

Prisons and drugs in Uruguay

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Introduction

Much like other Southern Cone countries, Uruguay has historically served as a transit country for controlled substances on their way to Europe. An important change in the use of controlled substances, associated with their availability on the drug market, has taken place over the last fifteen years in southern Latin America, especially in Argentina, Chile, and Uruguay. As an indirect effect of international interdiction policies, and as a result of other factors that are yet to be well understood, laboratories producing cocaine hydrochloride began to appear in the Southern Cone countries. “Paco”, a substance whose origin can still not be determined with certainty, began to appear in drug markets in these countries.² It is a much cheaper product than cocaine, with a greater turnover and lower quality, but with strong psychoactive effects. The sudden availability of “paco” stimulated debate across the region on public policies related to drugs.

In Uruguay, the law does not criminalize drug use or possession for personal consumption. In recent years, Uruguayan national drug policies have focused on specific directives, for both police and judicial personnel, aimed at prioritizing the repression of medium and large traffickers, and not at small-scale drug dealers.

The impact of these directives in terms of drug policies cannot yet be fully evaluated. Nonetheless, a prison crisis persists in Uruguay in which ever larger numbers of youths, and other vulnerable sectors of society, situated at the lowest levels of the drug-trafficking chain are entering the prison system.

This country study examines the scope of the legislation, the policies developed and how the normative and policy frameworks find expression in Uruguay’s prison system, with a special focus on the population incarcerated for drug-related offenses.

History of legislation on narcotic drugs

The first provision to regulate drugs in Uruguay was the 1934 Criminal Code. The article titled 'Commerce in coca, opium, or their derivatives,' among the crimes against public health punishable with a prison sentence of six months to five years, listed he or she who, “*outside of the circumstances provided for by regulation, engages in the commerce of narcotic substances, has them in his or her possession, or is a depositary thereof.*”

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² *Paco* is similar in appearance and effects to cocaine paste (PBC) - substances obtained halfway through the process of producing cocaine hydrochloride - as it also is to cocaine base and crack, a substance that has different definitions depending on whether it is a produce of cooked cocaine HCL or created from a previous stage in the process.

Law 9,692 of September 11, 1937 was aimed at adapting domestic legislation to the commitments acquired internationally, especially the International Opium Convention, signed at The Hague on January 23, 1912, and during the Conference for Limiting the Manufacturing of Narcotic Drugs, held in Geneva July 13, 1931. In 1974, the Council of State approved Decree-law 14,294, of October 1931, which repealed, among others, Law 9,692. Subsequently, on October 22, 1998, Law 17,016 was passed; it replaced several provisions of Decree-law 14,294 and incorporated five new chapters. As a result, Decree-law 14,294 remained in force as amended by Law 17,016, which will be the focus of this analysis.

In recent years other legal provisions have been adopted that have introduced specific reforms, as well as important Central Bank legislation, referring mainly to “money laundering.” Traditionally, it has been understood that the legal interest preserved by the specific criminal conduct defined by drug laws is limited exclusively to “public health.” Nonetheless, this reform, which includes provisions on “money laundering,” also adds the “economic order of the State” as a legal interest protected by this legislation.

Initially drugs laws only dealt with narcotic and psychoactive substances (*sustancias estupefacientes y psicotrópicas*), but Law 17,016 also included “chemical precursors or other chemical products.” With respect to narcotic and psychoactive substances, Uruguayan legislation has opted not to define them, and instead refer to the schedules contained in the 1961 and 1971 UN conventions.

Box– History of drug legislation in Uruguay

- **1934** – Criminal Code, offenses against public health, article on “Trade in coca, opium, or their derivatives.”
- **1937** – Law 9,692 of September 11, issued to bring the domestic legislation in line with the commitments acquired internationally.
- **1974** – Decree-law 14,294, which repealed Law 9692.
- **1998** – Law 17,016, which replaced several provisions of Decree-law 14,294 and incorporated five new chapters. This is the law currently in force.
- **2004** – Law 17,835 on the “System for the prevention and control of asset laundering and the financing of terrorism.”

