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WORKING GROUP RESULT 3.5

Beyond Criminal Justice: Legal Diversification Mechanisms for Minor Drug Offenses. Opportunities for Latin America and the Caribbean.

*July, 13th, 2023 16:30 (1.45 hours)
Online meeting*

Context

COPOLAD is the Cooperation Program between the European Union and Latin America and the Caribbean on Drug Policies, which has been working in the region for over 10 years to promote comprehensive, coherent, and sustainable policies to address the public issues generated by different aspects of the drug chain, under a sustainable development and public health approach.

Like in previous phases, COPOLAD III (2021-2024) aims to create a privileged space for interaction among institutional partners from the European Union, Latin America, and the Caribbean, through bi-regional, bilateral, trilateral, and South-South international cooperation instruments. The goal is to analyze and discuss the main challenges related to the design and implementation of drug policies, with the possibility of launching transformative and innovative processes aimed at improving the effectiveness of interventions and the implementation of drug policies.

The program seeks to improve outcomes and reduce the negative impact on sustainable development in Latin America and the Caribbean of supply reduction policies based solely on drug interception, arrest, and prosecution of illicit market actors. The objective is to support public policies that offer comprehensive solutions, combining strong intelligence work and impactful measures on the finances and power of criminal organizations with strategies and interventions in citizen security, development, dignified employment, social protection, legality, and trust in institutions, prioritizing the interests of the most vulnerable groups and women. This implies developing alternatives to arrest and incarceration linked to social, health, and economic inclusion programs to prevent recidivism in drug-related offenses.

Specifically, Result 3.5 will contribute to improving the proportionality of drug-related criminal law and the development of alternatives to arrest or imprisonment for minor drug offenses through various methodological tools that will be implemented by a set of institutional and technical actors supporting the Program.

The main tool driving the actions of Result 3.5 will be a Virtual Working Group that will promote various processes such as fostering debate on the proportionality of drug-related criminal law, seeking alternatives to arrest/incarceration, and



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understanding the significance of addressing the determining circumstances of the involvement of more vulnerable sectors in the drug chain. Additionally, the group will support the search for best practices, exchange of experiences, and sharing of some of the national reforms that will be supported by COPOLAD.

In this session, the search for penal alternatives to imprisonment for drug offenses goes beyond criminal justice. That is to say, possible strategies that can be developed within the framework of the criminal process (penalty substitution, conditional suspension of sentence execution, etc.) and during the serving of the sentence (mainly open compliance measures) are set aside, and the focus is placed on those strategies that prevent the offender from coming into contact with the criminal justice system. Normally, these types of measures are intended for minor or low-level offenses, but in this session, the possibility of expanding this traditional approach to the scope of application of this type of measures will also be explored.

In this regard, this session will address the opportunities that arise for Latin America and the Caribbean. First, an approach to the debate will be carried out through the experience of Portugal, where so-called dissuasion commissions have been implemented. This solution, which avoids the offender's contact with the penal system, represents an alternative diversion model to the widely spread model of drug treatment courts. Therefore, this case will serve to exemplify not only that other alternatives to the criminal process are possible, but also to offer possible avenues for the development of solutions already implemented in Latin America and the Caribbean. Specifically, this experience will provide a critical look at drug treatment courts, as the results have not met expectations in many cases. Practical evidence has shown that drug treatment courts are not as effective as assumed in addressing minor drug offenses in the region, leading each country to adapt this type of court to its own needs.

Subsequently, a panel discussion will take place to map out the solutions implemented in the region to avoid contact with the criminal justice system. From decriminalization, which in this session refers to the use of less severe criminal sanctions for certain drug-related behaviors, to cases where behaviors have been decriminalized, and finally, to the so-called diversion mechanisms where the offender is redirected toward non-punitive responses that involve an educational, therapeutic, or assistance component, these aspects will be addressed in this phase of the session.

