

Drug policy and the prison situation in Bolivia

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Introduction

Bolivia's participation in the international drug-trafficking circuit was determined by a series of factors, ranging from the ancestral tradition of growing and consuming coca leaf, to the endemic poverty of the population (per capita GDP is less than US\$ 1,000) and the structural weakness of state institutions.

Economic activity around the coca leaf, both legal and illegal, finds expression not only in the more than 45,000 peasant farmer families that make a living from coca growing, but also in the thousands of persons arrested each year for involvement in the processing and transport of the illegal derivatives of the coca leaf. This is the response of a country with high unemployment and underemployment, and a minimum wage not sufficient to cover the basic market food basket.

Notwithstanding this relationship between drugs and poverty, the Bolivian state and the international community have sought to put the brakes on the phenomenon through repressive policies in which the forced eradication of crops and interdiction of illegal trafficking in coca and its derivatives are often accompanied by systematic violations of civil and human rights.

The objective of this investigation is to describe the repercussions of these policies for Bolivian society, showing the human face of those behind bars for drug offenses and the real impact of drug policies on their lives and families, and on criminal organizations. The purpose is to show the need to reform Law 1008, so as to bring the legislation more into line with reality and to ensure that drug legislation does not increase poverty, violate human rights, or render the population vulnerable to crime.

This study is based on a survey of 130 prisoners in the San Pedro prison, for men, in the city of La Paz, in addition to other official data. The central hypothesis is that the crisis of

overcrowding in Bolivian prisons, as in the rest of Latin America, has a direct causal relationship with an approach to drug policy in which a disproportionate application of criminal law results in violations of fundamental human rights.

Bolivia's drug legislation and the international context

The United Nations Single Convention on Narcotic Drugs (1961) was the starting point for activities to control the cultivation of certain plants, which in practice meant the proscription of coca crops and the trade in coca leaf. To accomplish this, the Bolivian Government undertook a plan to fight drugs. In 1973 the first mechanisms for controlling the planting, harvesting, and collection of coca leaf were developed, leading to the manual eradication of plants and sanctions against coca producers. U.S. pressure later led to the militarization of the struggle against the crops and drug-trafficking.

In 1989, the United States proposed the “Andean Strategy,” a plan to strengthen programs for the substitution of coca crops through military support. In Bolivia, the military role in the war on drugs began in 1986 with Operation Blast Furnace, in which six Black Hawk helicopters and 160 high-ranking U.S. Army officers were sent to direct coca eradication and interdiction operations. It was in that context that the first national legislation was adopted, on July 19, 1988, with the enactment of the Law on the Regime Applicable to Coca and Controlled Substances, whose design was informally entrusted to U.S. officials. With the adoption of this law, strategies were framed for combating drug trafficking with four main pillars: eradication, alternative development, interdiction, and, marginally, preventing consumption.

In 2003, the government of Carlos D. Mesa signed an agreement with the coca producers from the region known as the Cochabamba Tropics to implement a series of reforms, including the authorization to grow up to one *cato* (1,600 m²) of coca per unionized family within the territories of the six peasant federations of the region. Since then, the conflicts with these organizations and the attendant violations of rights have decreased.

This has been the most important redress attained by a social sector, in terms of changing drug policy.

Enforcement of Law 1008

Law 1008 encompasses both the regime for the coca leaf and for controlled substances. This law, which has 149 articles, defines 32 specific forms of criminal conduct, specific forms of prosecution, and competent agencies. Yet its ambiguities and vagueness in several aspects have given way to excessive penalization. For example, the law does not distinguish between street-level drug dealers and larger drug-traffickers, such that the penalties range from one year for a producer of controlled plants to 25 years for trafficking, without considering the volume of drug involved. The law is also ambiguous in the definition of manufacture, possession, storage, delivery, supply, purchase, sale, and donation, and/or any other type of transaction.

According to a legal analysis undertaken in 1995 by the Committee on Human Rights of the Chamber of Deputies, Law 1008 “*establishes a criminal justice subsystem parallel to the regular criminal justice system, characterized by the tendency towards unreasonably drastic penalties*”¹ that suppresses fundamental rights to defense and undermines citizens’ constitutional rights. Law 1008 led to excessive penalization by including offenses already in the Bolivian Criminal Code, while also imposing more stringent sentences in terms of length of incarceration, number of days of fines, and asset seizure.

In addition, the extent of penalization under Law 1008 is unconstitutional because - given the total sum of prison terms plus days of fines - in many cases the sentences end up being more than the 30 years established as the maximum prison term stipulated in the Bolivian Constitution. In the criminal proceedings regarding the enforcement of Law 1008, the presumption of innocence is eviscerated by pre-trial detention, the issuance of arrest warrants for defendants who are in absentia, and the provisional registration of the assets of the persons involved. Law 1008 includes elements which in themselves violate

¹ Committee on Human Rights of the Chamber of Deputies, 1995.

constitutional and civil rights, and which, given how they are carried out, presuppose the systematic violation of human rights in the most vulnerable sectors of the population.