Article 30 of the current Law 17,016 establishes that “*one who, without legal authorization, produces in any manner raw materials or substances, as the case may be, capable of producing psychological or physical dependency ... shall be punished by 20 months to 10 years in prison.*” This provision is problematic because it does not consider the case of someone who engages in such conduct for personal use. This has led to major problems in judicial practice, in which the judge enjoys absolute freedom to form his or her conviction. Yet this article should be interpreted in harmony with and in the context of other articles of the same law, such as Article 31, which decriminalizes one who “*has in his or her possession a reasonable quantity, exclusively for his or her personal consumption.*”

The unrestricted application of Article 30 leads to the contradictory situation of not criminalizing a person who possesses a reasonable quantity because he or she bought it, but

criminalizing a person who has a reasonable quantity in his or her possession because he or she produced it (where that production is in preparation for use that is not criminalized). Article 31 also addresses illegal or illicit drug trafficking, punishing the massive movement of such substances, as well as the stages prior to transit.

The penalties for drug-related offenses range between a minimum of 12 to 20 months in prison and a maximum of four to 18 years. In this regard, the 1998 amendment to Law 14,294 was very important because until then the minimum penalties did not provide for the prosecution of these offenses without imprisonment, nor did it grant the benefit of probation or conditional release. Now, in contrast, as the minimums are less than 24 months of prison, such offenses do not necessarily result in jail time, and provisional liberty is allowed, as are alternative sentences.

The incorporation of articles regarding asset laundering into the legislation introduced the legal framework for distinguishing among the different levels of trafficking. Law 17,835 of 2004 proposed to target large-scale actions and to stiffen the penalties for those who direct the chain of production and commercialization of drugs. In addition, it requires that the offense be punished by imprisonment.

Institutional structure of Uruguay

The National Drug Board (JND: La Junta Nacional de Drogas) was created by Executive Decree No. 463/988 of July 13, 1988, *"for the purpose of waging an effective struggle against drug trafficking and the abusive use of drugs."* It is made up of the deputy secretaries of the following permanent members: Ministry of Interior, Ministry of Foreign Relations, Ministry of Economy and Finance, Ministry of National Defense, Ministry of Education and Culture, Ministry of Labor and Social Security, Ministry of Public Health, Ministry of Tourism and Sports, and Ministry of Social Development. It is chaired by the Deputy Secretary of the Presidency of the Republic, but its meetings are convened and its activities coordinated by the Secretary General of the National Secretariat on Drugs.

Its main responsibilities include implementing directives related to national drug policy in order to prevent problematic drug consumption and treat drug addiction, and to repress the trafficking of drugs and precursor chemicals, money laundering, and related offenses. The JND has several advisory committees on the issues of security, preventive education, assistance, and rehabilitation, and on precursors, chemical products and controlled substances.

All the country's drug policies are defined in the National Drug Board which, as a supra-ministerial structure directly under the president of the republic, enjoys wide recognition by the cabinet authorities. In addition, as it brings together many ministries, it makes a comprehensive approach to drug policy possible. Yet one of its main difficulties is that it depends on the budget allocation of each ministry to actions related to drug policy. One paradigmatic example is the health system: While it participates in and understands the approach required to address problematic consumption and prevention strategies, it never budgets enough to properly prioritize these matters.

In addition, in 2005 the public function of the Parliamentary Prison Commissioner (Comisionado Parlamentario Penitenciario), who does not participate in the JND, was created as a strategy to respond to Uruguay's prison emergency.

The prison situation and offenses related to the drug law

The fact that use and possession for use are not punished in Uruguay has made it possible for harm reduction measures to be incorporated into demand reduction strategies for the past ten years. The adoption of this approach by the Uruguayan government has been very significant internationally insofar as it expands the array of demand reduction strategies without presupposing that harm reduction is at odds with abstaining from use. Quite simply, it assumes the possibility of adopting different strategies for different consumption situations.

In the framework of the national policies, since the previous administration (2005-2009) a major effort has been underway on specific directives, for both police and judicial personnel, aimed at prioritizing the repression of medium and large-scale traffickers, and not focusing energies on small-scale drug dealers.

Uruguay has 29 prisons in all. Of these, 20 are departmental prisons and 8 are central prisons, under the authority of the National Directorate of Prisons, Penitentiaries, and Centers of Recovery; there is also one National Rehabilitation Center that serves as an independent implementing unit. Overcrowding in 2009 was 138 percent. In 2010, in the context of a new administration, the budget for the Ministry of Interior, and hence for the National Prison System, doubled. The doubling of that budget has been announced by the authorities and a large part of it will be earmarked for improving and shoring up the prison system.

