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Programme of Cooperation  
between Latin America, the  
Caribbean, and the European  
Union on Drug Policies

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# Technical document on minimum Ibero- American standards for the humanisation of criminal and penitentiary policy

Standards Implementation Roadmap



COP  LAD

  
**COMJIB**



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# Technical document on minimum Ibero- American standards for the humanisation of criminal and penitentiary policy

## Standards Implementation Roadmap

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**June 2025**

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## FOREWORD

For decades, Ibero-American prison systems have been marked by deep tensions between the punitive function of punishment and the need to guarantee the human dignity of persons deprived of liberty. Overcrowding, inadequate prison conditions, invisibility of particularly vulnerable groups, and the absence of effective social reintegration programmes have demanded urgent and transformative responses.

In this context, the Conference of Ministers of Justice of the Ibero-American Countries (COMJIB) has played a fundamental role as a technical and strategic engine in the process of modernisation and humanisation of criminal justice. Since its foundation, the COMJIB has steadily worked to harmonise policies and regulatory frameworks that strengthen the rule of law, aware that justice cannot be limited to punishment, but must be built upon humanity, proportionality, and respect for fundamental rights.

The humanisation of criminal and penitentiary policy has thus become one of the essential pillars of the institutional agenda of the COMJIB. Through documents, guides, declarations, and studies—such as the historic Declaration of San José (2010)—the Conference has promoted a comprehensive approach to criminal justice, recognizing that deprivation of liberty does not suspend the rights of the person and that gender, age, identity, or situation of vulnerability must be considered in the design of all prison public policy.

This document constitutes a milestone in that trajectory that translates into an operational tool to promote reforms that respect the dignity of people, strengthen the proportionality of penalties, and expand the use of alternatives to incarceration.

We are aware that moving towards a more humane justice entails great challenges. Discourses that advocate punitivism and approaches that associate penal effectiveness only with tougher sentencing still persist. Against this view, the COMJIB has argued with conviction that the true quality of a penal system lies not in the number of persons deprived of liberty, but in its capacity to protect rights, reduce recidivism, and strengthen the social fabric.



This document is also a call to action: addressed to States, justice operators and all those involved, so that together we can move towards a more effective and truly humane justice system. Because only when the penal system respects the dignity of all people, even those who have broken the law, can we speak of justice in its fullest sense.

Finally, the humanisation of punishment should not be understood as an act of indulgence, but as an ethical, legal, and democratic conviction that orients justice towards unrestricted respect for human dignity, safeguarding of fundamental rights, and effective social reintegration.

**Enrique Gil Botero**

*Secretary General  
Conference of Ministers of Justice  
of the Ibero-American Countries (COMJIB)*



## EDITING NOTES

This document is part of the line of work on criminal punishment alternatives and proportionality in drug-related crimes of the Cooperation Programme between the European Union and Latin America and the Caribbean—COPOLAD III, led by the Foundation for the Internationalisation of Public Administrations (FIAP).

In this context, one of the priority actions was supporting the COMJIB in the development of regional standards for misdemeanour drug offences, through the application of the Principles for the Humanisation of Criminal and Penitentiary Policy. To this end, technical support was provided by Tirant lo Blanch S.L. (Tirant eGob).

The work was made possible thanks to the joint leadership of COPOLAD III and COMJIB and the active participation in data collection and strategic discussions of the following institutions and organizations:

- Ibero-American Association of Public Prosecutors.
- Inter-American Association of Public Defenders.
- Inter-American Commission on Human Rights.
- Conference of Ministers of Justice of the Ibero-American Countries.
- Ibero-American Judicial Summit.
- Public Defence of Costa Rica.
- Public Defense of the Dominican Republic.
- Delegation of the Government of Spain against Gender Violence.
- United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders.





- Institute for Addictive Behaviours and Dependencies (ICAD - Portugal).
- Ministry of Justice and Public Security – Brazil.
- Ministry of Justice of Argentina.
- Ministry of Justice of Costa Rica.
- Ministry of Justice of Paraguay.
- Ministry of Justice and Law of Colombia.
- Ministry of Public Defence of Paraguay.
- Judicial Power of Costa Rica.
- Judicial Power of the Dominican Republic.
- Ibero-American Network of NGOs Working on Drugs and Addictions.
- General Secretariat of Penitentiary Institutions of Spain.
- Group of experts on proportionality and criminal alternation from the International Public Policy Consultancy Tirant Lo Blanch working for the COPOLAD III Programme.



# **PART I.**

## **General standards for the humanisation of criminal and penitentiary policy**



## PRELIMINARY CONSIDERATIONS

The principle of humanisation of penalties may be "[...] the principle that most characterises the origin and evolution of the content of the contemporary penal system"<sup>1</sup>.

The replacement of custodial sentences by other less harmful penalties, by measures consisting in their suspension or even the waiver of any penalty, mark an "international trend towards the decriminalisation of certain previously punishable conduct"<sup>2</sup>.

The principle of the humanisation of sentences also obliges States to apply a gender perspective to criminal and penitentiary policy, which is, in turn, a key element for the advancement of public policies towards sustainable development.

Drug control measures at the international level, through the use of guidelines and indicators related to drug use and possession, have been analysed by the UN General Assembly. The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has stressed the "[...] need to pay more attention to human rights in the fight against drugs, rather than continuing to apply extremely punitive approaches that cause more harm to health than they seek to prevent"<sup>3</sup>.

In their report, when speaking of detention centres, the Special Rapporteur states that States have "[...] the obligation to respect the right to health by refraining from denying equal access to preventive, curative, and palliative health services to all persons, including prisoners or detainees"<sup>4</sup>.

As early as 1988, Rosa del Olmo stated that: "Latin American women, due to the economic crisis affecting the continent, and because of their condition of

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1. MIR PUIG, S. (2016). Criminal Law General Part, 10th Edition. Reppertor Publishing House, p. 133.

2. MIR PUIG, S. (2016). Criminal Law General Part, 10th Edition. Reppertor Publishing House, p. 133.

3. UNITED NATIONS, General Assembly. Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health [A/65/255 dated 6 August 2010](#), p. 4.

4. UNITED NATIONS, General Assembly. Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health [A/65/255 dated 6 August 2010](#), p. 21.



dependence and subordination to men, are obliged to include in the range of adaptations they make in order to survive, that of offering their labour force in an activity considered criminal, such as the drug business. The economic need, which for women is greater than for men in times of crisis and unemployment, offers them greater opportunities for illegal work than for legal work. In this case, however, they will also be discriminated against. Their participation will be limited to secondary and, in many cases, higher risk roles [...]."<sup>5</sup>

The analysis of the data extracted from the **diagnostic study**, prepared within the framework of the construction of these standards, has revealed that there continues to be a structural problem that cuts across all State bodies: the production of violations of the human rights of people who commit misdemeanour drug offences. These violations can be analysed based on four axes:



5. DEL OLMO, R. (1988). Drugs and criminalisation of women. Revista Nueva Sociedad. Available [here](#).



# APPLICATION OF HIGHLY PUNITIVE APPROACHES

## Criminalisation of possession for consumption

The UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health considers that the imposition of penalties for drug use or possession "[...] perpetuates many of the main risks linked to the use of these substances [...]". In addition, it considers that "[...] less restrictive approaches to drug control, such as decriminalisation or depenalisation" should be studied<sup>6</sup>.

The **diagnostic study** has revealed information on the criminalisation of drug possession for consumption at the regional level.

In Argentina, Article 14 of Law Nº 23,737 criminalises possession for consumption. However, in 2009 the Supreme Court of Justice of the Nation issued its judgment in the "[Arriola](#)" ruling (Judgments 308:1392), determining the unconstitutionality of article 14, second paragraph, of Law Nº 23,737, which criminalises the possession of narcotics for personal consumption (Recital 30 of the majority vote).

For its part, in Colombia, consumption is constitutionally prohibited, but the Supreme Court of Justice has held, based on the doctrine of supply doses, that possession for consumption is not criminalised even if it exceeds the personal dose<sup>7</sup>. However, simple possession is classified as a crime<sup>8</sup>.

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6. UNITED NATIONS, General Assembly. Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health [A/65/255 dated 6 August 2010](#), p. 23.

7. Sentence C-221 of 1994 of the Constitutional Court of Colombia, which declared the articles of Law 30 of 1986 that sanctioned the possession and consumption of personal doses as unconstitutional.

8. In Decision C-491 of 2012, the Constitutional Court declared constitutional the article of the Criminal Code that criminalises possession, on the understanding that it does not include criminalisation of the possession or storage of doses, exclusively for personal consumption, of a narcotic, psychotropic, or synthetic drug, even if it slightly exceeds the personal dose. Article 376. Trafficking, manufacture, or transport of narcotics. Anyone who, without the permission of the competent authority, introduces into the country, whether in transit or removes from it, transports, carries, stores, conserves, prepares, sells, offers, acquires, finances, or supplies narcotic substances in any capacity whatsoever, or psychotropic or synthetic drugs listed in tables one, two, three, and four of the United Nations Convention on Psychotropic Substances, shall be liable to



In the case of Costa Rica, neither possession for consumption nor simple possession are crimes. The offence of possession is established when it is determined that the intention of the persons is to: distribute, trade, supply, manufacture, process, refine, transform, extract, prepare, cultivate, produce, transport, store, or sell.<sup>9</sup>

Finally, in Paraguay, possession and ownership are offences, as established in Article 27. However, possession for personal use is permitted, with a very low threshold, with the legislative forum currently debating as to whether it should be increased or reduced.

The legislations analysed criminalise possession for consumption, a situation that implies that consumers are inevitably within the criminal sphere, except for the authorities to verify the quantities of the substance in possession.

**General Standard 1.** Decriminalisation or depenalisation of possession for personal use.

## Pre-trial detention and misdemeanour drug offences

The excessive use of pre-trial detention is raised in the Inter-American Commission on Human Rights (IACHR) as "[...] one of the most serious and widespread problems faced by the Organization of American States (OAS) Member States [...]" and the IACHR therefore emphasises that "[...] policies aimed at the rational use of pre-trial detention should be a priority for all branches of the State"<sup>10</sup>.

The legal situation of persons deprived of liberty for misdemeanour drug offences has been analysed in the preliminary **diagnostic study**. Specifically, the focus has been on the situation of women, since in Argentina and Paraguay most of them are detained as a 'preventive' measure, that is, without a firm conviction.