Main outcome and goals of the session

The main outcome sought by this activity is to progress in the identification of key elements to consider for the development of a roadmap or model for addressing proportionality and penal alternatives in Latin America and the Caribbean.

Specific objectives for session 2.1 include:



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- Consolidate the working group to promote the expected outcomes and activities within the framework of Result 3.5 of COPOLAD III.
- Foster knowledge of a comparative law case that can serve as inspiration to delve deeper into the path of penal alternatives in the region.
- Map the mechanisms implemented in the region as alternatives to imprisonment that avoid contact with the criminal justice system and, consequently, generate a critical debate about the opportunities and challenges faced by the region in this regard.
- Generate a critical debate about drug treatment courts and explore new avenues for implementing this alternative mechanism to imprisonment.
- Share best practices from Europe and Latin America and the Caribbean on the topic.

Institutions and participating individuals

The working group is aimed at the countries of Latin America and the Caribbean involved in the implementation of the COPOLAD Program, and more specifically, at the institutions and individuals involved in the formulation and implementation of criminal law for minor drug offenses, as well as the creation/application of alternatives to arrest and imprisonment. Additionally, sectoral regional networks comprised of countries from Latin America and the Caribbean working on the topic are invited to participate.

Methodology

The working group will apply a central approach of sustainable development, with a particular focus on public health, non-criminalization, gender, and human rights.

The working group will consist of three stages:

1. Prior to the virtual session

- Sending an email by the COPOLAD team to convene the second working session scheduled for July 13, 2023, at 4:30 PM, along with the Save The Date attachment.
- Sending the registration link for the activity (SIA)
- El grupo de trabajo comprenderá tres momentos:

2. During the virtual session,

There will be a promotion of the debate about the need to seek, identify, and implement alternative measures to imprisonment that avoid contact with the criminal justice system, thus fostering a new discourse in criminal policy. While initially focusing on drug offenses of a less serious or minor nature, it will be recommended to expand these strategies to other types of behaviors related to these offenses.

The planned interventions will contribute to mapping pre-trial alternatives to imprisonment that have been implemented in the region and provide a critical assessment of drug treatment courts in the region.

For the development of the presentations, the following guiding questions are proposed for the moment of collective reflection:

- What mechanisms are implemented in your jurisdiction as an alternative measure to arrest and imprisonment for minor drug offenses to avoid contact with the criminal justice system?
- Have any less serious behaviors related to drug offenses been decriminalized in your jurisdiction (e.g., consumption or possession for personal use)?
- What are the challenges in your jurisdiction to develop alternative strategies that prevent offenders from entering the criminal justice system?
- What has been the experience in your jurisdiction with drug treatment courts? Has their implementation had a positive or negative impact?
- Have there been any proposals for the elimination or abandonment of these courts?
- The limitations of drug courts

At the end of the session, the Program's management will provide closing remarks.

3. After the session,

The conclusions of the virtual session, as well as a roadmap for upcoming sessions/activities to be carried out within the working group, will be shared with the participants.



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Working Agenda

Time	Content
16.30 – 16.40 10 mins	Opening remarks: Laura Guirao. Project Manager. COPOLAD
16.40 – 17.00 20 mins	An approach to the debate. The experience of Portugal and deterrence commissions. <i>Teresa Silva. Jurist. Comissão para a Dissuasão da Toxicodependência de Oporto</i>
17.00-18:00 60 mins	Panel discussion: Strategies to avoid contact with the criminal justice system. Use of less severe sanctions, decriminalization, and diversion mechanisms. <u>Moderator:</u> Beatriz López Lorca , Expert Result 3.5 COPOLAD. Dominican Republic. <i>Magistrate Kenya Romero, Judiciary of the Dominican Republic.</i> México. <i>Dr. Gady Zabicky Sirot, General Director of the National Commission on Mental Health and Addictions</i> <u>Discussion</u>
18.00 – 18.15 25 mins	Final remarks and closing session Javier Sagredo. Director of COPOLAD Program