According to earlier studies on this law, state institutions use high levels of violence during the detention for, and investigation of, offenses defined in Law 1008.² This violence includes threats, coercion, and extortion, and even physical and psychological torture.

In the wake of the harsh criticism of Law 1008 and in an effort to restore constitutional guarantees and principles of justice, on February 2, 1996, the Bolivian state enacted the Bail Act (Ley de Fianza Juratoria), and then, in 1999, a new Code of Criminal Procedure was adopted and gradually implemented. As a result of these reforms, the benefit of conditional release was introduced in limited form in cases involving delays of justice, along with more guarantees for the exercise of the right to defense by the accused. Yet despite these new laws, the use of special prosecutors, excessively harsh penalties attached to the definitions of criminal conduct, and other elements leading to violations of the rights of the accused all continued. Moreover, the requirements for conditional release are not viable for most of the accused. The prison population incarcerated because of offenses defined in Law 1008 is made up mostly of the weakest, poorest, most vulnerable, and easiest to replace links in the drug-trafficking chain.

The prison system and the prison population

The prison administration in Bolivia is part of the state, public, and under the executive branch, and is administered by the General Directorate of the Prison Regime (DGRP: Dirección General de Régimen Penitenciario), which is within the Ministry of Interior (Ministerio de Gobierno). Bolivia's prisons reflect the country's poverty in some of its crudest forms. According to a DGRP report, in early 2006 the prison population numbered 7,782 inmates, distributed in 54 prison establishments, with a budget (provided

² Rose Marie de Achá (1996), *Violaciones a los derechos humanos civiles durante la investigación policial en casos de detenidos bajo la Ley 1008*. Andean Information Network. This study shows that 68 percent of males and 71 percent of females detained under Law 1008 suffered torture and maltreatment while being arrested.

by the national government) of just over US\$ 4 million annually, earmarked for food, health expenditures, personal services, basic services, and others. With these resources, less than US\$ 0.80 daily was earmarked for the prisoners' food, and only 30 percent of the prisoners' medical needs were addressed by the prison regime. In many prisons, the prisoners themselves have to take charge of medical services.³

The picture of poverty is even more dramatic if one considers the presence of children in the prisons, which in turn is closely related to the poverty of most of the prison population. *"And so the absence of a social policy for minors in Bolivia means that when the parents go to prison, the children have no safer place to be than in the prison.... In all, there are more than 3,000 children in the prisons of Bolivia."*⁴

Article 26 of Law 2298 on Enforcement of Sentences and Supervision establishes that *"the children of prisoners up to 6 years of age may stay in the prison establishments so long as the parent deprived of liberty is the minor's legal guardian."*⁵ Despite this limitation, given the impossibility of leaving their children elsewhere, many mothers and fathers keep their children by their side even after they have turned six, and family dynamics take shape within the prisons that stigmatize minors and show them a way of life in which violence is trivialized and liberty is lost.

Prison population behind bars for drug-trafficking offenses

Since the implementation of Law 1008, the proportion of prisoners behind bars for drug-trafficking and related offenses has been approximately 45 percent of the total prison population nationwide. This proportion has begun to decline only in recent years, dropping from 47 percent in 2005 to 30 percent in 2009. The trend is illustrated in Graph 1:

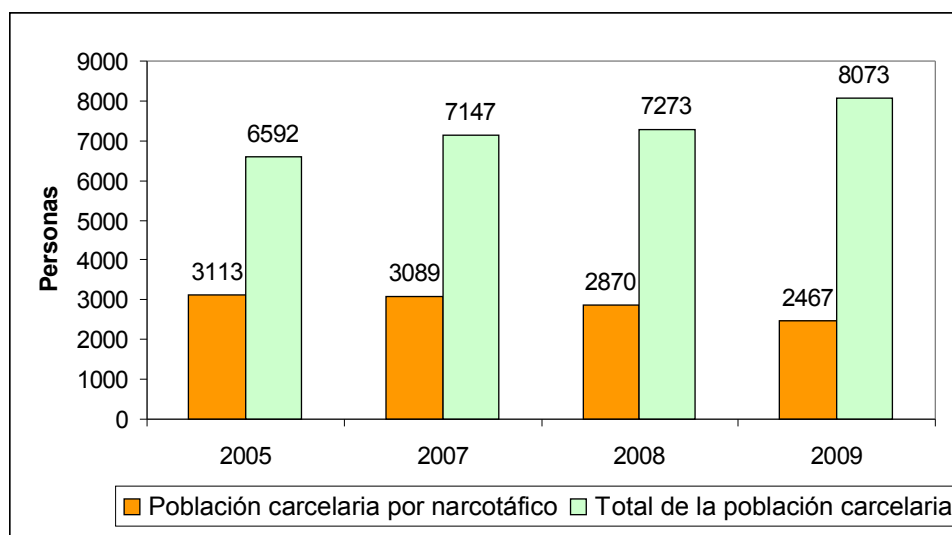
Graph 1 – Total prison population and prisoners incarcerated for drug-trafficking

³ Pinto Quintanilla (2004) *Las cárceles en Bolivia*, p. 54.

⁴ Ministry of Interior, 2006.