In Colombia and Costa Rica, most women imprisoned for misdemeanour drug offenses are 'convicted'. However, in none of the four countries studied is the number of women in pre-trial detention for drug offences less than 27%<sup>11</sup>.

|   | Argentina |        | Colombia  |        | Costa Rica |        | Paraguay  |        |
|---|-----------|--------|-----------|--------|------------|--------|-----------|--------|
|   | Convicted | Quotes | Convicted | Quotes | Convicted  | Quotes | Convicted | Quotes |
| % | 33.64%    | 66.35% | 72.56%    | 27.43% | 65.70%     | 34.30% | 36.00%    | 64.00% |

imprisonment of one hundred and twenty-eight (128) to three hundred and sixty (360) months and to the end of one thousand three hundred and thirty-four (1,334) to fifty thousand (50,000) current legal monthly minimum wages.

9. Law No 8204 of Costa Rica, art. 58. Available [here](#).

10. IACHR. (2016). [Practical Guide to Reducing Pretrial Detention](#), p. 9.

11. Detail of sources consulted as of May 2024: Data for Argentina as from the Interactive Report of the National System of Statistics on the Enforcement of Sentences (SNEEP). Data for Colombia as from the National Penitentiary and Prison Institute (INPEC). Costa Rican data from the Ministry of Justice and Peace. Data from Paraguay: Consultation with the designated national focal point. Data cited from the 2023 Continuous Permanent Household Survey (EPHC).



The issue of pre-trial detention cannot go unmentioned because of its topicality as a circumstance of imprisonment. In the same vein, the prescriptions of the Tokyo Rules that reinforce the criterion of the use of imprisonment as a last resort should be taken into account, which is of particular importance in relation to women prisoners where no assessment of their gender role has been made in line with the Bangkok Rules<sup>12</sup>.

In terms of tackling misdemeanour drug crimes, the legal status of people in prison is a crucial issue in the design of prison treatment. Furthermore, statistical consideration of data on pretrial detention contributes to the search for solutions to the problem of prison overcrowding and overpopulation affecting prison services in Latin America in general, and in the countries studied in the **diagnostic study** in particular.

**General Standard 2.** It is necessary to ensure that persons remain at liberty while awaiting trial, provided that they do not pose a *significant* risk of absconding or of obstructing the judicial process.

- A balance must be generated between the need to ensure the appearance and proper development of the judicial process, with respect for the fundamental right to freedom of the accused persons.
- Implementation of an objective evaluation system and promotion of alternatives to pre-trial detention will contribute to fairer and more efficient justice.
- A fairer and more balanced approach to the application of precautionary measures should be promoted, respecting the fundamental rights of individuals while ensuring the integrity of the judicial process.

## Proportionality

There must be a proportion between offences and penalties. As early as 1764, BECCARIA stated that "[...] the obstacles that keep men from crime must be stronger as the crimes are more contrary to the public good and in proportion to the stimuli that impel them"<sup>13</sup>.

FERRAJOLI conceptualises the principle of harmfulness (or offensiveness) as a guarantee of criminal law. He explains that "[...] in order to guarantee moral and political pluralism, that is, the peaceful coexistence of various moral points of view, it is necessary for the law to limit punishment only to those behaviors that are specifically offensive to others, while guaranteeing an intangible sphere of freedom"<sup>14</sup>.

<sup>12</sup>. Tokyo Rules: United Nations Standard Minimum Rules for Non-custodial Measures. These rules establish basic principles to promote the use of non-custodial measures, as well as minimum safeguards for persons to whom alternatives to imprisonment apply.  
Bangkok Rules: United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders. These rules constitute international human rights standards, providing specific guidance for treatment and alternative measures to imprisonment for women offenders.

<sup>13</sup>. BECCARIA, C. (1764). Crimes and penalties [Crimes and penalties]. Ediciones Orbis S.A., p. 86.

<sup>14</sup>. FERRAJOLI, L. (2012). The principle of the principle of non-injusticiability as a criminal guarantee, p. 109. Available [here](#).



Based on the data analysed in the **diagnostic study**, we present the following scheme of penalties applied by countries to drug offences:

| ARGENTINA<br>Narcotics Act № 23,737                                  | PENALTY                                                |
|----------------------------------------------------------------------|--------------------------------------------------------|
| Article 5 subsections a-d.                                           | Prison: 4 to 15 years and disqualification.            |
| Article 5 subsection a. For personal consumption.                    | Prison: 1 month to 2 years.                            |
| Article 5, paragraph e. No charge.                                   | Prison: 6 months to 3 years.                           |
| Article 6. Importation into the country.                             | Prison: 4 to 15 years + at the end.                    |
| Article 6. Non-commercialisation.                                    | Prison: 3 to 12 years.                                 |
| Article 7. Organisation or funding.                                  | Prison: 8 to 20 years + at the end.                    |
| Article 8. Quantities other than those authorised.                   | Prison: 3 to 15 years + at the end + disqualification. |
| Article 9. Licensed professional exceeding limits.                   | Prison: 2 to 6 years + at the end.                     |
| Article 9. Unlawful purpose.                                         | Prison: 4 to 15 years.                                 |
| Article 10. Facilitation of place or means.                          | Prison: 3 to 12 years + at the end.                    |
| Article 11. Aggravating circumstances (perpetrator + victim).        | Increase by 1/2 of the maximum and 1/2 of the minimum. |
| Article 12. Promotion and/or display.                                | Prison: 2 to 6 years + at the end.                     |
| Article 13. Aggravating circumstance criminis causa.                 | Increase by of the minimum and maximum.                |
| Article 14, 1. Simple possession.                                    | Prison: 1 to 6 years.                                  |
| Article 14, 2. Possession for personal use.                          | Prison: 1 month to 2 years.                            |
| ARGENTINA<br>Customs Code (Law № 22,416)                             | PENALTY                                                |
| Article 866. Smuggling.                                              | Prison: 3 to 12 years + at the end.                    |
| Article 866. For commercialisation purposes.                         | Increase by 1/2 of the maximum and 1/2 of the minimum. |
| COLOMBIA<br>Penal Code                                               | PENALTY                                                |
| Article 375. Possession or financing.                                | Prison: 96 to 216 months + at the end.                 |
| Article 376. Trafficking, transport, or manufacture.                 | Prison: 128 to 360 months + at the end.                |
| Article 377. Use of movable or immovable property.                   | Prison: 96 to 216 months + at the end.                 |
| Article 377B. Encouragement of illicit use.                          | Prison: 48 to 144 months + at the end.                 |
| Article 379. Unlawful supply or prescription.                        | Prison: 48 to 144 months + at the end.                 |
| Article 386. Substance trafficking.                                  | Prison: 98 to 180 months + at the end.                 |
| COSTA RICA<br>Narcotics Law № 8204.                                  | PENALTY                                                |
| Offence type A. Cultivation, manufacture, transport, or trafficking. | Prison: 8 to 15 years.                                 |
| Offence type B. Facilitation.                                        | Prison: 3 to 8 years.                                  |
| Offence type C. Other chemical precursors.                           | Prison: 8 to 15 years.                                 |
| Offence type D. Special category – women.                            | Prison: 3 to 8 years.                                  |
| Offence type E. Public servant.                                      | Prison: 3 to 8 years + at the end.                     |





| PARAGUAY<br>Narcotics Act № 1340                            | PENALTY                                                                |
|-------------------------------------------------------------|------------------------------------------------------------------------|
| Article 9. Healthcare professional.                         | Prison: 2 to 8 years.                                                  |
| Article 10. Pharmacies.                                     | Prison: 4 to 10 years.                                                 |
| Article 13. Unauthorised supply.                            | Prison: 6 to 15 years.                                                 |
| Article 14. Supply to minors.                               | Prison: 10 to 15 years + confiscation + at the end.                    |
| Article 19. Distribution of medical samples.                | Prison: 2 to 6 years + confiscation + at the end.                      |
| Article 21. Unauthorised importation.                       | Prison: 10 to 15 years + confiscation + at the end + disqualification. |
| Article 27. Possession.                                     | Prison: 5 to 15 years + confiscation + at the end.                     |
| Article 33. Sowing, harvesting, cultivating, or harvesting. | Prison: 10 to 20 years.                                                |

The data analysed show that the penalties applicable in these four countries have high minimums in most criminal cases, with large distances between minimums and maximums, which affects the expectation of punishment of the perpetrators. Furthermore, there are maximum penalties that equal or even exceed those imposed for crimes against life, as is the case in Argentina<sup>15</sup> and Paraguay<sup>16</sup>.

The access to parole and sentence reduction measures when moving forward in the progressive regime occurs after a long period of time due to the application of high sentences.

Based on the preliminary **diagnostic study**, the particular situation of Argentina can be identified, a country in which Law № 27,375 modified art. 14 of the Penal Code (PC), which regulates the conditions required for a judicial authority to grant a convicted person the benefit of parole. In particular, the reform expanded the number of so-called 'excluded crimes', that is, crimes commission results in the convicted person losing the possibility of being granted parole. As of 2017, any person convicted of the crimes provided for in articles 5, 6, and 7 of the Narcotics Law № 23,737 (or any that replace it in the future) and those provided for in articles 865, 866, and 867 of the Customs Code, that is, the 'drug crimes', is excluded from the right to words after the effective sentence is completed.

It is important to mention that in Argentina, violation of the Narcotics Law is the main cause of deprivation of liberty of women. As of June 2024, approximately 33.8% of women prisoners in the Federal Penitentiary Service were incarcerated as convicted drug offenders<sup>17</sup>. Among transgender persons held within the Federal Penitentiary Service, approximately 36% are facing legal proceedings for offences under the Narcotics Law, and 23.4% have been convicted<sup>18</sup>.

15. In Argentina, the crime of simple homicide carries a sentence of 8 to 25 years in prison ([Art. 79 Criminal Code](#)).

16. In Paraguay, the crime of simple homicide carries a penalty of 5 to 15 years in prison ([Art. 105 Penal Code](#)).

17. [SNEEP Interactive Report](#). Filters: Type of Federal Penitentiary Service + Gender woman + Type of crime "Violation of law № 23,737 (narcotics). Percentage calculation: ADD Gender male.

18. [SNEEP Interactive Report](#). Filters: Type of Federal Prison Service + Gender trans woman/transvestite and trans man + Type of crime "Violation of law № 23,737 (narcotics). Percentage calculation: of the total (trans woman/transvestite + trans man in the Federal Penitentiary Service = 256).