Population in prison nationwide by legal status and sex

Year	On trial	Convicted	Men	Women	First-time	Recidivists	Total
2008 (September)	5,033	2,847	7,303	577	3,158	4,722	7,880
2009 (October)	5,520	2,930	7,824	626	3,453	4,997	8,450

Source: Statistics Division – Ministry of Interior

Persons in prison and on trial for violations of the law on narcotic drugs and asset laundering; partial data as of December 28, 2009

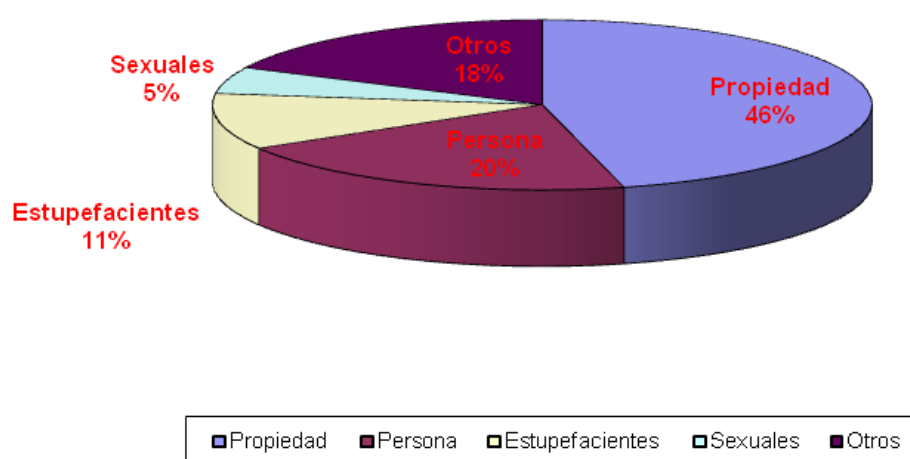
Year	Total prisoners	Males on trial	Females on trial	Total on trial
2003	1,849	253	46	299
2004	1,594	234	95	329
2005	1,248	293	70	363
2006	1,566	344	122	466
2007	2,177	434	172	606

2008	2,374	503	197	700
2009 (28/12)	1,592	492	203	695

Source: JND, Presidency of the Republic.

Of the country's total prison population, 11 percent are behind bars for drug offenses. Unfortunately, no annual series corresponding to that information is available. It is not therefore possible to estimate how the prison population behind bars for drug-related offenses has evolved, so as to be able to reliably gauge the impact of the current policies that focus police operations primarily on medium and large-scale drug trafficking, or to gauge the scant use of alternative sentences. Yet the data does show that a larger percentage of women prisoners are behind bars for drug-related crimes, rising to 15 percent for 2007 (the last year for which this statistic is available).

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Source: Parliamentary Commissioner, Legislative Branch, January-June 2009.

At present, priority is being accorded to the prison system as a matter of state policy. In the wake of the successive assessments of the humanitarian emergency in the prisons, there has been a significant increase in the levels of international cooperation available to address this problem.

Some data that illustrate the current prison situation are:

- 60 percent of all prisoners are recidivists;
- 65.3 percent are being held in pre-trial detention, with no final verdict; and
- Therefore, only 34.7 have been convicted.

Persons prosecuted for violations of the drug law – The information offered here has been drawn from two data bases of the JND that include all the drug-related police procedures: data on official police operations and data on drugs seized in those operations.

Persons involved in drug-related police operations

Year	All persons	All persons prosecuted and incarcerated	Percentage prosecuted and incarcerated	Persons prosecuted but not incarcerated	Percentage prosecuted but not incarcerated
2006	1,601	447	27.9	21	1.3
2007	2,211	542	24.5	66	3.0
2008	2,406	624	25.9	64	2.7
2009	1,647	662	40.2	40	2.4
Total	7,883	2,275	28.9	192	2.4

Source: Compiled by the author. JND data base.

In these police operations, as will be seen below, a large percentage of the cases involve seizures of less than 10 grams of any substance. Nonetheless, the resulting judgments do not appear to reflect this situation because the percentage of persons prosecuted without incarceration is very low.

Ages of persons involved in the operations

Age in years	Persons	Percentage
Under 10	20	0.3
10 to 14	93	1.2
15 to 19	1,408	17.9
20 to 24	1,761	22.3
25 to 29	1,418	18.0
30 to 34	1,109	14.1
35 to 39	672	8.5
40 to 44	430	5.5
Over 45	835	10.6
No data on age	137	1.8
Total	7,883	100.0

Source: Compiled by author. JND data base.

