

Alternatives to Incarceration

Working Group

Updated Proposal

NOTE: This proposal is an updated version of the first document shared with countries through CICAD. This document incorporates comments and suggestions of the countries, and includes some new information regarding the schedule and products of the working group.

The Fifty-Fourth Regular Session of the Inter-American Drug Abuse Control Commission (CICAD), held in December 2013 in Bogotá (Colombia), the Chair of CICAD Executive Secretariat requested the creation of a working group, aimed at generating alternative proposals to incarceration. During the Fifty-Fifth Regular Session of CICAD, commissioners approved in plenary the creation of this group. Additionally, the Omnibus Statement to the General Assembly of the OAS 2014 included the following mandate:

Establishes an “alternatives to incarceration” working group within the framework of the Inter-American Drug Abuse Control Commission (CICAD), and instruct the Group to prepare a technical report on existing alternatives to incarceration for drug-related offenses in accordance with the three international drug control conventions, taking into account national legislative frameworks and the contents of the Hemispheric Drug Strategy and Plan of Action 2011 – 2015, and instruct it to present its progress at CICAD 56 and its final report at CICAD 57.

1. 1. Background and Justification

Member States of the Organization of American States (OAS) adopted the Hemispheric Drug Strategy and Action Plan 2011-2015, in which they agreed to consider carrying out necessary measures in order to allow alternatives to privation of liberty for violators of the law that are dependent on drugs. Such measures are considered essential because a significant proportion of crimes are related to alcohol and drug use.

The Report of the Drug Problem in the Americas, prepared by the Organization of American States, identified a number of challenges in the application of drug laws that require policy responses by countries of the Hemisphere. According to the report "In some countries, drug sales have become an important economic activity, with many adverse social, political, and economic consequences, such as corruption and a reduction of state power." Adding to this, "for some countries, the transnational illicit drug trade has become a major source of violence; for others, it is quite minor."

One of the many challenges identified in the report is the increase in the prison population, due in part to the incarceration of drug offenders, lack of access to treatment and poor access to social services for dependent drug users, and the vulnerability and the risks that are faced by certain social groups - youth, women and poor people.

Additionally, various academic studies and reports from civil society organizations have pointed to the disproportionality of sanctions for drug offenses compared to other violent crimes, the lack of the female perspective of drug-related offenses with significant increases in the prison

population of women, and lastly the overburdening of the justice system – many times with low-level drug offenders. In producing countries the main cause for concern is the prosecution of farmers who lack other alternatives or are pressured by criminal actors to grow products that end up in illicit markets.

In this context, different countries have been promoting alternatives to incarceration and other penal reforms that are specifically focused on consumption and possession for consumption as well as other low-level offenses. Among these alternatives is the decriminalization of drug use, the suspension of criminal sanctions and the adoption of administrative sanctions and referral to treatment or education for certain cases. According to the study of the Drug Problem in the Americas: Legal and Regulatory Alternatives, "About a dozen OAS member states have non-criminal or reduced penalties or no penalty at all for possession of a personal amount of controlled substances."

A special mention should be made regarding the model of drug treatment courts, which according to the CICAD, are an alternative to incarceration for drug-dependent offenders, which "...involve diverting offenders from prison to treatment and rehabilitation for judicial supervision."

In response to the current challenges, it is of utmost importance to analyze and evaluate these alternatives to incarceration and the justice system responses, recognizing the need to strengthen the public health approach and favor the guarantee and protection of Human Rights. It is also important to include in these alternatives not only consumption, but also consider responses to the links of the chain weaker and not commit crimes considered serious.

2. Objective of the Working Group (WG)

Identify and analyze alternatives to incarceration for drug-related offenses, from the available evidence with a perspective that will strengthen public health and privileges human rights.

3. Specific Objectives

- Analyze the criminal law on drugs, its impacts and outcomes.
- Identify and analyze alternatives to incarceration for the weakest links in the chain - such as small farmers, consumers and people carrying small amounts, taking into account the policy and budgetary realities of the Member States CICAD.
- Develop a technical report containing the main findings and options, including a gender perspective, with special attention to vulnerable groups.

4. Composition and structure of work

The Working Group will be composed of experts nominated by States (Group of Experts). The government of Colombia will coordinate the Working Group and the Ministry of Justice of Colombia will serve as a Technical Secretariat, which shall be exercised through a "legal technical Leader" - nominated by the Government of Colombia.

The Working Group will be supported by a *Technical Support Group*, composed of five experts selected by the Government of Colombia and the CICAD, based on criteria linked to the

experience and knowledge, based on the regional diversity.

The Colombian Ministry of Justice and Law will coordinate, with support from CICAD, the development of a Technical Report that will be drafted by the Technical Support Group and delivered to the Experts Group for their consideration and observations. A progress report will be presented at CICAD 56, and the final report during CICAD 57.

5. Scope of Working Group

Duration of the group: CICAD 57, after the final report delivered.

Composition: Experts delegated by governments voluntarily.

Limits: The group will provide technical non-binding inputs.

Financing:

- Countries will be responsible for the cost of the experts' attendance to the meetings.
- The First Meeting of the Working Group will be held on 17 to 20 June in Antigua (Guatemala). The accommodation and food for participants will be provided by the AECID and CICAD
- The publication of the report will be the responsibility of Colombia.

6. Thematic Areas of Working Group (proposed basis for discussion)

The Government of Colombia proposed this initial list of topics to be discussed by the Working Group and the Technical Support:

- The decriminalization of drug use and attention to problematic users.
- Referral to social services, health and comprehensive care.
- Specialized Drug Courts.
- A review of the sentencing guidelines.
- The feminization of drug offenses and alternatives to criminal and prison treatment.
- The proportionality of sentences for drug offenses.
- Alternatives to penal and correctional treatment of small growers of coca, poppy and marijuana.
- The best interests of children as a basis for prison alternatives: Children in conflict with law and children of incarcerated persons.

7. Work Schedule

Date	Deliverable
April 29	Establishment of the Working Group on the CICAD (Washington DC)
June 15	Delivery of baseline document of criminal law on drugs in the hemisphere, considering outcomes and impacts, by the Technical Support Group
June 17-20	Specialist Group Meeting + Technical Support Group in Antigua (Guatemala)
July 15	Document revision including major inputs and conclusions of the workshop
August 20	First step of the Technical Report by the Technical Support Group.

September 5	Report of the Technical Secretariat of the Group reporting on progress (Colombia in charge)
September 19	Presentation of Progress at Extraordinary General Assembly
September 30	Second Advance Technical Report by the Technical Support Group.
October 1 - 15	Review by the Expert Panel of the Second Technical Progress Report.
October 15-31	Adjustments to Second Advance Technical Report taking into account the comments and suggestions of the Expert Group.
November	Presentation of Progress Report on CICAD 56. Define steps for preparation of the final report to be presented at the CICAD 57.