Law No 27,375 also amended Article 28 of Law No 24,660 on the enforcement of sentences, adding that, with respect to grounds that may warrant an unfavourable opinion regarding the social reintegration of the convicted person, such opinion shall be unfavourable: (1) in cases where the person is subject to criminal proceedings for new offences committed while serving the sentence; (2) in cases where the inmate's behaviour and conduct have not reached at least the classification of Good for at least two-thirds of the sentence served at the time of requesting parole. The requirement of having obtained at least a Good rating for two-thirds of the sentence served depends on the Correctional Councils, which apply highly subjective criteria when assigning the conduct or concept grade — a grade that is, moreover, not subject to appeal or review by persons deprived of liberty.

High sentences are conducive to prison overcrowding. The recidivism rates of the countries studied range from 20 to 30%. All countries have prison overcrowding, and the rate of persons deprived of liberty (PPL) per 100,000 inhabitants ranges between 195 and 288, with Colombia having the lowest rate and Costa Rica the highest.<sup>19</sup>.

|            | Recidivism | Overpopulation | Rate × 100k |
|------------|------------|----------------|-------------|
| Argentina  | 30%        | 18.50%         | 227         |
| Colombia   | 24%        | 23.50%         | 195         |
| Costa Rica | 14.60%     | 7.40%          | 287.68      |
| Paraguay   | N/A        | N/A            | N/A         |

## Of the criminal offence type

The criminal offence type is a legal instrument used by the State to ensure that, through the imposition of a sanction, an individual is deterred from committing a particular act or required to act in a specific situation. It also serves as an instrument that establishes and limits what is prohibited, thereby precisely reflecting the legal interests protected by law.

The same as the scope of the criminally relevant wrongdoing. The detailed formulation of the precept and the sanction represents the true description of the act in all its scope and characteristics. However, the mere commission of the act described in the offence does not automatically constitute the attribution of criminal responsibility.

The correspondence between the act and the statutory offence is the first stage in determining whether the offence is constituted. It must also be verified that the act was not committed under a lawful justification (absence of legal justification), that the conduct is blameworthy, and, according to some scholars, that "the conduct is not socially adequate" (Sutherland, 1939), a circumstance which, depending on one's

<sup>19</sup>. The data were extracted according to each country from the following institutes: SNEEP Argentina, INPEC Colombia, MJP Costa Rica, and focal point in Paraguay. Argentina: Data as of 2022, annual report, based on information from all prison systems in the country. Colombia: Recidivism data based on convicted vs. recidivists in the intramural system, year 2024. Data rate year 2023. Costa Rica: Data recorded only at the intramural level. The juvenile criminal level has a recidivism rate of 11.9%, comprehensive care level 8.1%, electronic monitoring 6.2%, and semi-institutional level 5%. Paraguay: No date.



perspective, excludes either typicality or illegality. All of which makes the dynamic and interpretive work of the judge necessary and indispensable.

In the field of offences that make up the illicit activity of drug trafficking, the use of open-ended offence definitions and blank criminal norms—through references to other legal instruments in order to complete or supplement the offence—may occur with relative frequency.

With regard to narcotic and psychotropic drugs, their definition is established through the listing system set out in the relevant international conventions. This translates into a greater guarantee for the principle of legality, since the list system allows modifications, when proposed by the parties involved.

The terms narcotic and psychotropic encompass virtually all substances whose abusive consumption may cause harm to the user and to public health in general.

As indicated, drug trafficking is a form of criminal activity that operates in a manner similar to a business. It is understood as a criminal activity of international scope that involves phases and illicit conducts of very different kinds within a specific spatial and temporal dimension. This wide range of actions—drug production and manufacture, transport, purchase for resale, trade, and acts promoting consumption—is extremely difficult to capture in precise and closed offence definitions without the risk that certain unlawful acts, which are in fact part of the illicit drug-trafficking activity, might fall outside the scope of punishment.

This is why legislators often resort to the use of open-ended offence definitions as an indispensable tool; or, conversely, they tend to list a variety of actions within a single article intended to sanction the entire illicit activity. However, these actions do not necessarily bear a clear or direct relationship to the real-world phases that constitute drug trafficking: production – commercialisation – concealment.

**General Standard 3.** The basic criminal offence must describe the prohibited behaviours related to substances subject to prohibition.

This ensures that no form of direct or indirect action falls outside the scope of criminal liability. To achieve such comprehensiveness, the drafting should employ governing verbs that encompass what is known as the drug cycle. One way to simplify this legislative formulation is to group these verbs into three main categories of acts: cultivation, manufacture, and trafficking.

Within these categories, the following acts should be included:

- **Cultivation:** includes planting and harvesting plants that may be used to produce prohibited substances.



- **Manufacture:** covers the processing or creation of prohibited substances through various methods, including the manufacture, refinement, transformation, extraction, and preparation of such substances.
- **Trafficking:** encompasses the distribution, marketing, supply, transport, storage, and sale of prohibited substances.

This formulation makes it possible to cover a broad range of actions, including:

- **Distribution and trade:** sharing and exchanging substances.
- **Supply:** providing substances to others.
- **Manufacturing and production:** creating substances from raw materials.
- **Refinement and transformation:** improving or modifying substances for use.
- **Extraction and preparation:** obtaining substances from plants or products and preparing them for use.
- **Production and transport:** generating and moving substances.
- **Storage and sale:** keeping and selling drugs.

Likewise, possession of these substances should be penalised when the purpose is to engage in any of the aforementioned activities. This means that possession for personal consumption is excluded from the criminal offence, distinguishing it from possession for the purposes of trafficking, manufacture, or cultivation.

## Of sentencing guidelines

Decriminalisation or depenalisation may be implemented by defining the offence in relation to the quantities of the objective element of the offence—the ‘drug’—in order to determine whether the situation constitutes possession for personal use or possession with an ulterior purpose. In essence, if possession ranges are established, the permitted range should be considered atypical; and if the quantity exceeds the established threshold, mere possession of such an amount should not be sufficient to constitute the offence—it must be demonstrated that the purpose was the trafficking of the substance.

On the basis of establishing specific quantitative thresholds, and under the presumption of innocence, certain behaviours involving possession of a ‘small’ amount of the drug could be decriminalised.



**General Standard 4.** Drug use should not constitute grounds for a criminal sanction. Nor should possession of drugs for personal use.

## Restorative justice in criminal matters

The United Nations Economic and Social Council, in particular the Commission on Crime Prevention and Criminal Justice, has defined the restorative process as a criminal justice process "[...] in which the victim, the offender and, where appropriate, any other persons or members of the community affected by a crime, actively participate together in resolving matters arising from the crime, generally with the help of a facilitator. Restorative processes may include mediation, conciliation, conferencing, and sentencing circles."

It also defined restorative justice as "any programme that uses restorative processes and seeks to achieve restorative outcomes," which in turn were defined as agreements resulting from restorative processes, such as "responses and programmes including reparation, restitution and community service, aimed at meeting the individual and collective needs and responsibilities of the parties and at achieving the reintegration of the victim and the offender<sup>20</sup>."

A restorative process starts from the premise that those who commit misdemeanour drug offences are often in situations of social, economic, and/or gender vulnerability, which calls for a reparative rather than a rehabilitative approach. Policies are required that reduce the underlying inequality in which such persons find themselves and provide them with the tools to build new social and community relationships.

Reducing the minimum limits of penalties, or adding mitigating factors in specific cases, seeks to humanise and adapt the criminal justice system so that it is fairer, especially for people in vulnerable situations. Likewise, it would allow for the use of alternative measures.

**General Standard 5.** A more individualised and humanised approach to justice is needed, one that takes into account circumstances of particular vulnerability and risk in prison.

In addition, a reduction in sentence lengths would help to lessen overcrowding in prisons.

20. United Nations, Economic and Social Council. [Report of the Expert Group Meeting on Restorative Justice](#). Vienna, 16–25 April 2002. Annex. Point I (Definitions), paragraphs 1–3. E/CN.15/2002/5/Add.1



## ABSENCE OF A GENDER AND VULNERABILITY PERSPECTIVE AS A DETERMINING FACTOR

### Of vulnerability

Social and/or economic vulnerability creates conditions that lead people-and in particular women and LGBT persons-to enter the illegal drug market "[...] often as the only means of survival, or because they are forcibly drawn into it, as in the case of victims of trafficking [...]"<sup>21</sup>.

As set out in the **diagnostic study**, the incidence of drug offences among women is significantly higher than for other types of offences. This phenomenon calls for a comprehensive approach that takes into account gender-specific factors and the conditions of vulnerability faced by many women.

In 2019, the National Directorate of Criminal Policy of the Ministry of Justice and Human Rights of Argentina published a [report](#) entitled "Women, Drug Smuggling, and Vulnerability: A Case Law Analysis. A Case Law Analysis". In this document, the researchers examine the offence of drug smuggling committed by women, analysing court rulings that consider the conditions of vulnerability they had experienced. The legal tools analysed in the report include, among others: the state of necessity, absence of intent (for instance, through error), expansion of intent (eventual intent and wilful blindness), and romantic relationships as a vehicle for deception and romantic idealisation<sup>22</sup>.

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21. PROCUNAR. (2022). Narco-crime and gender perspective. The gender perspective and the intersectional approach in the criminal prosecution of drug crime. [Report](#).

22. The report explains on pages 18 and 19 that: "The differential education of men and women has fostered values of obedience, self-sacrifice for others, and the notion of romantic love, which generates vulnerability and reinforces the model of female submission. Hence the need to deconstruct the ideal of romantic love, which is nothing more than a stereotyped construction of what love relationships, sexuality, and affection should be-one that has endured generation after generation, free from challenge (Illouz, 2009; Lagarde 1996 and 2001). What would a woman not do for love? How can you not trust your loved one? These idealised relationships are based on gender inequality and on a patriarchal, heterosexual view of romantic relationships."



The social role of law as a science must enable the bodies responsible for designing criminal policy to make the gender perspective an unavoidable mandate. Defining criminal policy is the first step towards defining penitentiary policy.

Making this issue visible and proposing good practices for the region as a State response are tools that enable civil society and non-governmental organisations to join this process.

Among the countries in the region that have implemented good practices in this area, Costa Rica must be mentioned for its inclusion of Article 77 bis in Law No 8204, which grants the judicial authority the possibility of ordering alternative measures to imprisonment when a woman is the author or participant in the introduction of toxic, narcotic, or psychotropic substances into penitentiary establishments.

Colombia, in turn, enacted Law No 2292 in 2023, through which affirmative actions in matters of criminal and penitentiary policy are adopted for women who are heads of household. Among other measures, Article 38h provides for community service as an alternative to imprisonment, which may consist of work related to the restoration or improvement of public spaces, support or assistance to victims, assistance to vulnerable communities, and educational activities of a cultural, road safety, or environmental nature, among others.