As shown in the table above, 72.3 percent of the persons involved in the operations range in age from 15 to 35 years, consistent with the profile of ages in the prison population. Also

noteworthy is the number of children involved in the operations, which means that minors were present at the moment the police arrived to conduct a search. Oftentimes these minors, when not under the custody of another relative, end up in a state caretaker institution, while the adult in question with whom he or she was found during the search resolves their legal situation.

Most prisoners – 94.2 percent – are of Uruguayan nationality. The prisoners from other Latin American countries account for only 3.5 percent, and the numbers are even lower for persons from other parts of the world.

Some 7,883 persons were involved in a total of 3,371 police operations carried out from 2006 to 2009. Of these, 4,649 were subsequently released.

Substances seized – The following tables detail the substances seized, by amount, in each of the operations.

Substances and amounts seized

Marijuana		
Grams	Operations	Percentage
0 to 9	681	43.3
10 to 49	434	27.6
50 to 99	118	7.5
100 to 499	156	9.9
500 to 999	60	3.8
1,000 to 1,999	77	4.9
2,000 to 2,999	19	1.2
3,000 to 3,999	10	0.6
4,000 to 4,999	6	0.4
5,000 to 9,999	13	0.8
Total	1,574	100.0
Coca leaf		
Grams	Operations	Percentage
100 to 499	4	40.0
500 to 999	3	30.0
1,000 to 1,999	3	30.0
Total	10	100.0
Cocaine paste		

Grams	Operations	Percentage
0 to 9	540	55.2
10 to 49	276	28.2
50 to 99	30	3.1
100 to 499	43	4.4
500 to 999	16	1.6
1,000 to 1,999	45	4.6
2,000 to 2,999	9	0.9
3,000 to 3,999	8	0.8
4,000 to 4,999	1	0.1
5,000 to 9,999	11	1.1
Total	979	100.0
Cocaine (salts)		
Grams	Operations	Percentage
0 to 9	176	35.3
10 to 49	87	17.4
50 to 99	28	5.6
100 to 499	43	8.6
500 to 999	28	5.6
1,000 to 1,999	53	10.6
2,000 to 2,999	31	6.2
3,000 to 3,999	30	6.0
4,000 to 4,999	9	1.8
5,000 to 9,999	14	2.8
Total	499	100.0
Cannabis plant		
Units	Operations	Percentage
0 to 9	63	87.5
10 to 49	8	11.1
50 to 99	1	1.4

Total	72	100.0
MDMA (ecstasy)		
Units	Operations	Percentage
10 to 49	4	57.1
100 to 499	2	28.6
1,000 to 1,999	1	14.3
Total	7	100.0

As can be observed, for all the substances the largest share of operations are those in which seizures amount to less than 10 grams or units of the substance in question. While the political guidelines prioritize the actions directed against the medium and large-scale drug-traffickers, most of the operations involve the possession of substances in sums close to the limit of the definition of what could be considered possession for personal use. And where they do involve trafficking, it is at the street retail level.

The fact that there may have been 681 operations that resulted in seizures of less than 10 grams of marijuana and 63 that seized just a few marijuana plants makes no sense in terms of the use of police and judicial resources. In addition, this represents a violation of users' rights to have minimal doses for their own use. In other words, an inconsistency exists between lawful possession for personal use and police arrests. On top of this, many of the persons detained in these police operations have been prosecuted and incarcerated, calling into question the effective implementation of the drug directives and policies designed in Uruguay in the last five years. Persons prosecuted for less than 10 grams of any substance should be candidates for alternative sentences, and by no means should they be among the ranks of those locked up in high-security prisons.

Seizures of up to 2 grams of substances

	Substances							
	Marijuana	Cocaine paste	Cocaine	Cannabis plant	Cannabis seeds	LSD	Other drugs	Total
Seizures of up to 2 grams	368	258	109	34	7	3	4	861

It is true that the substances, even in small amounts, may have been seized along with other substances in larger amounts. Yet it is significant that the many operations that have involved

minimal quantities of substances account for such a large percentage of the total number of persons prosecuted and incarcerated (2,275) as a result of these police actions.

The case of cocaine paste (PBC) merits special attention, for while there are specific directives to target the outlets where this substance is sold, in 258 cases the amount of cocaine paste seized was two grams or less. This raises the question of whether, in effect, the traffickers of that substance are being detained or whether the persons being arrested are the most vulnerable users.