⁵ Ministry of Interior, 2006.

in Bolivia



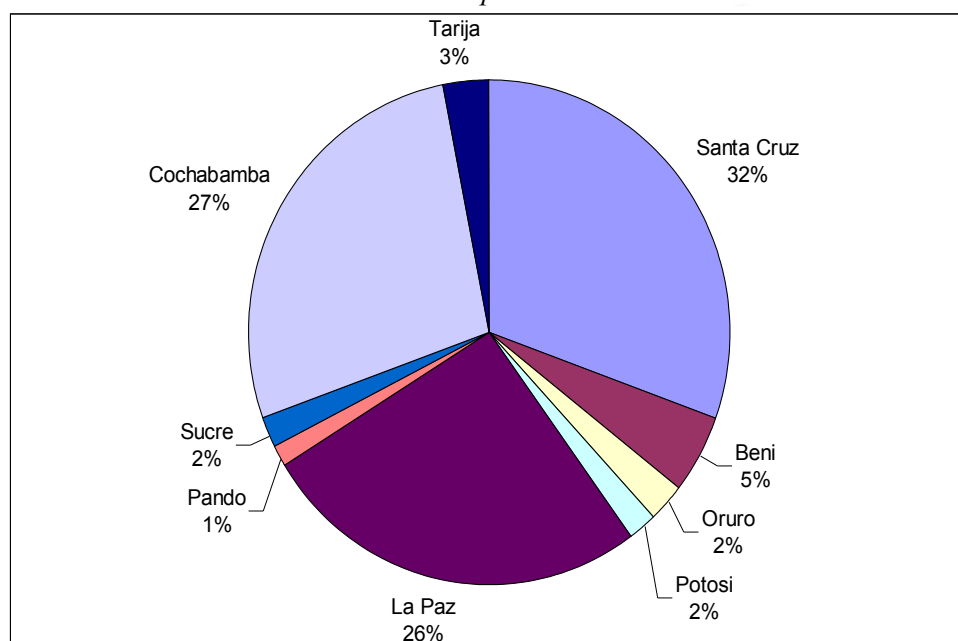
According to high ranking officers from the Special Force to Fight Drug Trafficking (FELCN: Fuerza Especial de Lucha contra el Narcotráfico), one of the main reasons for the drop in the number of persons detained is the use of new technologies for manufacturing cocaine paste. According to this explanation, the maceration pits (the artisanal processing plants for obtaining cocaine paste) were given up in favor of large receptacles that may fit inside a room; the water from the rivers or streams has been replaced by tap water. Whereas previously up to 10 people worked in a maceration pit, now only two or three people are needed to operate the grinders (commonly “weed whackers”) in much less time.

Another possible explanation is the growing employment by the drug-trafficking organizations of youths and children, against whom criminal charges cannot be brought. It is common for these minors to be released after a few days, for no judicial proceeding to be brought against them, and for them not to go to prison.

Finally, the decrease in the population confined under the drug law could also be explained by the changes that have occurred under the government of Evo Morales, which have expanded the possibilities of conditional release and improved the processing of *habeas corpus* petitions.

Observing the distribution of the population incarcerated for crimes codified in Law 1008, it is notable that due to the use of the new technologies for manufacturing cocaine paste and its shift from the forests of the Cochabamba Tropics to the urban areas of El Alto, La Paz, Cochabamba, and Santa Cruz, the population of persons behind bars for drug-trafficking and related offenses has extended to all nine departments of Bolivia.

Graph 2 – Distribution of the population behind bars for crimes codified in Law 1008 among the nine departments



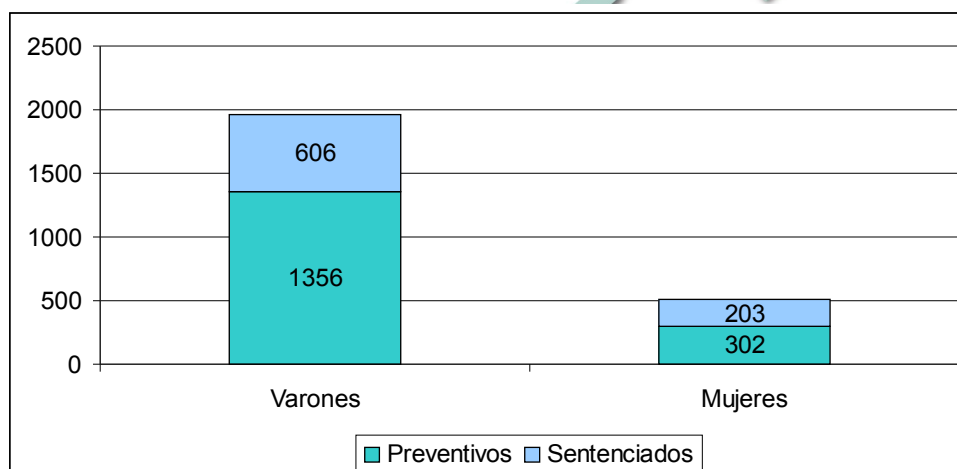
Source: Based on information provided by the National Directorate for Prison Security.