During the enforcement of a prison sentence, women and members of the LGBTIQ+ community are considered part of the group in a situation of particular risk, according to the IAHR<sup>23</sup>. This particular risk in prison is a direct consequence of the social factors that shape the lives of women outside prison.

The absence of a gender perspective in the penitentiary treatment of women convicted of offences constitutes a human rights issue. It is of vital importance to redesign and implement standards in penitentiary matters and in social reintegration, incorporating a gender perspective for our region, which moreover finds itself in a context of increasing inequality, the feminisation of poverty, the rise of far-right political actors, and migratory and climate crises.

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<sup>23</sup>. The Inter-American Commission on Human Rights (IACHR), in its report [Practical Guide to Reducing Pre-Trial Detention \(2017\)](#), states that "the accumulation of harm resulting from pre-trial detention has a much more intense impact on people belonging to groups in situations of vulnerability, and this impact is even more serious when such persons belong to groups that are economically at particular risk, as they are also victims of other forms of social exclusion." This group includes persons of African descent, Indigenous peoples, LGBTI persons, older or younger persons, and those with disabilities (pp. 50–52).





**General Standard 6.** States must make an effective commitment to guarantee access to rights for women and members of the LGBTIQ+ community who are involved in criminal proceedings, and to provide the basic tools that contribute to equal opportunities so that, once free, they may develop a life project with dignity.

## Of human trafficking

Victims of human trafficking are not punishable for the commission of any offence that is the direct result of having been trafficked.<sup>24</sup> However, they are often criminalised as "victim-offenders"<sup>25</sup>.

Subjecting victims of trafficking to criminal proceedings "[...] exposes them to a series of acts of re-victimisation and institutional violence, since, instead of receiving the comprehensive protection that the law grants to all persons harmed by crime, they must face the punitive power of the State and the threat of a custodial sentence, testify repeatedly to assert their status as victims, and undergo rigorous judicial scrutiny to determine their condition as such"<sup>26</sup>.

The so-called "mule women", who are recruited by trafficking networks to transport drugs, "[...] represent the lowest link in the criminal organisation engaged in drug smuggling. In general, they belong to extremely marginal socio-economic sectors—many of them are women heads of household responsible for young children—and often risk their own health and physical integrity [...]"<sup>27</sup>.

**General Standard 7.** Judicial authorities should take into account the vulnerability of women accused of trafficking offences, as well as the defining elements of human trafficking (the act, means, purpose of exploitation, and the victim's consent), in order to protect the victims of this crime and avoid criminalising them<sup>28</sup>.

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<sup>24</sup>. Law 26.364 on the prevention and punishment of trafficking in persons and assistance to its victims in Argentina, Article 5.

<sup>25</sup>. MARTÍNEZ, S. M. (2013). Criminalization of victims of human trafficking. *Revista das Defensorias Públicas do Mercosul*, Brasília, DF, n. 3, p. 1-192.

<sup>26</sup>. *Ibid.*, p. 58.

<sup>27</sup>. *Ibid.*, p. 62.

<sup>28</sup>. In general: MARTÍNEZ, S. M. (2013). Criminalization of victims of human trafficking. *Revista das Defensorias Públicas do Mercosul*, Brasília, DF, n. 3, p. 1-192.





## DIFFICULTIES REGARDING SOCIAL REINTEGRATION

### Right to work

In the preliminary **diagnostic study**, the legally established time limits in the countries examined were analysed with regard to the removal of criminal records, for the purpose of facilitating the labour reintegration of individuals.

In Argentina, the term of 10 years<sup>29</sup> from the completion of the sentence for the deletion of criminal records is excessively long for the purpose of enabling the employment reintegration of convicted persons. Moreover, the administrative procedure required obliges individuals to obtain post-penitentiary legal assistance in order to request the removal of their record. The criminal records registry in Argentina falls under the Ministry of Justice.

In Paraguay, persons who have been sentenced to more than three years' imprisonment retain their criminal record for up to eight years after the expiry of their sentence.

This situation increases discrimination factors and reduces the social and employment reintegration opportunities of individuals.

**General Standard 8.** State bodies responsible for developing public policies that contribute to the process of social readaptation must provide the necessary tools for employment reintegration, which may include both specific professional training and facilitating the management of bureaucratic documentation required for job interviews, such as identity documents.

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<sup>29</sup>. Art. 51 of the Criminal Code.



## The right to housing

The right to adequate housing is a human right<sup>30</sup>, access to which contributes to the process of social, and especially employment, reintegration of individuals. The United Nations highlights that "in many countries, women, religious and ethnic minorities, Indigenous peoples, persons with disabilities, migrants, and refugees suffer discrimination in housing or live in deplorable conditions"<sup>31</sup>.

The principle of non-discrimination in this area, in support of the social reintegration process of persons who have been deprived of their liberty, "may take the following forms: discriminatory laws, policies or measures; land-use planning; exclusionary development; exclusion from housing benefits; denial of security of tenure; lack of access to credit; limited participation in decision-making; or lack of protection against discriminatory practices by private actors"<sup>32</sup>.

**General Standard 9.** States must adopt and implement effective housing strategies, adapted to gender and age, with a social reintegration perspective, to ensure the progressive realisation of the rights to housing, land and property<sup>33</sup>.

## Right to health and substance use

UNODC recommends "[...] adapting interventions to women, young people, and groups at risk, and closing treatment gaps so that all persons can have access to the services they need without stigma or discrimination, in line with the UNODC and WHO International Standards for the Treatment of Drug Use Disorders"<sup>34</sup>.

Women and LGBTIQ+ persons face greater obstacles in accessing treatment, not only because the number of treatment centres is lower than that of centres for men (and even non-existent in some countries), but also because of the caregiving responsibilities traditionally assigned to them, which lead them to prioritise the health of those in their care over their own<sup>35</sup>.

The WHO has defined mental health problems as encompassing mental disorders, psychosocial disabilities and other mental states associated with significant distress, functional impairment or risk of self-harming behaviour<sup>36</sup>.

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30. Universal Declaration of Human Rights, Article 25 and International Covenant on Economic, Social and Cultural Rights, Article 11.1.

31. United Nations. Special Rapporteur on adequate housing. Summary of the Report on The Human Right to Adequate Housing. Website available [here](#).

32. United Nations. Report: [The right to adequate housing](#). Information leaflet № 21 (Rev. 1). ISSN 1014-5567, p. 11.

33. United Nations. Report: [The right to adequate housing](#). Information leaflet № 21 (Rev. 1). ISSN 1014-5567, p. 38.

34. UNODC. (2022). [World Drug Report. Book 1: Summary. Policy implications](#), p. 15.

35. COPOLAD III. (2023). [Guidelines for incorporating the gender perspective into the information systems of the National Drug Observatories](#), p. 12.

36. WHO. (2022). Mental disorders. Website available [here](#).



**General Standard 10.** Within the framework of sentence enforcement and with a view to social reintegration, penitentiary services must design and implement specific treatment programmes for people suffering from mental health problems. Public authorities must provide appropriate tools to ensure that individuals have access to the right to health on an equal basis and without discrimination as a result of having served a criminal sentence.



# SENTENCE ENFORCEMENT AND PENITENTIARY SYSTEMS

## The bodies responsible for sentence enforcement

Social reintegration is the essential purpose of the sentence enforcement process.

The process of enforcing criminal sentences is also governed by the principles of proportionality and the use of alternatives to imprisonment.

The judicial authority plays the most significant role in applying the principles of proportionality and penal alternatives, as it is responsible for granting alternative measures to imprisonment or benefits that involve a reduction in the severity of custodial sentences.

The right to effective technical assistance entails an active role for the body responsible for the defence, given the need to promote actions aimed at ensuring that persons deprived of liberty have access to alternative measures, mechanisms for sentence reduction, and other matters related to the monitoring and oversight of penitentiary services.

A humanised and proportionate sentence enforcement process also requires an active role from the Public Prosecutor's Office, through an innovative approach that moves it "[...] away from the role of a spectator with the right to comment on and challenge what occurs during the execution of the sentence [...]" and enables "[...] cooperation and coordination with executive branch agencies-particularly the penitentiary administration-involved in the management of sentence enforcement and other measures imposed within the criminal process"<sup>37</sup>.

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37. ALDERETE LOBO, R., PLAT, G. (2020). [Draft Model Penal Enforcement Law for Latin America](#). INEJEP, p. 12.



The administrative bodies responsible for the enforcement of sentences, for their part, hold the position of guarantor in relation to persons deprived of liberty, according to the IAHRs<sup>38</sup>.

Penitentiary management must also take into account intersectionality<sup>39</sup> when designing treatment programmes for these persons, since "it is possible to identify among them certain specific characteristics such as being foreign nationals, young, mothers, poor, or suffering from illness"<sup>40</sup>.

## Groups in situations of particular risk in prison

Women, LGBT persons, pregnant women, women who are breastfeeding or have children, older women, foreign nationals, and/or members of Indigenous or Afro-descendant populations are considered part of the group in situations of particular risk in prison, according to the IAHRs<sup>41</sup>. This particular risk is also linked to issues concerning health, understood in a comprehensive way: physical and mental, sexual and reproductive health.<sup>42</sup>

The double vulnerability<sup>43</sup> that affects this group of people requires the prison administration to adopt measures aimed at compensating for the conditions of inequality that occur in the exercise of their rights. Moreover, the offences committed by these persons are generally non-violent or of low harmfulness<sup>44</sup>, which adds to the possible element of coercion to offend due to social and economic vulnerability, abuse of power and/or gender-based violence.

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38. See IACHR Court (Judgment of 25 November 2019). Case of López et al. Argentina, para. 90. (Judgment of 14 May 2013). Case of Mendoza et al. v. Argentina, para. 188.

39. According to *ParlAmericas*, intersectionality is "an analytical tool that recognises that systemic inequalities are shaped by the overlapping of different social factors such as gender, ethnicity and social class."

40. The National Directorate of Criminal Policy of the Ministry of Justice and Human Rights of Argentina published the report *Women, Drug Smuggling and Vulnerability: A Case Law Analysis*, in which the authors explore "the issue of drug smuggling carried out by women, selecting judgments that have taken into account the conditions of vulnerability they experience" (p. 3). The direct quotation referred to in reference 4 appears on page 2.

41. The Inter-American Commission on Human Rights (IACHR), in its report *Practical Guide to Reducing Pre-Trial Detention (2017)*, states that "the accumulation of harm resulting from pre-trial detention has a much more intense impact on people belonging to groups in situations of vulnerability, and this impact is even more serious when such persons belong to groups that are economically at particular risk, as they are also victims of other forms of social exclusion." This group includes persons of African descent, Indigenous peoples, LGBTI persons, older or younger persons, and those with disabilities (pp. 50–52).