The faces of persons behind bars for drug offenses

As part of this research we interviewed four people behind bars for drug-related crimes, three men and one woman with different levels of education: Two have nine years of formal schooling while the other two never finished primary school. Their ages range from 21 to 31 years; all are Uruguayan nationals. Two are of lower class socioeconomic background, and two are lower middle class. Three of them are heads of household and their incomes revolve around legal activities (employment as a cook, independent work as a seamstress, or menial jobs in the informal sector) or illicit activities (stealing). Only one of the four had a formal-sector job with social security benefits. Their family ties are weak. Three of these persons have children; accordingly incarceration takes a greater toll on them, as they are removed from their children's day-to-day lives and by the impact this experience could have on their children. *"My little girl has not been doing too well in school since I went down, strange, she's violent."* Not all of them have the same association with drugs (though all are or were users) and the offense, which reflects the variety of situations and realities that can be found in the country's different prisons. The persons interviewed agreed that it was during adolescence that they began to use drugs with their friends. *"It all began years ago; I first tried drugs in adolescence. I began with marijuana, one thing led to the next, and I ended up with cocaine paste."*

Experience in prison – Three of the persons interviewed did not complain specifically about the conditions of their confinement. Only one of them said she had suffered torture or beatings by the police, guards, and fellow prisoners. Part of the experience of imprisonment consists of getting along with the prevailing codes. Accordingly, the prisoners incarcerated for conduct related to the production and sale of drugs must pay certain prices, like a "toll", to be able to walk in certain areas. They may receive special demands from their fellow prisoners because it is thought they have money, contacts, and/or opportunities for bringing in drugs and other items. It is essential to make oneself known or to have contacts in the prison who know your situation; you want to make it known that you are a user without any money and not a trafficker, to avoid certain types of situations and confrontations. Some of the worst experiences in prison have to do with some violent episodes that result in confrontation and death. Conditions are aggravated by overcrowding. For example, one of the persons interviewed shares a cell with a capacity for three with seven other men.

One of the interviewees stated: *"I never opposed the police, but I came to see the injustices committed here inside by the officials against the prisoners, even though no one says anything ... and the prisoner is a violent person. And they end up inciting terrible fights, stabbings in*

the patio or they hold the guard against the bars and stab him. And it happens every day because they [the police] contribute to this whole climate of tension.”

The opportunity to participate in organized activities makes confinement easier. Women, for example, study, work, and exercise. Men, on the other hand, have fewer opportunities to participate in committees or study. *“I signed up for the secondary school, but it appears that there’s a limited number of places, and I wasn’t chosen.... Here in prison, you don’t learn anything; here a prisoner, and you walk out even worse.”*

With regards to the legal situation of the persons interviewed, two of them have been in prison for five months and one year respectively, even though they have not been sentenced. These cases reflect the situation of thousands of prisoners who are awaiting trial. The work of the defense counsel *“leaves a great deal to be desired,”* according to one of the interviewees. He was only able to talk with a lawyer once, and after a time he retired. The public defender who replaced him as counsel has not had any contact with him. It is considered better to have one’s own lawyer, but not many of them can afford it.

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A person age 21 years, has been in prison for a year and three months. Previously he worked, studied, and lived with his family—without any criminal record—in a middle class neighborhood in Montevideo. This young man was arrested for producing and selling drugs, and must serve a sentence of two years and four months. He has used marijuana for years; he raises plants and garden vegetables, among which he had seven marijuana plants. His crime was to sell marijuana to acquaintances, which he claims is an occasional activity by which he gets money to go to the beach for vacation.

“I didn’t have the plants to produce for trafficking. I came to have them because I like plants. When I went down I explained this to the trial judge, and they didn’t take it into account. I keep lots of plants in my house; I like to grow plants and this wasn’t taken into account. And I am accused under laws of presumption of production.” As a result of a complaint, the police went to his home with a search warrant and found less than 10 grams of marijuana, plants, and marijuana seeds. His father was also arrested and incarcerated for eight months for presumption of production. Both were sent to the prison known as Penal de Libertad, Uruguay’s maximum security prison, for the simple reason, apparently, that there was space there, with no consideration that it was their first arrest and they had no prior record.

Incarceration led to a breakdown in his personal and family life. His sister left the home and emigrated, and as the house was empty, it was burglarized and looted. His father, who was about to retire, lost everything. *“I don’t consider myself a criminal; I am here for having told the truth, and I’m a fool for having exposed myself so much with the question of the marijuana When they put me on trial I couldn’t believe it. I thought they were going to have me do community service, or give me house arrest. I was seeking an alternative sentence, I never committed a crime; my family has no criminal record. We always pay the electricity bill, the water bill, our taxes, everything. And when they put me on trial, they sent me to the Penal de Libertad prison.... I thought they were going to put me in the CNR [National Center for Rehabilitation] or something like that.”*

One wonders whether the sentence this young man received is proportional to and appropriate for the crime committed. Cases such as this help to overburden the prison system without any clear justification.

