LEGISLATIVE INNOVATION IN DRUG POLICY

LATIN AMERICAN INITIATIVE ON DRUGS AND DEMOCRACY
Martin Jelsma, Transnational Institute

Martin Jelsma is a Dutch political scientist specialized in international drug control policies. Since 1995 he is the coordinator of the Drugs & Democracy program of the Transnational Institute (TNI), based in Amsterdam and dedicated to drugs research and dialogues between policy officials and experts in Europe, Latin America and Asia.

October 2009

SECRETARIAT OF THE LATIN AMERICAN INITIATIVE ON DRUGS AND DEMOCRACY:

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Centro Edelstein de Pesquisas Sociais
Instituto Fernando Henrique Cardoso
Open Society Institute

To know more about the Initiative, access the site:
www.drogasydemocracia.org

Or write to the email:
ilona@drogasydemocracia.org

Graphic design: Cacumbu // Amapola Rios

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MARTIN JELSMA, TRANSNATIONAL INSTITUTE

This briefing summarizes good practices in legislative reforms around the world, representing steps away from a repressive zero-tolerance model towards a more evidence-based and humane drug policy. The examples provide lessons learned in practice about less punitive approaches and their impact on levels of drug use and drug-related harm to the individual and society. Evidence suggests that legislation lessening criminalization combined with shifting resources from law enforcement and incarceration to prevention, treatment and harm reduction is more effective in reducing drug-related problems. Fears that softening drug laws and their enforcement would lead to sharp increases in drug use, have proven untrue. The examples cited below, in spite of their differences in scope and objectives, can be regarded as improvements on an ineffective overly repressive drug control model and they indicate a direction for more substantial reform and paradigm shifts in the future.

The center of gravity for these reforms has been Europe, as the European Monitoring Centre on Drugs and Drug Addiction (EMCDDA) sums up: "*The analysis of national drug strategies, legal literature, laws, and judicial practice, suggests that in several EU countries public action is based on a) a more powerful focus on treatment rather than on criminal punishment; b) on a sense of disproportion between custodial sentences (often involving a criminal record) and illicit use of drugs; and c) on the perception that cannabis is less dangerous to health compared to other drugs.*"[2] Similar reforms have also taken place in Australia, Canada and within several states in the United States and increasingly in Latin America, the region potentially becoming a new center of gravity for advancing this type of reform in the near future.

1. Support paper for the Latin American Commission on Drugs and Democracy. Original English text was edited by David Aronson. Translation to Spanish by Beatriz Martínez Ruiz. Martin Jelsma contributed a first support text to the Commission in April 2008 titled "The current state of drug policy debate. Trends in the last decade in the European Union and United Nations", available at www.drugsanddemocracy.org

2. European Monitoring Centre for Drugs and Drug Addiction, Illicit drug use in the EU: legislative approaches, EMCDDA Thematic Papers, Lisbon 2005.

1. DECRIMINALIZATION OF DRUG USERS

The first type of legislative reform enacted in Europe, and recently gaining momentum in Latin America, is absolving drug users from arrest and prosecution for drug use and preparatory acts like acquisition, simple possession or cultivation for personal use. There are no scientifically substantiated arguments against the merits of this level of decriminalization. As demonstrated below, it does not lead to increased drug use, but does significantly lower pressure on law enforcement agencies and on the judicial and penitentiary systems, and it removes barriers for users with problematic patterns of use to approach treatment and harm reduction services.

Doubts and policy dilemmas do evolve around the precise nature of the legal distinction between possession for personal consumption and possession with the intent to supply others. Some law reforms set quantitative thresholds; others define the distinction in terms of certain criteria and principles and leave discretion to the prosecutor and judge about their application to each specific case. Some reforms removed all punishment (full decriminalization) while others only removed criminal sanctions and prison sentences while maintaining administrative penalties or referral to treatment or education. In Europe, "*the decisive determinant of the severity of an offence is the intention rather than the quantity possessed. The vast majority of countries have opted to mention 'small' quantities in their laws or directives, leaving it to the discretion of the courts (or police) to determine the type of offence (personal use or trafficking); no country uses quantity as the sole criterion to sharply distinguish between users and traffickers.*"[3]

3. European Monitoring Centre for Drugs and Drug Addiction, *Illicit drug use in the EU*: *legislative approaches*, EMCDDA Thematic Papers, Lisbon 2005.

EXAMPLES OF THRESHOLDS USED IN DECRIMINALIZATION OF POSSESSION FOR PERSONAL USE

Country	**Quantity Threshold Defined by Law**	**Judicial Practice**
Portugal	The quantity required for an average individual consumption during a period of 10 days	25 gr cannabis, 2 gr cocaine are used as an indication, but without additional evidence on the intent to supply, larger quantities are regarded as possession for personal use
Uruguay	Possession of “a reasonable quantity exclusively intended for personal consumption” is not punishable	Left entirely to the discretion of the judge to determine whether the intent was consumption or supply
Finland	15 gr cannabis, 1 gr heroin, 1.5 gr cocaine, 10 ecstasy pills only punishable with fine	100 gr cannabis, 2 gr heroin, 4 gr cocaine, 40 ecstasy pills only punished with fine
Spain		40 gr cannabis, 5 gr cocaine not considered supply
Netherlands	5 gr cannabis and 0.5 gr cocaine or heroin not punishable	5 cannabis plants permitted, possession up to 30 gr only small fine, up to 1 kg larger fine, more is punishable with prison sentence; small amounts of “hard drugs” in practice left to police, prosecution and eventually judicial discretion to determine whether the intent was consumption or supply
Mexico	5 gr cannabis, 2 gr opium, 0.5 gr cocaine, 0.05 gr heroin	Any amount above the thresholds is considered intent to supply
Paraguay	10 gr cannabis, 2 gr cocaine or heroin	
Colombia	20 gr cannabis, 1 gr cocaine	Supreme Court determined that further evidence is required to punish someone caught with more than threshold for supply
Australia (states)	Four states in Australia have decriminalized cannabis possession of quantities from 15 to 50 gr	Administrative sanctions only
US (states)	13 states decriminalized cannabis possession, several using 28.45 grams (one ounce) as limit	Schemes differ per state or county, most only applying small fines