42. The *WHO defines health* as "a state of complete physical, mental and social well-being, and not merely the absence of disease or infirmity."

43. The *Brasília Rules (2008)* set out in Article 3 the concept of persons in situations of vulnerability: "Those who, by reason of their age, gender, physical or mental condition, or due to social, economic, ethnic and/or cultural circumstances, face particular difficulties in fully exercising, before the justice system, the rights recognised by law, are considered to be in a situation of vulnerability." The Brasília Rules identify causes of vulnerability, among which is deprivation of liberty, which may be combined with others, thereby creating a dual axis of vulnerability in access to rights: "The following may constitute causes of vulnerability, among others: age, disability, belonging to Indigenous communities or minorities, victimisation, migration and internal displacement, poverty, gender and deprivation of liberty" (Art. 4).

44. Luigi Ferrajoli conceptualises the principle of *lesividad* (harm or offensiveness) as a safeguard within criminal law in his article *The Principle of Harm as a Criminal Guarantee (2012)*. He explains that "[...] in safeguarding moral and political pluralism—that is, the peaceful coexistence of different moral viewpoints—it is necessary for the law to limit punishment only to behaviour that concretely causes harm to others, while ensuring an inviolable sphere of individual freedom" (p. 109).



## The inclusion of gender-sensitive statistics

The incorporation of gender-sensitive statistics entails, among other considerations, that:

- a) It is recognised throughout the research process that the gender identity of those participating in a study does not necessarily coincide with the sex assigned to them at birth.
- b) The data produced take into account the specific needs of men, women and LGBTIQ+ persons, and acknowledge and address the interrelationship between gender and other dimensions of social inequality, as referred to in the discussion of intersectionality.
- c) The objectives and hypotheses include a critical analysis of gender asymmetries in the exercise of rights. Methodological designs are incorporated that creatively seek to estimate gender gaps.
- d) The methodology used includes disaggregated samples that are representative of the target population in gender terms, and distinguish greater intra-gender differences using an intersectional approach.
- e) Data are analysed in light of the multiple forms of gender-based violence that are reproduced mainly against women and LGBTIQ+ persons, particularly in situations of greater vulnerability.
- f) Including intersectionality means considering not only gender differences, but also, simultaneously, differences related to social class, ethnic background, generation, and region of residence, among others. It challenges the homogenisation of, for example, all women, instead requiring the recognition of distinctions where strata 'intersect' and reveal other social positions. A white woman is not the same as an Indigenous woman, an adolescent, a poor woman, a migrant, or a woman deprived of liberty<sup>45</sup>.

In its Guidelines for Incorporating the Gender Perspective in the Information Systems of National Drug Observatories (2023), COPOLAD III emphasises that "making LGT-BIQ+ persons visible, naming and including them in statistics and monitoring, is one of the most urgent international commitments in terms of incorporating the gender perspective in drug studies"<sup>46</sup>.

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45. COPOLAD III. (2023). [Guidelines for incorporating the gender perspective into the information systems of the National Drug Observatories](#), pp. 14-15.

46. COPOLAD III. (2023). [Guidelines for incorporating the gender perspective into the information systems of the National Drug Observatories](#), p. 15.



**General Standard 11.** Public authorities must adopt the necessary measures to prevent and remedy any violation of the rights of persons belonging to groups in situations of particular risk in prison, taking into account the double vulnerability affecting this group from the perspective of the Brasilia Rules<sup>47</sup>.

## Prison treatment programmes

Treatment programmes are designed according to the length of sentences. In the case of persons sentenced to long terms of imprisonment, programmes may be implemented to ensure that prison conditions are compatible with progress through the progressive regime and with the prospect of social reintegration<sup>48</sup>.

The objectives pursued through the treatment programme are:

- a) To establish strategies aimed at normalising life in prison, reducing as far as possible the differences between life in prison and life in freedom.
- b) Understand personal goals and encourage commitment both to the treatment and to the design of a comprehensive life plan.
- c) Promotes a sense of responsibility by encouraging the participation of the person deprived of liberty in all treatment-related decisions while imprisoned.
- d) Maintain a professional attitude that is flexible, dynamic and interactive in designing treatment proposals and interventions.
- e) Provide opportunities for communication and interaction with the outside world, in order to counteract the deterioration of family and/or social relationships.
- f) Strengthen links with the community by creating conditions that allow persons deprived of liberty to take part in educational, recreational, and work programmes connected with life outside prison.
- g) Offer treatment spaces that enable convicted persons to maintain or rekindle their personal talents, skills, and knowledge.
- h) Encourage activities and spaces for reflection and engagement with current global conflicts, issues, and debates.

<sup>47</sup>. Brasilia Rules: Brasilia Rules on Access to Justice for Persons in Conditions of Vulnerability. Their purpose is to ensure that the judicial system functions as an effective instrument for the protection of individuals' rights without discrimination.

<sup>48</sup>. Argentine Federal Prison Service (SPF). Comprehensive Treatment Programme for Persons Sentenced to Long-Term Imprisonment. Published in [Public Regulatory Bulletin No. 813, Year 30, dated 8 June 2023](#).



- i) Maintain, throughout the entire sentence, the meaning of the prison treatment process, individually restoring the purpose of each phase, and period within the person's life plan<sup>49</sup>.

Treatment programmes for persons sentenced to short terms of imprisonment are intended to design and sustain a comprehensive treatment process aimed at social reintegration starting from the beginning of the sentence, ready for their release back into the community, despite the short duration of the prison term<sup>50</sup>.

The programme consists of "[...] a set of specific interventions for diagnosis, planning, implementation and evaluation that aim to limit the deteriorating effects of imprisonment and improve the prospects for integration into the community"<sup>51</sup>.

Its specific objectives are:

- "To identify the conditions of vulnerability of the persons included in the programme.
- Carry out all available interventions and actions during the short time the detained person remains in the penitentiary establishment, in order to promote social inclusion.
- Strengthen the objective of achieving early release.
- Assist in the development of personal capacities, practical knowledge, and social skills aimed at improving the person's ability to function in society.
- Foster greater contact with the outside world, facilitating family ties, and the rebuilding of existing social relationships and/or the establishment of new ones.
- promote the planning of concrete and feasible strategies that guide short-term life projects, encouraging links with other State bodies and civil society organisations"<sup>52</sup>.

The particular conditions of vulnerability and risk are taken into account<sup>53</sup>.

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49. Ibid.

50. Argentine Federal Prison Service (SPF). Comprehensive Treatment Programme for Persons Sentenced to Long-Term Imprisonment. Published in [Public Regulatory Bulletin No 765, Year 28, dated 21 October 2021](#).

51. Ibid., p. 7.

52. Ibid., p. 8.

53. Ibid.





**General Standard 12.** Treatment programmes must aim to provide the best possible conditions for release. This may be achieved by strengthening strategies for social promotion and inclusion through tools that ensure access to basic rights and to some form of early-release regime prior to the completion of the sentence.

- There must be coordination and exchange with various State bodies<sup>54</sup>.
- Treatment programmes must recognize the resources, needs and specific difficulties associated with certain conditions such as age, gender, sexual orientation and gender identity, physical or mental condition, length of sentence, and other social, economic, ethnic, and/or cultural circumstances that warrant such recognition.
- In addition, they must be conceived as positive measures directed at these groups, in order to fulfil the State's special duty of protection and care towards persons under its custody, particularly to guarantee the principle of equality and non-discrimination<sup>55</sup>.

## Interdisciplinarity

Social work in the context of imprisonment aims to "[...] strengthen and facilitate interaction with supportive relationships [...]" and "[...] promote strategies so that the person has more and better tools with a view to future release and a successful return to society."<sup>56</sup>

Intervention by professionals is intended "[...] to support and strengthen the family and social ties of persons deprived of liberty, and, on the other hand, to foster links with community and social networks that may accompany them throughout their detention and facilitate their reintegration for appropriate social coexistence."<sup>57</sup>

Work with women may place special emphasis "[...] on demands related to various situations involving the violation of their children's rights (educational, economic, relational, communication, or housing-related)."<sup>58</sup>

Work with young adults may focus particularly on the lack of "[...] support networks [...]" and on the "[...] situation of homelessness prior to imprisonment."<sup>59</sup>

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<sup>54</sup>. Ibid., p. 11.

<sup>55</sup>. Argentine Federal Prison Service (SPF). General framework for the design and implementation of specific prison treatment programmes. Published in [Public Regulatory Bulletin \[Public Regulatory Bulletin\] No 785, Year 29, dated 14 July 2022](#), art. II.

<sup>56</sup>. Argentine Federal Prison Service (SPF). Training manual on social intervention in the detention process of persons deprived of their liberty in the Federal Penitentiary Service. Published in [Public Regulatory Bulletin \[Public Regulatory Bulletin\] No 798, Year 29, dated 8 November 2022](#), Art. 2.1.

<sup>57</sup>. Ibid.

<sup>58</sup>. Ibid., Art. 2.3.1.1.

<sup>59</sup>. Ibid.



## **PART II.**

# **Specific operational or complementary standards for the humanisation of criminal and penitentiary policy**



The following section presents a set of specific technical standards, together with others of an operational or complementary nature, aimed at improving the proportionality of the punitive response and penal alternatives that preserve the underlying principle of humanisation of criminal and penitentiary policy.

These standards represent an integrated set of essential elements and contents that should be incorporated or developed within reforms of criminal justice and penitentiary systems.

To facilitate their progressive implementation, the standards have been organised into three levels:

|   |                                                                                  |
|---|----------------------------------------------------------------------------------|
| 1 | <b>Base level.</b> Short-term implementation                                     |
| 2 | <b>Intermediate level.</b> Medium-term phased implementation                     |
| 3 | <b>Future level.</b> Implementation associated with long-term structural reforms |

The **basic level** includes the fundamental standards that must be implemented immediately to ensure respect for and the dignity of individuals within the criminal justice and penitentiary systems. The **intermediate level** covers more advanced measures which, once the basic standards have been established, aim to improve prison conditions and processes through the introduction of more humane and efficient practices. These require gradual medium-term implementation, drawing on available resources and programmes within the region. Finally, the **future level** encompasses long-term goals, envisioning a transformed and fully humanised criminal justice and penitentiary system aligned with international best practices and the highest human rights standards. In all cases, the institutions responsible for implementing the



standards, or those required to play a coordinating role in their application, are clearly identified.

This phased approach enables institutions to move forward in a structured and sustainable way towards a more humane criminal and penitentiary policy, one that respects fundamental rights and is effective in restoring rights, repairing harmony, and promoting the social reintegration of persons deprived of liberty.



