society.¹⁰

In sum, the catastrophic scale of human rights violations that exists today is the direct result of prohibitionist policies. Therefore, reforming this model, which failed a long time ago, must be included in pro-human rights agendas worldwide.

In fact, this is what an increasing number of human rights organisations are doing with increasing coordination and impact. From the activities of such human rights organisations, some actions and strategies can be briefly listed here to indicate possible ways through which real and concrete impact can be made:¹¹

- (i) conduct empirical research to identify the profile of prisoners incarcerated for drug trafficking in order to bring to light and denounce the criminalisation of the most vulnerable sectors of society;
- (ii) defend users who grow their own marijuana who, in many countries are arrested and tried in court as traffickers;
- (iii) undertake legislative advocacy at the domestic level to prevent the enactment of regressive laws on drug policy and, instead, propose a move towards the decriminalisation of the use, regulation, production, trade and consumption of certain substances;

- (iv) expand efforts to regulate access to medical marijuana through legal actions focussed on access to health or legislative changes;
- (v) approach influential organisations or public figures who publicly position themselves in favour of reforming prohibitionist policies;
- (vi) carry out studies on the impact of alternative drug policies on health and criminal justice in countries where such policies have already been implemented;
- (vii) build closer ties, exchange information and coordinate strategic efforts with actors with different areas of expertise, such as psychiatrists, anthropologists, jurists, sociologists, police officers, etc. to improve advocacy and to strategise in a multidisciplinary way;
- (viii) use international human rights mechanisms to denounce the impacts of prohibitionist policies;
- (ix) bring lawsuits that challenge the constitutionality of banning the use of certain substances from the point of view of individual freedom;
- (x) generate public debate with different sectors of society (students, religious figures, public servants, journalists, etc.);
- (xi) ensure the systematic production of counterintelligence to debunk myths and falsehoods on alternatives to prohibitionist policies; and
- (xii) use different communication strategies across different media outlets, especially to generate spaces of discussion and reflection for the general population.

These items are only some examples of what human rights organisations have done to combat human rights violations resulting from inefficient and abusive drug policies. Whilst this is not intended to be an exhaustive list of possible actions and strategies, it does make clear that a lot has been, and can be, done. In short, the suggestions point to the combination of expanding individual rights and limiting state powers as an effective means for remedying human rights violations in this context. And results are beginning to appear everywhere. It seems impossible...

NOTAS

1. "Richard Nixon," *The American Presidency Project*, June 17, 1971, accessed July, 2015, <http://www.presidency.ucsb.edu/ws/?pid=3048>.
2. Michael Reid, "Una región amenazada por el narcotráfico" in Diego García Sayán, *Coca, cocaína y narcotráfico. Laberinto en los Andes* (Bogotá: Comisión Andina de Juristas, 2013).
3. See the joint report presented by Mexican civil society organisations to the Universal Periodic Review of Mexico: "Informe conjunto presentado por organizaciones de la sociedad civil mexicana para la segunda ronda del Examen Periódico Universal a México," 4 March 2013, accessed July, 2015, http://www.iccnw.org/documents/Informe_conjunto_presentado_por_organizaciones_de_la_sociedad_civil_mexicana.pdf.
4. As Maria Lucia Karam affirmed in "Proibição às drogas e violações a direitos fundamentais" (*Leap Brasil*, August 2013, accessed July, 2015, http://www.leapbrasil.com.br/media/uploads/texto/72_Proibição%20às%20drogas%20e%20violação%20a%20direitos%20funda

mentais%20-%20Piau%C3%AD.pdf?1376532185).

5. West Africa Commission on Drugs (WACD), *Not Just in Transit: Drugs, The State and Society in West Africa* (WACD, June, 2014), accessed July, 2015, https://www.unodc.org/documents/ungass2016//Contributions/IO/WACD_report_June_2014_english.pdf.

6. Expression used by *The Economist*: "Jailhouse Nation," *The Economist*, June 20, 2015, accessed July, 2015, <http://www.economist.com/news/leaders/21654619-how-make-americas-penal-system-less-punitive-and-more-effective-jailhouse-nation>.

7. See the complete study: Drug Policy Alliance, "The Drug War, Mass Incarceration and Race," June 2015, accessed July, 2015, http://www.drugpolicy.org/sites/default/files/DPA_Fact_Sheet_Drug_War_Mass_Incarceration_and_Race_June2015.pdf. Another important source on the issue is: Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: The New Press, 2010).

8. Loïc Wacquant, "Deadly symbiosis: When ghetto and prison meet and mesh," *Punishment and Society* 3, no. 1(2001): 95-133, accessed July, 2015, <http://loicwacquant.net/assets/Papers/DEADLYSYMBIOSISPRISONGHETTO.pdf>. The author highlights that in 10 of the 38 states where the proportion of black x white people increased, black people are imprisoned ten times more than their fellow citizens of European origin.

9. LSE Expert Group on the Economics of Drug Policy, *Ending the Drug Wars* (London: LSE, May 2014), accessed July, 2015, <http://www.lse.ac.uk/IDEAS/publications/reports/pdf/LSE-IDEAS-DRUGS-REPORT-FINAL-WEB01.pdf>.

10. Comissão Global de Políticas sobre Drogas, *Guerra às drogas*, June 2014, accessed July, 2015, http://www.globalcommissionondrugs.org/wp-content/themes/gcdp_v1/pdf/Global_Commission_Report_Portuguese.pdf.

11. These are actions that have been brought to our attention, mainly by our partners.



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