A 28 years old man, of lower middle class background, addicted to cocaine paste. "I ended up here as a user. While the authorities thought I sold because I used a large amount, one can perfectly well consume it, even more.... In addition, cocaine paste is highly addictive. If you have another dose, you keep going. There's no limit, and you never want to stop." He says that "there are cases of people who had less than they caught me with who are here and they're people who everyone knows don't sell. What you see here nowadays are a lot of people who are in for drugs because they're users, daily, two, three times a day. The weakest links. And then, to get people not to take drugs, they attack the users, but there are millions of outlets that the people know about. And nonetheless, they catch any neighbor's son, they catch you smoking, and you end up here."

This case is more complex because the interviewee had outstanding robbery charges. As he tells it, from the age of 17 he has been stealing (with periods of rehabilitation and legal work). This opened up another chapter of his life that he emphasizes, especially since he became a user of cocaine paste: the direct association between drug use and stealing.

"I began using drugs; I used marijuana and cocaine, and I was a relatively normal person, in the sense that I worked and went to school. But once on cocaine paste, you stop being responsible. It is very difficult for an addict to hold a steady job, because one day he's going to fail to show up, or he's spun out and tired. I've worked while an addict, but after a month and a half I lost it; I could not hold down the job. You can't work and be an addict; most go after easy money by stealing."

This person is in prison for selling drugs, when his real crime was systematic larceny. In a way, the system fulfills its purpose by imposing a sentence on him, yet the cause is blurred and other cases are neglected. What measures would be more appropriate for these youths, who commit other crimes due to their addictions? Is prison the appropriate solution? How might this approach continue impacting the prison situation in Uruguay? What is the impact on their opportunities for rehabilitation?

"Even the healthiest kid gets into the circle of trying to get money for drugs for his own use. Either you steal something or you sell something stolen and it leads to you do things that you probably never did."

A 30-year-old woman with four children. Her case is more dramatic, since in her life *"it's me and my children, no one else."* Her confinement led to her separation from those who, for the last 11 years, have been *"my reason for being"* and her strongest affective relationship. At the same time, her children were separated from one another (two stayed under the guardianship of the father, and the other two under the care of an aunt because they have a different father); the two oldest children spend practically all day in the streets.

She is in prison for being at the same place where a police operation was being carried out. As she tells it, she was visiting, was innocent, and had no money or drugs. *"I'm like this [she cries during the interview] because it's unfair and not being able to show it because you have*

no money, it's horrible.... They didn't find anything. They didn't even search me. They said 'there's nothing here, what do we do?' 'Now there is,' he said, 'look,' and he took it out, from above the pocket, and I cried because the judge was going to believe him. Desperate, I put it on top of the trunk.... In the house supposedly they sell, but there was nothing, and the person prosecuted is me, but I don't live in that house."

Cases such as this give rise to doubts about the guarantees or lack thereof in police operations, and therefore, the vulnerability of persons and their rights. *"The attorney tells you that you should say yes, to get a lighter sentence. They tell you that it's better to say you're the perpetrator; that you are the person, to tell the truth, that you do it to feed your kids. If it were true I would say so, but it's not."*

Conclusions

In contrast to other Latin American countries, Uruguay has relatively good information systems regarding the prison situation. While Uruguay's legislation has incorporated the leading international conventions, it has reserved areas that guarantee its independence in some aspects, mainly in terms of how stiff the penalties are.

The budget of the national prison system has been shored up in recent years. Nonetheless, overcrowding and the vulnerability of the population in poverty persist.

The judicial system is one of the weakest points of the prison system, especially due to the delays, the scant use of alternative sentences and the abuse of pre-trial detention.

The percentage of the population incarcerated for drug-related offenses (11 percent) is low compared to other crimes against property and against persons. The number of persons prosecuted and imprisoned and the persistence of police operations with seizures of minimal amounts of substances suggest that either the current policy directives have yet to be reflected in the quantitative data, or there are problems that make it difficult for them to be translated into police and judicial activity.

The aforementioned cases provide a glimpse of the situation of a prison population who represent the weakest links in the chain, and who are the most vulnerable to police operations. Their plight suggests the importance of re-examining the actual reach of drug policies and the consistency of their implementation in both the judicial and the police spheres.