# 1. SPECIFIC STANDARDS FOR IMPROVING THE PROPORTIONALITY OF THE PUNITIVE RESPONSE AND PROMOTING ALTERNATIVES TO IMPRISONMENT

## Basic level of implementation

### For different types of criminal offences and their penalties

**Specific Standard 1.** It is recommended that the basic criminal offence describes the prohibited behaviours related to substances subject to prohibition. This ensures that no form of direct or indirect action falls outside the scope of criminal liability and that the criminal provision complies with the principles of legality and precision. The use of governing verbs that cover the so-called drug cycle is recommended. One way to simplify this legislative formulation is to group these verbs into three main categories of acts: cultivation, manufacture, and trafficking.

Within these categories, it is recommended to include the following acts:

- **Cultivation:** includes planting and harvesting plants that may be used to produce prohibited substances.
- **Manufacture:** covers the processing or creation of prohibited substances through various methods, including the manufacture, refinement, transformation, extraction, and preparation of such substances.
- **Trafficking:** encompasses the distribution, marketing, supply, transport, storage, and sale of prohibited substances.



This formulation makes it possible to cover a broad range of actions, including:

- **Distribution and trade:** sharing and exchanging substances.
- **Supply:** providing substances to others.
- **Manufacturing and production:** creating substances from raw materials.
- **Refinement and transformation:** improving or modifying substances for use.
- **Extraction and preparation:** obtaining substances from plants or products and preparing them for use.
- **Production and transport:** generating and moving substances.
- **Storage and sale:** keeping and selling drugs.

**Specific Standard 2.** It is recommended to decriminalise the use and possession of drugs for personal consumption. In accordance with the presumption of innocence, it must be proven, where applicable, that possession of drugs had a purpose other than personal use, and for this purpose a maximum quantity permitted as possession for personal consumption may be established by law or jurisprudence.

**Specific Standard 3.** It is recommended to eliminate criminal sanctions for the therapeutic use of cannabis derivatives, following the example of certain States. This measure should be accompanied by strict regulation of the applicable cases.

**Specific Standard 4.** It is recommended to recognize the traditional uses of natural substances, such as the chewing of coca leaves, in countries where these practices are part of the cultural heritage of their citizens.

**Specific Standard 5.** It is recommended to refine the technical description of the defined offences, and it is particularly necessary to remove offence types that do not reflect a criminal law based on the act itself.

**Specific Standard 6.** It is recommended that legislation, especially criminal legislation, establish different legal consequences depending on whether the drugs or substances cause serious harm to health or not.



**Specific Standard 7.** It is recommended that large-scale trafficking offences, as well as those involving criminal organisations or affecting certain population groups (distribution to minors, persons with disabilities, or within educational institutions), be punished with more severe penalties. For smaller-scale offences, the imposition of less severe sanctions is recommended. Likewise, it is recommended that criminal conduct related to precursors be sanctioned less harshly than drug trafficking itself.

**Specific Standard 8.** It is recommended to establish a mitigated offence type in relation to the basic one, taking into account the lesser seriousness of the act or the personal circumstances of the offender, in order to provide an appropriate response in borderline cases where applying the general criminal regulation could disproportionate evidence. Among these personal circumstances, particular consideration should be given to the situation of vulnerability in which the offence may have been committed, as well as the age and gender of the offender. Specifically, it is recommended to promote legal reforms that allow for the individualisation of the sentence for women without prior criminal records and in conditions of vulnerability, when such conditions have influenced the commission of the offence.

**Specific Standard 9.** It is recommended to regulate specific alternatives for women involved in micro-trafficking, especially within penitentiary establishments, once it is confirmed that they are first-time offenders and in a situation of vulnerability.

**Specific Standard 10.** It is recommended that drug offences committed by victims of human trafficking not be subject to criminal punishment.

**Specific Standard 11.** It is recommended to grant privileged penological treatment to those who actively cooperate with the authorities, providing useful information to dismantle criminal organisations.

**Specific Standard 12.** It is recommended to review and reduce the length of custodial sentences associated with drug trafficking offences, ensuring compliance with the principle of proportionality and, where appropriate, opting for sanctions alternative to imprisonment.

**Specific Standard 13.** It is recommended to consider drug addiction as an exempting circumstance or, where applicable, a mitigating factor in determining



the sentence for any offence, insofar as such addiction effectively nullifies or diminishes the offender's capacity for culpability.

## For pre-trial detention

**Specific Standard 14.** It is recommended that the commission of a drug trafficking offence, especially when it is of a minor nature or committed in a situation of vulnerability, should not be grounds for requesting or applying pre-trial detention, ensuring that this measure is used only when strictly necessary to guarantee the defender's appearance in proceedings, to prevent obstruction of justice, or to protect the community and victims.

## For enforcement of prison sentences

**Specific Standard 15.** It is recommended that conviction for a drug trafficking offence should not involve a more rigorous prison regime or the application of segregation measures, ensuring that convicted persons receive equitable treatment in accordance with human rights standards.

**Specific Standard 16.** It is recommended to design specific prison treatment programmes for people suffering from drug use.

**Specific Standard 17.** It is recommended to implement treatment programmes addressing problematic drug use from a gender perspective, taking into account possible prior victimisation, the specific needs of LGBTI persons and of pregnant persons and/or those with children, as well as the diversity of cultural traditions.

**Specific Standard 18.** It is recommended to establish detection and intervention programmes according to levels of risk of problematic substance use, through which data are collected to enable a specialised and interdisciplinary approach to the issue. It is further recommended that such statistics incorporate a gender perspective.

**Specific Standard 19.** It is recommended that conviction for a drug trafficking offence should not exclude the possibility of palabras or other forms of early release, particularly in cases involving minor or low-level offences or those committed in situations of vulnerability, provided that the convicted person





meets the legal requirements and demonstrates appropriate behaviour during the serving of the sentence.

**Specific Standard 20.** It is recommended that, in cases of minor or low-level drug offences, or when these have been committed in situations of vulnerability, the serving of sentences in open environments be prioritised, promoting alternative measures to imprisonment that facilitate the social reintegration of the convicted person.

**Specific Standard 21.** It is recommended that conviction for offences related to drug trafficking should not preclude the application of measures of pardon or clemency, provided that the convicted person meets the legal requirements and demonstrates behaviour that justifies such consideration.

## For the gender perspective in criminal proceedings

**Specific Standard 22.** It is recommended to include the gender perspective throughout the entire criminal process, including the assessment and adjudication of drug-related offences.

## For the application of restorative processes in criminal matters

**Specific Standard 23.** It is recommended to define a conceptual and procedural framework for introducing restorative justice in drug trafficking offences as an instrument to help resolve the legal conflicts arising from criminal acts, with the active participation of the parties involved, in order to repair harm caused to the victim, promote the social reintegration of the offender through comprehensive solutions, and foster *social*<sup>60</sup> peace.

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60. Costa Rican Restorative Justice Law No 9582, art. 1.



## 2. OPERATIONAL OR COMPLEMENTARY STANDARDS FOR THE HUMANISATION OF CRIMINAL AND PENITENTIARY POLICY

### Basic level of implementation

**For bodies responsible for sentence enforcement / judicial authorities enforcing sentences**

**Operating Standard 1.** The judicial authority responsible for sentence enforcement must resolve all procedural matters arising during the enforcement period efficiently and without bureaucratic delay, guaranteeing the right of defense of persons deprived of liberty.

**Operating Standard 2.** The judicial authority responsible for sentence enforcement must keep a record of the number of persons deprived of liberty without a final conviction, held under pre-trial detention.

**Operating Standard 3.** The judicial authority responsible for sentence enforcement must regard the social reintegration of individuals as the essential purpose of serving a sentence. This should be taken into positive account when determining eligibility for prison benefits such as sentence reduction or remission, temporary leave, less restrictive forms of sentence enforcement including the use of electronic monitoring devices, alternative measures to imprisonment, and alternative methods of conflict resolution.



**Operating Standard 4.** The judicial authority responsible for sentence enforcement must make decisions on the granting of prison benefits applying a gender perspective within the human rights framework.

**Operating Standard 5.** The judicial authority must take into account the particular risk situations in prison affecting women, pregnant persons, older persons, foreign nationals, and persons with physical or mental health issues, from an intersectional perspective.

**Operating Standard 6.** The judicial authority must consider overcrowding and overpopulation levels when making decisions on the granting of prison benefits, in particular and where possible, using a priority allocation protocol for persons in situations of particular risk in prison, such as women.

## For the Public Prosecutor's Office

**Operating Standard 7.** It must inform the judicial authority of the number of persons deprived of liberty without a final conviction, held under pre-trial detention.

**Operating Standard 8.** It must act proactively before the judicial authority in determining the manner in which a custodial sentence is to be enforced.

## For the defence

**Operating Standard 9.** Persons deprived of liberty have the right to effective technical assistance. The defence must, at every opportunity permitted by law, petition the court for the application of the different forms of sentence reduction or mitigation for their clients, based on the humanisation of criminal sanctions for persons in situations of particular risk in prison or for those who have committed non-violent offences.

## For the administrative body (penitentiary services)

**Operating Standard 10.** Prison staff must receive ongoing theoretical and practical training on issues of identity and mental health, particularly those related to problematic substance use, addressed in an intersectional way and within the human rights framework. An annual examination on these topics is recommended, together with subsequent training sessions in the field.



**Operating Standard 11.** Prison staff must be sensitised to moments of particular distress experienced by persons belonging to groups in situations of particular risk, so that they can respond appropriately and provide the necessary support.

**Operating Standard 12.** Clear policies and regulations must be developed and applied concerning staff conduct, to provide maximum protection for individuals against all forms of physical or verbal violence motivated by gender, as well as against sexual abuse and harassment. All officials involved in the management of detention facilities must receive training on gender issues and the need to eliminate discrimination and sexual harassment.

**Operating Standard 13.** Attention must be given to the working conditions and mental health of prison staff.

## For oversight and monitoring bodies

**Operating Standard 14.** A body must be created to protect the human rights of persons deprived of liberty and to audit and oversee the work carried out by the penitentiary services.

## Standards relating to prison treatment

**Operating Standard 15.** The authorities must encourage and support the development of initiatives on the prevention, treatment and care of HIV, such as peer education.

**Operating Standard 16.** Programs must be implemented to promote support for people with mental health problems.

**Operating Standard 17.** Specific treatment programmes must be designed and implemented for persons sentenced to short terms of imprisonment, for those serving long-term sentences, and for repeat offenders.