Although prisoners locked up for drug-trafficking and related crimes can be found throughout the country, this population is concentrated mainly in the prisons of Palmasola, in Santa Cruz, with 672 prisoners, the San Pedro prison in the city of La Paz, with 472 prisoners, and the San Sebastián prison in Cochabamba, with 249. These three prisons account for 56 percent of the persons behind bars for drug-trafficking and related

offenses; the remaining 44 percent are distributed among the other 34 prisons in the country.

Of the total population in prison for drug-trafficking and related offenses, more than 67 percent are being held in pre-trial detention, i.e. they have not been convicted; this illustrates what delayed justice means in Bolivia, and the way in which the enforcement of Law 1008 entails violations of civil and constitutional rights. The figures are shown in Graph 3:

Graph 3 – Prison population for crimes codified in Law 1008 by gender and legal status



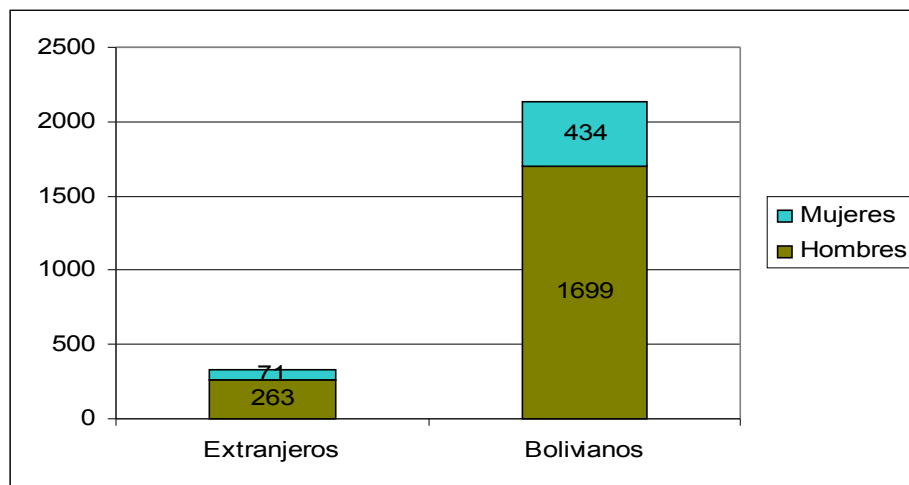
Source: Based on information provided by the General Directorate of the Prison Regime.

Graph 3 also shows that the percentage of male prisoners held in pre-trial detention is greater than the percentage of women detained without having been convicted. Accordingly, among the males, those held in pre-trial detention account for 69 percent of the total, whereas among the females it is 59 percent. Of the total prison population, 80 percent of the prisoners for drug-trafficking offenses are male, and only 20 percent are female.

According to the interviews carried out at the San Pedro prison, a large percentage of the prison population appears to be made up of persons hired as *pisadores*, or those who stomp the coca leaves, operators of coca leaf grinders, or “mules.” These persons, often hired without prior notice of the kind of work they are to perform, are subject to the orders of thugs who pay them some US\$ 200 weekly to place their integrity and their liberty at risk. According to one prisoner, “*We hire the operators and loaders here in La Ceja (market in La Paz), where anyone can find a plumber, mason, or day worker. From there we take them, without much explanation.*”⁶

As for the prisoners’ country of origin, 13.5 percent are foreigners, the proportion being similar among men and women. Of the foreigners, Peruvians working as mules transporting cocaine paste from Peru to Bolivia or Brazil figure prominently. The Europeans detained account for no more than 10 percent of all foreigners; for the most part they are problematic drug users.

Graph 4 - Distribution by country of origin and gender of the prison population incarcerated for crimes codified in Law 1008

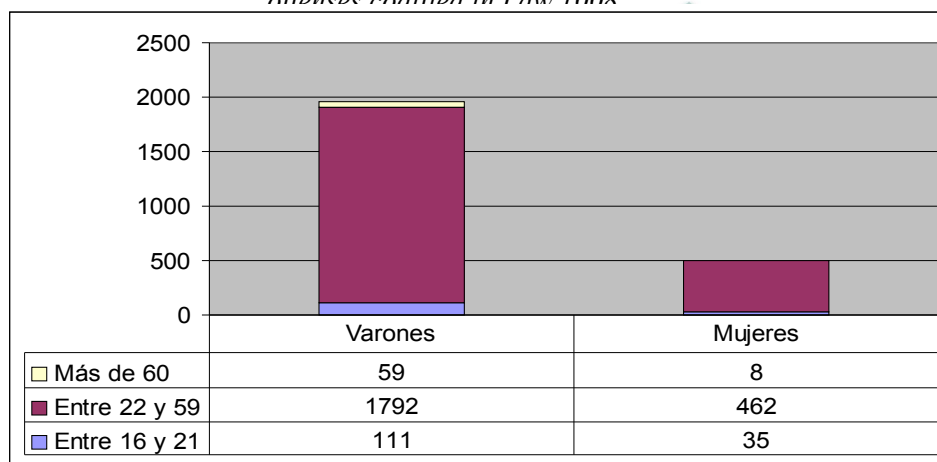


⁶ Interview with a prisoner from the San Pedro prison incarcerated on charges of trafficking in controlled substances.