**Operating Standard 18.** Specific treatment programmes must be designed for pregnant, postpartum and breastfeeding persons, for mothers, for members of the LGBTIQ+ community, for addressing socio-cultural diversity, for older persons, for foreign nationals, for members of Indigenous peoples, and for persons



who do not speak the official language of the country in which they are imprisoned.

**Operating Standard 19.** Reasonable adjustments must be made for people with intellectual disabilities who are in prison.

**Operating Standard 20.** Guidelines for professional intervention must be established for social workers.

## Standards relating to the protection of the rights of persons at special risk in prison

**Operating Standard 21.** Persons belonging to groups in situations of particular risk who report abuse must receive immediate protection, support and guidance, with full respect for the principle of confidentiality.

**Operating Standard 22.** Access to and/or continuity of competent, non-discriminatory treatment, care and support must be guaranteed for persons seeking bodily modifications related to gender reassignment.

**Operating Standard 23.** Persons undergoing hormonal treatment must continue to have access to hormones, including supervision by adequately trained medical staff and medical care related to the potential effects of hormonal therapy. Persons who have not received hormonal treatment or surgical modifications but seek to do so while deprived of liberty must be able to access these procedures through the health services provided by the establishments.

**Operating Standard 24.** A protocol must be developed for the priority allocation of electronic monitoring devices, establishing an order of priority based on the specific characteristics of the convicted person.

The order of priority could be as follows<sup>61</sup>:

- Pregnant women;
- Mothers of children under five (5) years of age or of a person with a disability under their care;

<sup>61</sup>. This order of priority is established in [Resolution 808 - E/2016](#).



- Mothers of children between five (5) and ten (10) years of age, where the competent judicial authority deems it reasonable to grant house arrest as an exception to the regulatory provisions;
- Persons suffering from an incurable illness in a terminal stage;
- Persons for whom deprivation of liberty prevents recovery or adequate treatment of their condition and who do not qualify for placement in a hospital facility;
- Persons with a disability for whom deprivation of liberty is inappropriate due to their condition, resulting in degrading, inhuman or cruel treatment;
- Persons over seventy (70) years of age;
- Persons considered by the technical-criminological body to pose a low level of risk and/or who are serving the final third of their sentence—where another benefit has been denied—provided that the competent judicial authority deems it reasonable to grant house arrest as an exception to the regulatory provisions;
- Members of the LGBTIQ+ community;
- Other cases considered by the judicial authority.

## Standards relating to alternative methods of dispute resolution

**Operating Standard 25.** A protocol must be developed for the application of alternative conflict resolution methods to address disciplinary and coexistence issues within the prison context.

## Intermediate level of implementation

### For pre-trial detention

**Operating Standard 26.** A measurement instrument must be developed to assess the risk of non-appearance and obstruction of proceedings. This instrument must be based on factors, variables and indicators analysed through a rigorous and transparent methodology.

Factors to be considered:

- Record of attendance at previous court proceedings.



- Employment and residential stability.
- Seriousness of the offence and the likely sentence to be imposed.
- Behaviour during the proceedings.
- Possibility of influencing witnesses or destroying evidence.

Methodology of analysis:

- Use a statistical and qualitative methodology that allows for a comprehensive risk assessment.
- It includes the periodic review of the circumstances of the case and of the accused, in order to adjust the measures appropriately.

## For non-custodial precautionary measures

**Operating Standard 27.** Effective supervision mechanisms must be implemented for non-custodial precautionary measures, ensuring compliance with judicial proceedings.

**Operating Standard 28.** Electronic monitoring, periodic reporting to the authorities, and restrictions on movement should be promoted as alternatives to pre-trial detention.



## For judicial court records

**Operating Standard 29.** Criminal records must be deleted, or public access to them limited, once the sentence imposed has been served, especially for persons in situations of vulnerability and with dependent family members.

States must take positive action to compensate for the social, labour and economic limitations arising from unrestricted public access to databases containing criminal records.

Particular consideration should be given to the specific situation of persons convicted of misdemeanour drug offences whose commission was influenced by determining factors such as social or economic vulnerability and/or gender-based violence.

Access to criminal records must be restrictive, insofar as such records do not constitute grounds for disqualification from practicing a particular profession or occupation.

In the European context, the protection of natural persons with regard to the processing of personal data is a fundamental right (Regulation (EU) 2018/1725).

## Intermediate level of implementation

### Standards relating to minimum and maximum penalties

**Operating Standard 30.** Judicial Flexibility: Increase the flexibility of the judicial system so that judges can adapt sentences more fairly and equitably, avoiding the imposition of excessively severe penalties in cases where significant mitigating factors exist.

States must take positive action to compensate for the social, labour and economic limitations arising from unrestricted public access to databases containing criminal records.

Particular consideration should be given to the specific situation of persons convicted of misdemeanour drug offences whose commission was influenced by determining factors such as social or economic vulnerability and/or gender-based violence.





Access to criminal records must be restrictive, insofar as such records do not constitute grounds for disqualification from practicing a particular profession or occupation.

In the European context, the protection of natural persons with regard to the processing of personal data is a fundamental right (Regulation (EU) 2018/1725).

## Standards relating to resocialisation and post-penitentiary care

**Operating Standard 31.** Particular attention must be paid to ensuring the right to housing once the person has been released.

**Operating Standard 32.** The person's access to an identity document must be guaranteed.

**Operating Standard 33.** Housing, food, and health subsidies must be provided.

**Operating Standard 34.** Particular attention must be paid to the person's inclusion in employment.

**Operating Standard 35.** Incentives must be offered to employers who hire persons who have been deprived of liberty.

**Operating Standard 36.** An employment quota must be established for employers who are State bodies.

**Operating Standard 37.** Words must be applicable to all offences, except crimes against humanity and genocide.

**Operating Standard 38.** A robust regulatory framework must be developed to ensure the proper implementation of AI in criminal proceedings. AI tools must not be used to assess the dangerousness of persons deprived of liberty for the purpose of obtaining preparatory mechanisms for release.



# Roadmap for the implementation of standards for the humanisation of criminal and penitentiary policy (Product 3)



For the implementation of the standards, a roadmap has been developed comprising six elements, which are set out below: required approaches; applicable standards; areas of action; actors and levels of intervention; and, finally, a set of cross-cutting actions considered relevant for progress in this field. At the end of the narrative, an infographic is provided summarising the information and process (the Roadmap in the strict sense).

## 1. REQUIRED APPROACHES

In designing the roadmap, the focus has remained on the problematic areas previously identified (diagnostic) with respect to criminal and penitentiary policy, and in particular concerning persons deprived of liberty for low-harm drug-related offences:



**HIGHLY PUNITIVE APPROACHES**



**ABSENCE OF GENDER AND SOCIAL VULNERABILITY PERSPECTIVE**



**DIFFICULTIES IN SOCIAL REINTEGRATION**



**SENTENCE ENFORCEMENT AND PENITENTIARY SYSTEMS**



## 2. APPLICABLE STANDARDS

In this regard, it should be understood that the roadmap encompasses all the standards presented in Sections I and II of this document, giving particular importance to those aimed at improving the proportionality of the punitive response and the use of penal alternatives in relation to misdemeanour drug offences:

### Standards for the humanisation of criminal and penitentiary policy

23

#### Specific Standards

Aimed at improving the proportionality of the punitive response and criminal alternatives to misdemeanour drug offences.

12

#### General/Transversal Standards

For the humanisation of criminal and penitentiary policy in Ibero-America.

38

#### Operating/Supplementary Standards

For the humanisation of criminal and penitentiary policy in Ibero-America.



## 3. AREAS OF ACTION

In this field, four areas have been defined as the focus for the application of the various standards, with a thematic sub-classification established within each:

### Substantive legislation (criminal codes)

- Classes of penalties.
- Main penalties.
- Complementary penalties.
- Additional penalties.
- Accessory penalties.
- Pre-trial detention.
- Alternative measures to imprisonment.
- House arrest.
- Suspension of the enforcement of the custodial sentence.
- Preparatory mechanisms for release.
- Words.
- Exemption from punishment.
- Non-custodial sentences.
- Sentencing.
- Sentencing frameworks.
- Extenuating Circumstances.
- Security measures.
- Criminal records.
- Structure of sentence enforcement: national, local, and the convergence of both systems.
- Drug offenses.
- Human trafficking offences.

### Procedural legislation (enforcement laws)

- Principles of sentence enforcement.
- Bodies responsible for the enforcement of sentences and measures.



- Functions of the judicial authority responsible for sentence enforcement.
- Role of the Public Prosecutor's Office.
- Role of the public defence service.
- Functions of the administrative (executive) body in charge of sentence enforcement.
- Penitentiary services.
- Penitentiary systems.
- Bodies responsible for persons deprived of liberty in special risk situations.
- Interdisciplinary bodies.
- Modalities of enforcement.
- Treatment standards.
- Training of prison staff.
- Structure of the prison system.
- Phases of the progressive system.
- Individual treatment programmes.
- Group treatment programmes.
- Approach to problematic substance use.
- Disciplinary sanctions.
- Sentence reduction or remission.
- Temporary release permits.
- Procedural, family, and social relationships.
- Work.
- Health.
- Education and culture.
- Social work.
- Reduced-severity enforcement modalities.
- Petitions and enforcement incidents.
- Legality control and access to justice.
- Social reintegration and life after release.

### Prison capacity

- Prison overcrowding.
- Overpopulation.

### Administrative regulations

- Group treatment programmes.
- Individual treatment programmes.
- Treatment programmes addressing problematic substance use.
- Awareness-raising workshops.
- Treatment programmes for short-term sentences.
- Treatment programmes for long-term sentences.
- Treatment programmes for persons in special risk situations.
- Alternative methods of conflict resolution.
- Protocols.
- Guidelines for action.
- Intersectionality.



## 4. ACTORS AND LEVELS OF INTERVENTION

This section presents the integration of key actors involved in implementing the standards for the humanisation of criminal and penitentiary policy, particularly in improving proportionality and promoting penal alternatives in cases of misdemeanour offences:

- COMJIB. Conference of Ministers of Justice of the Ibero-American Countries.
- AIAMP. Ibero-American Association of Public Prosecutors.
- CIJ. Ibero-American Judicial Summit.
- AIDEF. Inter-American Association of Public Defenders.
- IACHR. Inter-American Commission on Human Rights.

### COMJIB + AIAMP + AIDEF

Judicial authorities responsible for sentence enforcement.  
Public prosecutors.  
Defence.  
Penitentiary services.  
Monitoring and oversight bodies.  
Gender perspective.  
Prison treatment.  
Special risk situations in prison.  
Alternative methods of conflict resolution.  
Social reintegration.

### COMJIB + CJI

Proportionality.  
Pre-trial detention.  
Precautionary measures.  
Criminal records.  
Restorative justice.

### COMJIB + IACHR + CJI

Types of penalties.  
Legal reforms.  
Minimum and maximum penalties.  
Human trafficking.



## 5. ACTIONS OF A TRANSVERSAL NATURE

At a cross-cutting level, and based on discussions with various regional and national stakeholders who participated in the process of developing these standards, the following actions are proposed:

### International and regional cooperation

International cooperation is essential to address shared challenges and exchange good practices. Collaboration between Ibero-American countries and other international actors must be facilitated to develop more effective and humane policies. For example, it is recommended to organise conferences, seminars, and workshops where experts and government representatives can exchange experiences and knowledge.

### Research and evaluation

Research and evaluation of the measures adopted by States must be promoted. Studies and assessments should be carried out to show the effects of criminal and penitentiary policies implemented in the region. Such research will make it possible to assess the impact of the measures adopted and adjust strategies based on the results obtained.

### Awareness-raising and Training

Awareness and training programmes for judicial, penitentiary, and security officials are essential to foster greater understanding of humanitarian and human rights approaches in the administration of criminal justice. Training should include subjects such as prison management, care for people with addiction problems, and the treatment of vulnerable populations within the criminal justice system. Within the Ibero-American Programme on Access to Justice, a 40-hour video training course on this topic has been developed in collaboration with Tirant lo Blanch.





## Promotion of public and political dialogue

Encouraging public and political dialogue on the need to reform criminal and penitentiary policies —through forums, round tables, and meetings with leaders— is essential for driving a paradigm shift in how our societies address misdemeanour drug offences and other non-violent crimes. It is crucial to involve all sectors of society in this debate to achieve broad and lasting consensus. Proportionality in sentencing, the implementation of alternatives to imprisonment, the strengthening of human rights, prevention, legislative reform, international cooperation, research, training, and dialogue promotion are all essential actions for building justice systems that not only punish but also rehabilitate and reintegrate individuals into society.

## Promotion of good practices

COMJIB could identify and disseminate good practices and successful models for dealing with misdemeanour drug offences. This includes promoting alternative measures to imprisonment, such as drug courts and rehabilitation programmes. Documenting and sharing these experiences allows countries to learn from their neighbours' successes and challenges, adapting strategies that have proven effective elsewhere. A digital repository of good practices should be created and made accessible to all member countries. This repository should include case studies, impact analyses, and implementation guides for various programmes and policies. COMJIB will also facilitate visits and exchanges between professionals from different countries so they can observe and learn directly from successful programmes implemented elsewhere.

## Defence of human rights

COMJIB must be an unwavering advocate for human rights in all policies and practices related to drugs. This means ensuring that the measures adopted do not violate individuals' fundamental rights, promoting a model of justice that is both humane and effective. Mechanisms for monitoring and evaluation should be created to ensure that prison policies and practices align with international human rights standards. COMJIB may collaborate with civil society organisations and human rights advocates to monitor and report violations, and to advocate for reforms where necessary.

## Implementation of alternative programmes

COMJIB can promote the implementation of alternatives to imprisonment. These programmes are essential to reducing prison overcrowding and providing more humane and effective solutions to misdemeanour drug offences. Alternatives may include treatment in therapeutic communities, community work, and education and employment programmes. The development of clear regulatory and operational frameworks for implementing these alternatives is crucial. COMJIB may provide technical assistance and advice to member countries to create such frameworks, ensuring they are viable and sustainable in the long term. It will also develop monitoring and evaluation systems to measure the success and impact of these programmes and to adjust policies as needed.



## Promoting prevention and education

Prevention is a crucial tool for effectively addressing drug-related problems. COMJIB should contribute to joint government efforts to promote prevention programmes that include education in schools, public awareness campaigns, and the strengthening of community support networks. Education and awareness are key to reducing drug use and preventing related crimes. Implementing educational programmes from an early age can be particularly effective. These programmes should not only inform about the risks of drug use but also help develop life skills and resilience among young people. Moreover, awareness campaigns must be culturally relevant and designed to reach different audiences within each country.

## Legislative reforms

COMJIB actively supports legislative reform in the region's countries. This includes advising governments on reviewing and amending laws that excessively criminalise drug users and promoting legal frameworks that allow for the implementation of alternative measures. Drafting recommendation documents and organising legislative debate forums are key tools in this process. Continuous evaluation of existing laws and their impact on the population will be carried out. Collecting and analysing data on how these laws affect different demographic groups will provide a solid basis for future proposals for legal change. Support will be given to legislators through comparative studies and examples of successful reforms elsewhere to facilitate the process of change.

## Promoting restorative justice

Restorative justice is an approach that seeks to repair the harm caused by crime through reconciliation and restitution rather than punitive punishment. COMJIB can play a key role in promoting restorative justice in the region, particularly in cases involving misdemeanour drug offences. This approach may include mediation between offender and victim, community service programmes, and other forms of reparation. COMJIB will develop guidelines and manuals for the implementation of restorative justice, provide specialised training for mediators and justice professionals, and promote the creation of pilot programmes in different countries. Evaluating these pilot programmes will make it possible to assess their effectiveness and areas for improvement.

## Sustainability

Criminal justice systems require significant resources to function effectively and to implement reforms that promote a more humane and equitable approach. Without adequate funding, it is impossible to maintain rehabilitation programmes, alternatives to imprisonment, and prison systems that respect human rights. Some key commitments include:



- Collaboration with international entities: COMJIB may work closely with international bodies such as the European Union, the Inter-American Development Bank (IDB), and the Andean Development Corporation (CAF) to secure sustainable funding sources. These organisations can finance numerous projects aimed at modernising and reforming justice systems in the region.
- Resource optimisation: Policies to improve resource efficiency and administrative effectiveness should be promoted, including modernising judicial infrastructure and implementing management systems that reduce operating costs.
- Cooperation and technical assistance programmes: COMJIB can facilitate cooperation and technical assistance programmes to strengthen the financial and administrative capacities of criminal justice systems in the region. These programmes will include staff training and the development of more transparent and efficient financial management systems.
- Evaluation and continuous improvement: Ongoing evaluation systems must be implemented to measure the efficiency and effectiveness of programmes and policies in the criminal justice system. This will make it possible to identify areas for improvement and ensure that resources are used as efficiently as possible.
- Financial transparency: Financial transparency practices should be promoted within judicial systems to ensure that funds are used appropriately and that there is accountability.
- Innovation in financing: New funding sources should be explored, including public-private partnerships and the use of international funds. COMJIB may work with international organisations and donors to ensure a steady flow of resources to support reforms and improvements in the criminal justice system.
- Austerity and resource reallocation policies: Resource reallocation should be promoted towards programmes and policies that demonstrate high levels of effectiveness and efficiency.

### **‘Punitive populism’**

Public opinion and political discourse often favour harsh criminal policies as a quick response to crime-related problems. This tendency makes it difficult to implement more humane and proportionate approaches, as these may be perceived as "soft" on crime. To address punitive populism, COMJIB could focus on the following actions:

- Public education and awareness-raising: Develop awareness campaigns to educate the public about the benefits of more humane and rehabilitative approaches within the criminal justice system. These campaigns would aim to shift public perceptions and build support for policies that promote rehabilitation and the social reintegration of offenders.



- Political dialogue and strategic alliances: Foster political dialogue and build alliances with political leaders, academics, and civil society organizations to counter punitive narratives. This dialogue would include presenting evidence on the effectiveness of alternative and rehabilitative measures.
- Research and data publication: Publish studies and data demonstrating the effectiveness of non-punitive approaches in reducing recidivism and improving public safety. This is essential to support humanitarian policies. COMJIB could collaborate with universities and research centres to produce and disseminate such studies.

## New technologies

The incorporation of new technologies and the digitalisation of judicial systems are crucial to improving efficiency and transparency, but they also present significant challenges. Many judicial systems in the region still operate with outdated infrastructure and lack the training necessary to use new technologies effectively.

The following strategies are proposed:

- Technological infrastructure: Improve the technological infrastructure of judicial systems, including the digitalisation of case files and the creation of online platforms for case management.
- Continuous training: Provide ongoing training for judicial authorities, prosecutors, and administrative staff in the use of new technologies. COMJIB could organise courses and workshops to ensure that judicial staff are prepared to operate in a digital environment.
- Pilot projects: Develop pilot digitalisation projects in several member countries. These projects will allow new technologies to be tested and fine-tuned prior to large-scale implementation, thus ensuring that the solutions adopted are effective and appropriate to local needs.
- International collaboration: Collaboration will take place with the European Union and other international entities to finance and support the digitalisation agenda. This cooperation will include the exchange of knowledge and good practices, as well as access to funding and technical assistance.

## On the use of artificial intelligence

The use of artificial intelligence (AI) in criminal justice has the potential to revolutionise case management and decision-making processes, but it also presents challenges related to ethics, privacy, and potential algorithmic bias. Proper implementation of AI requires careful planning and a robust regulatory framework.

COMJIB's guidance for addressing these challenges could include, among others:



- Development of regulatory frameworks: Establish regulatory frameworks to ensure that the use of AI in criminal justice is ethical and transparent. These frameworks should include safeguards to protect privacy and prevent algorithmic bias.
- AI Projects: Support pilot projects that use AI to improve case management, resource allocation, and judicial decision-making. These projects should be implemented with rigorous evaluation to ensure that outcomes are fair and equitable.
- AI training: Provides training in the use and management of AI tools. COMJIB could organise workshops and training programmes for judicial authorities, prosecutors, and other actors in the justice system, focusing on the responsible and ethical use of these technologies.
- Transparency and accountability: AI in criminal justice should be implemented with a strong focus on transparency and accountability. The systems and algorithms used must be auditable, and clear mechanisms must exist to identify, address, and correct any errors or biases detected.

## Awareness campaigns

Development of awareness campaigns aimed at:

- Raising public awareness within civil society about the entities promoting the adoption of the standards and the issues these standards are designed to address.
- Building credibility, so that people have confidence in the entity promoting the adoption of the standards and also in the magnitude of the problem. Here, too, case examples could be put forward in the perspective of good practice.
- Foster proximity: Improve communication with civil society actors and demonstrate an open dialogue that creates empathy.
- These actions should cover at least four key areas: Media; Social Networks; Political-Institutional; Civil Society.



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Technical document  
on minimum Ibero-  
American standards for  
the humanisation  
of criminal  
and penitentiary policy



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