Source: Based on information provided by the General Directorate of the Prison Regime.

Finally, as regards prisoners' ages, 91 percent range in age from 22 to 59 years, 3 percent are over 59, and 6 percent are under 21.

Graph 5 – Distribution by age bracket of the population incarcerated for offenses codified in Law 1008



Source: Based on information provided by the General Directorate of the Prison Regime.

In general, the data presented shows the profile of the population impacted by the Law 1008 and the dogmatic approach of the case-law that leads the state to claim to protect society from drug-trafficking through repression and exemplary punishment.

Characterization of the population at the San Pedro prison for crimes codified in Law 1008⁷

For the purposes of this study, the San Pedro prison, the main prison in La Paz, was examined in order to illustrate in more detail the situation of the male population of

⁷ Based on surveys done by the author at that prison in 2010.

prisoners behind bars for drug-trafficking and related offenses. More than 1,500 prisoners are incarcerated in San Pedro and distributed based on social status among six sections. The conditions of overcrowding at this prison are such that *“the prisoners have to sleep in the bathrooms and patios, on the ground, and without beds. This also results in greater insecurity, as money and clothes are stolen, drugs and alcohol are sold, threats are made, persons are injured and killed, some are paid to protect others, and there is not adequate food or basic medical care, etc.”*⁸

This prison, like other prisons in Bolivia, is administered under an open regime, which means that behind the prison walls the prisoners organize their life with only a limited role played by the police authorities in charge of administering and seeing to the security of the prison. Economic activities unfold in the San Pedro prison as though it were a small town. There are eateries, barbershops, stores, billiard halls, and even video rooms. It is all administered by the prisoners for the purpose of generating income that allows them to cover their expenses, support their families, or make up for the lack of government investment in maintaining the prison.

In keeping with this open regime, access to a cell in the San Pedro prison, as in the other major prisons in Bolivia, is not free of charge to the prisoner, contrary to Article 22 of Law 2298. The possibility of getting a cell in a given section depends on each inmate's access to cash to be able to buy his cell from the delegates, who administer the spaces available in each section. In the most expensive section cells go for US\$ 6,000 to US\$ 8,000, whereas in the more dilapidated section the price is no more than US\$ 150.

Given the characteristics of the open regime, *“governability in San Pedro is outside of the hands of the administration, and only a severe regime of self-discipline managed by the power groups among the inmates is capable of keeping order on the inside.”*⁹ So a balance is struck between the civilian administration, the police in charge of security at the gates, and the delegates of the prisoners themselves. This relationship works, in part,

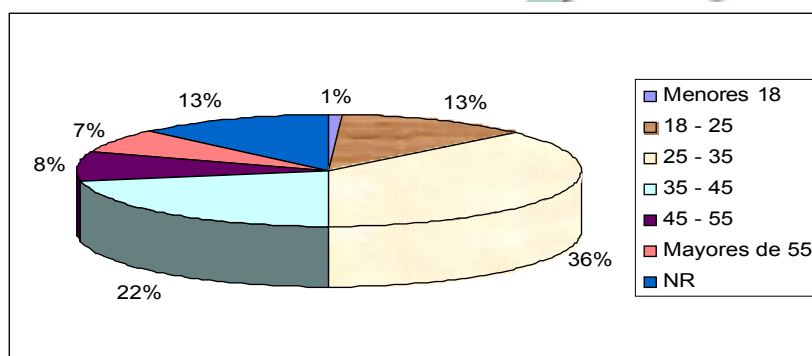
⁸ Ministry of Interior, 2006.

⁹ Ministry of Interior, 2006.

thanks to a dynamic of corruption that benefits each of these parties. None of the three would be capable of keeping control of and maintaining the prison on its own.

Socio-demographic characteristics of San Pedro

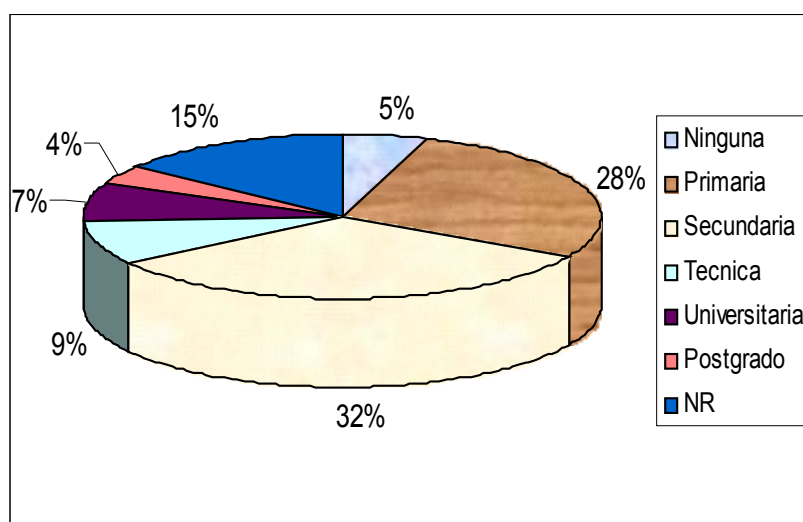
The prisoners in the San Pedro prison for drug trafficking and related offenses account for 29.7 percent of the total (420 of 1,411 prisoners). Of these, 1,295 have Bolivian nationality, 93 are Peruvian, and the rest are a smattering of different nationalities. The average age of this population, according to the registry kept by the prisoners themselves, is 33.5 years.



Source: Based on survey of prisoners at the San Pedro prison.

According to Graph 6, most of the prisoners are middle-aged; only 1 percent are under 18 years of age, and only 7 percent over 55 years. Analyzing the distribution of the population by age bracket, together with levels of education completed, reveals that it is a population with scant opportunities for earning sufficient income for the subsistence of an average-size family. Only 11 percent of the prisoners have completed university or graduate education.

Graph 7 – Distribut.



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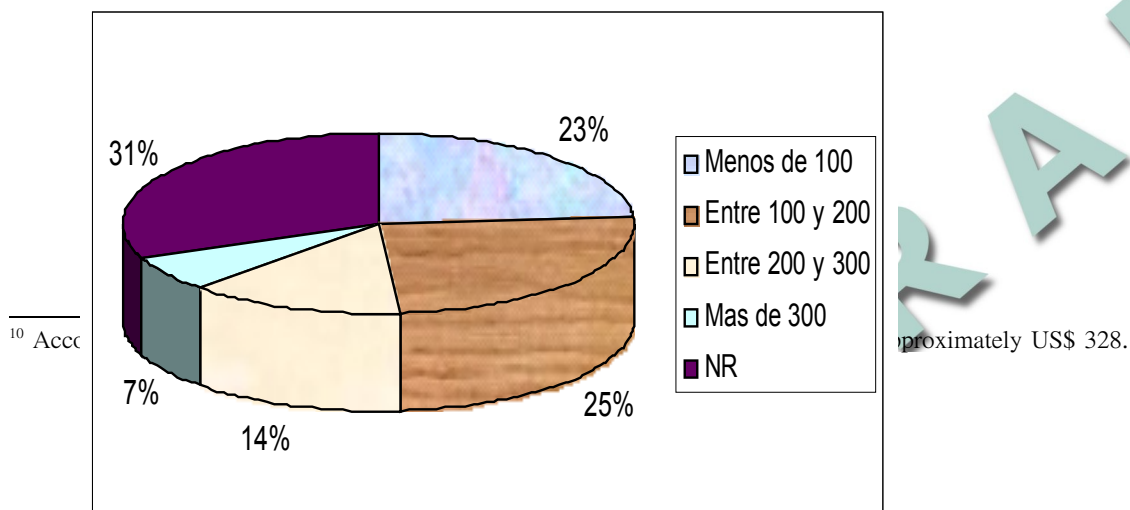
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Source: Based on survey of prisoners at the San Pedro prison.

Most of the inmates were engaged in legal economic activities, as merchants, transportation workers, or construction workers – work that generally does not require any higher education. According to the most recent legal activities they had engaged in before being imprisoned, these three categories account for 40 percent of those behind bars for drug trafficking.

The profile of poverty and economic vulnerability comes into greater focus when observing the income levels of this proportion of the incarcerated population. Some 62 percent of those surveyed said they received no more than US\$ 300 per month. In general, the average incomes of the prisoners before being imprisoned was equivalent to US\$ 155 per month, which does not cover even half the cost of the basic food basket in Bolivia.¹⁰

Graph 8 – Income levels (in dollars) of the prison population before becoming involved in activities related to trafficking in controlled substances



Source: Based on survey of prisoners at the San Pedro prison.

The life histories of the prisoners at San Pedro reveal how they found themselves in situations of poverty, family crisis, or health problems when the opportunity arose to obtain extraordinary earnings and solve their problems in exchange for the risk of losing their liberty and jeopardizing their physical integrity.

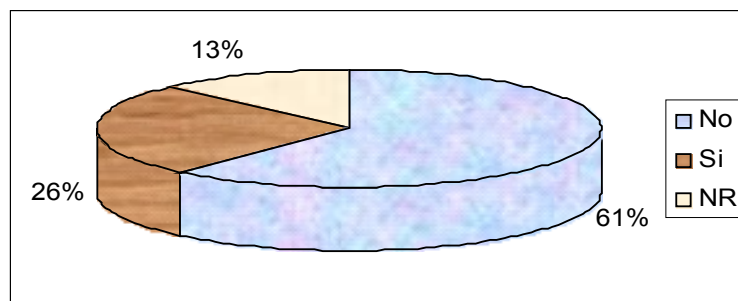
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Among the prisoners from rural areas, one young beekeeper, no more than 30 years old, was interviewed who, when 21 years of age, by which time he already had three small children and a wife to maintain, came across a group of persons who were transporting cocaine paste. In the presence of the outsider, the traffickers forced him to participate in exchange for not being harmed; after the first contact a series of new meetings ensued. The new work that the young man encountered by chance allowed him to increase his income eightfold, with which he was not only able to meet his family's most basic needs, but also to buy new inputs for his work as a beekeeper, and to then become a transportation worker. Of course, after a few years he was arrested and lost everything he had been able to accumulate in that time.

Features of legal process at the San Pedro prison

Another aspect related to the logic of detention and subsequent legal proceedings in which the prisoners become submerged has to do with the lack of capacity of the institutions in charge of the administration of justice and pre-trial detention in the application of Law 1008.

Graph 9 – Population convicted of drug-trafficking and related offenses at the San Pedro prison

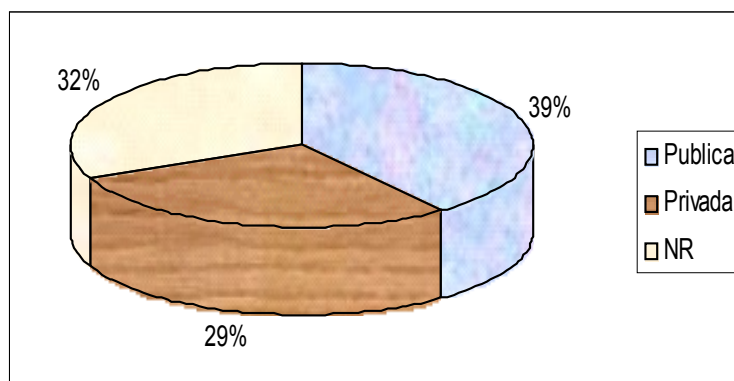


Source: Based on survey of the prisoners at San Pedro prison.

As illustrated in Graph 9, 61 percent of the persons surveyed reported that they are still awaiting verdicts in their cases. The high percentage of prisoners who have not been convicted applies not only to prisoners held under Law 1008, but also to the entire prison population. Indeed, the 5,808 prisoners being held in pre-trial detention account for 74 percent of the total prison population.¹¹

Using incarceration as a precautionary measure to that extent constitutes a systematic violation of the constitutional principles and civil rights recognized in Bolivia. This situation stems from the particular legal process entailed in the enforcement of Law 1008, leaving the prisoners' fate in the prosecutors' hands. The prosecutors receive bonuses from funds provided by the U.S. Embassy based on the number of persons incarcerated. As shown in Graphs 10 and 11, these persons tend not to have an adequate defense.¹²

Graph 10 – Type of defense in the San Pedro prison for prisoners incarcerated for drug-trafficking and related offenses



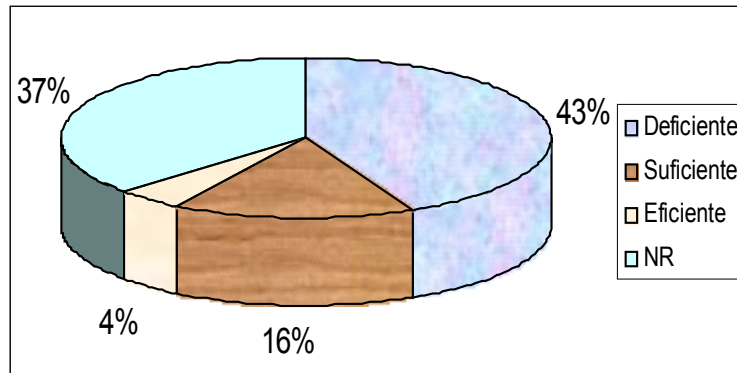
Source: Based on survey of prisoners in San Pedro prison.

¹¹ Ministry of Interior, 2006.

¹² Interview with official of the Public Ministry.

As illustrated in Graph 10, more than half of the prisoners surveyed stated they have had a public defender, since they cannot afford to pay for private defense counsel. The prisoners' have a poor opinion of the public defender service.

Graph 11 – How the prison population characterizes its defense

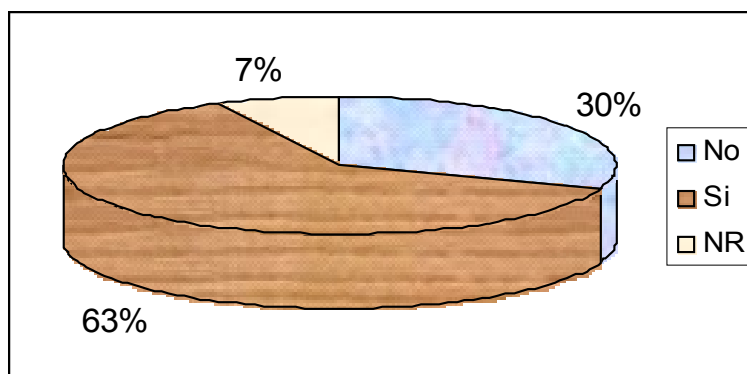


Source: Based on survey of prisoners at the San Pedro prison.

Only 4 percent of the prisoners stated that they had an effective defense, while over 43 percent said they have or have had a defense that did not allow for justice to be done in their case.

The precarious status of the conditions the prisoners face is aggravated not only by delays in the justice system and the inadequacy of their own defense, but also by the abuses they suffer at the moment they are detained: 63 percent of the prisoners surveyed said they had been beaten or tortured at that moment or in the days following their arrest by members of the FELCN.

Graph 12 – Prison population beaten or tortured



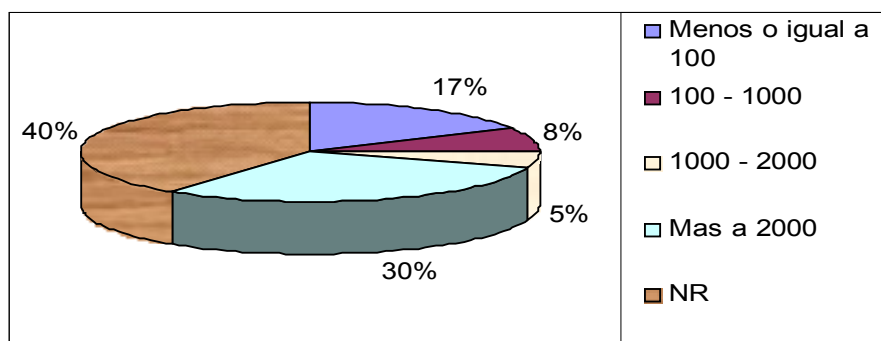
Source: Based on survey of prisoners at the San Pedro prison.

According to interviews with the prisoners, the FELCN, seeking to extract information about the persons with whom they coordinated the manufacture, transport, or trafficking of controlled substances, tends to beat detainees for days on end, repeatedly submerging them in water or applying electricity to them.¹³ These are forms of torture that entail the most flagrant violation of the detainees' rights.

Guidelines for characterization of the offense

The prisoners surveyed at San Pedro had over 2,000 grams of a controlled substance, mostly cocaine paste, when they were detained. This coincides with the amounts produced by the maceration pits or the amounts transported by mules to the borders. Eight percent of the prisoners had less than 100 grams, meaning they were micro-traffickers, known as “*sobreteros*” in the prison slang, i.e. users accused of trafficking.

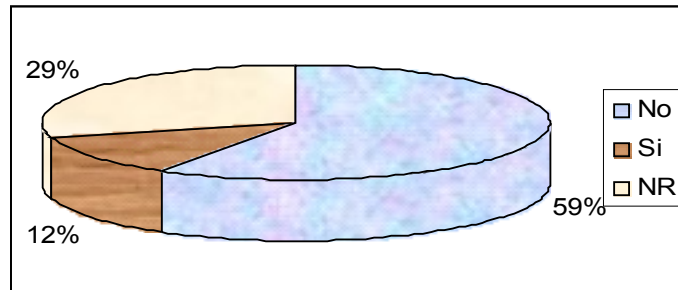
Graph 13 – Amount of drug



¹³Statements by prisoners interviewed at the San Pedro prison.

In analyzing the nature of the offense the ownership of the drugs should also be considered. Almost 60 percent of those surveyed stated that they were not the owner of the drugs for which they were detained, which would mean that they were hired by third persons to perform tasks related to manufacturing or transport.

Graph 14 – Ownership of the drugs



Source: Based on survey of prisoners at the San Pedro prison.

Given that most of those surveyed said they were not the owners, one can also infer a low level of participation of the prisoners in the drug trafficking organizations. Not being the owners suggests they were easy-to-replace employees of these organizations and that the interdiction policy stemming from the massive imprisonment of mules, workers, and coca stompers is hardly effective. Moreover, 44 percent of the prisoners state that their work was not coordinated with more than one person.

The impact of the massive detention of men and women on the criminal organizations is relatively insignificant, given that most of those arrested are workers and mules who know little of the operations of the criminal organizations, at least until they are incarcerated. As we found in several of the interviews, it is within the prison that the workers and mules become real partners in the criminal organizations.

Conclusions

The particular circumstances in which drug trafficking is carried out in Bolivia are marked by the rural and urban nature of the production of cocaine sulfate and cocaine hydrochloride throughout the country. This means that unlike in the centers of consumption, where micro trafficking is related to “problematic consumption,” in Bolivia, involvement in manufacture and transport is related to poverty and unemployment. This is a reality that has extended throughout the country and that finds expression, in concentrated fashion, in each prison.

The government of Evo Morales has announced its intent to repeal Law 1008 and to replace it with two different laws: one on coca and another on controlled substances. At the same time, it has announced that it will reinforce the hard-line approach to trafficking in controlled substances, increasing the penalties, reducing alternatives to incarceration, and increasing the use of precautionary measures such as pre-trial detention. This change fails to take into account that the current interdiction policies do not resolve the problem of drug trafficking, render the population vulnerable in the face of poverty, and induce those imprisoned to join the organizations or networks trafficking in controlled substances.

These two elements of reform contrast insofar as the first highlights the importance of vindicating the value of the coca leaf for the Bolivian people, while the second expresses more the need of the Bolivian government to show the international community and Bolivian public opinion that it is firm in fighting drug trafficking.

Finally, this study underscores the urgency of beginning a serious and documented debate on this issue. Will strengthening the current policies for controlling illicit drugs achieve the desired objective? Or will it be necessary to seek more effective and humane policies that ensure the proportionality of punishments, guarantee due process, and protect human rights?