One of the best-documented examples of decriminalization drug use is the case of Portugal. In July 2001 the acquisition and possession of drugs for personal consumption was reduced from a criminal offence to a misdemeanor, punishable by fine or other administrative measure, to be applied by so-called Drug Addiction Dissuasion Units (CDTs). These units consist of a jurist and two other members chosen from a pool of doctors, psychologists, sociologists and social service experts[4]. The CDTs have dealt with an average of 500 cases per month. Most of the sentences ordered the suspension of proceedings involving non-addicted consumers. About ten percent were fined. The new law adopted the norm of "*the quantity required for an average individual consumption during a period of 10 days.*" Indications are given for what constitutes an average daily dose, for example 2.5 grams for cannabis or 0.2 grams for cocaine. "*These thresholds are presumptive as opposed to being determinative; however, so long as there is no additional evidence implicating the drug user in more serious offences, drug possession is decriminalized, dealt with as an administrative violation, as opposed to being prosecuted as a criminal offence.*"[5]

Decriminalization in Portugal led to a reduction in the number of prisoners who were sentenced for drug offences, declining from a peak of 44 percent in 1999 to 28 percent in 2005. Decreasing imprisoned drug offenders contributed to a marked reduction in prison overcrowding. By 2005 the number of prisoners no longer exceeded the official prison capacity. The large drop in heroin-related deaths (from 350 in 1999 to 98 in 2003) can be linked to the significant increase of users who entered substitution treatment. Though deaths related to the use of some other drugs did rise, there was an overall fall in drug-related deaths of 60 percent between 1999 and 2003. The effect of decriminalization on levels of drug use is subject to different interpretations. Heroin use went markedly down, but cocaine and cannabis use did go up, especially among the young, as it did in several other European countries, while Portugal is still markedly below the EU average (see text box). Overall, as the Cato Institute concluded, "*judged by virtually every metric, the Portuguese decriminalization framework has been a resounding success. …Drug policymakers in the Portuguese government are virtually unanimous in their belief that decriminalization has enabled a far more effective approach to managing Portugal's addiction problems and other drug-related afflictions.*" [6]

4. *External and Independent Evaluation of the "National Strategy for the Fight Against Drugs*" and of the "*National Action Plan for the Fight Against Drugs and Drug Addiction – Horizon 2004*", performed by the Portuguese National Institute of Public Administration for the Institute for Drugs and Drug Addiction, Lisbon, July 2005.

5. Charlotte Walsh, *On the threshold: How relevant should quantity be in determining intent to supply?*, International Journal of Drug Policy 19 (2008) 479–485.

6. Glenn Greenwald, *Drug Decriminalization in Portugal*, Cato Institute 2009.

DECRIMINALIZATION IN PORTUGAL AND LEVELS OF CANNABIS USE

The first general population survey on drug use was conducted in 2001, the year decriminalization was introduced, making comparisons with the pre-2001 situation difficult, and a second survey was done in 2007. Lifetime prevalence of cannabis was reported to have increased from 7.6 percent in 2001 to 11.7 percent in 2007, still far below the EU average of 21.8 percent. The increase took place primarily among the youth. The European School Survey Project on Alcohol and Other Drugs (ESPAD) provides some comparable data for 1999 (pre-decriminalization), 2003 and 2007 for the 15-16 age group. The trend seems to indicate that initially cannabis use went up but had started to go down again by 2007. The survey results of 2007 showed that the lifetime prevalence for cannabis use was 13 percent (compared to 18 percent in 2003 and 12 percent in 1999); last year prevalence was 10 percent (13 percent in 2003, 9 percent in 1999); and 6 percent for the last month prevalence of cannabis (8 percent in 2003, 5 percent in 1999). The initial increase cannot be attributed just to decriminalization, in that other countries showed increases as well during the same period. Another factor that may have influenced the statistics is that after decriminalization more youth might have been willing to report their use in the questionnaires.

2. ALTERNATIVES TO INCARCERATION

Experimentation with less repressive measures is being applied to people arrested not just for simple possession, but for offences like street dealing, shoplifting, burglary and street theft. A significant number of those arrested suffer from problematic patterns of drug abuse and resort to micro-trading or petty crime to finance their drug use. A clear distinction should be noted regarding the category described above. Most people caught for simple possession do not want or need treatment (for occasional/recreational use), and forcing people into it has largely proven ineffective. In this category, however, the criminal offences are rooted in problem drug use. The offences (theft, burglary) obviously cannot be ¨decriminalized¨, but locking up the offenders does not solve the underlying cause and leads to revolving doors for multiple offenders, and is responsible for a significant proportion of petty crime. Several countries have therefore introduced referral schemes or specialized drug courts to deal with drug-related offences, offering offenders a choice between prison and treatment.

In the specialized drug courts operating in the US, Canada, Australia and Ireland the judge is assisted by a team of professionals who advise on appropriate treatment options instead of custodial sentences. The main objective is crime reduction by providing nonviolent offenders the chance to escape the vicious drugs-crime-prison cycle. Initial results are at best

mixed, however, depending on the eligibility criteria for admission[7], range of alternative sanctions and quality of treatment services.[8]

The United Kingdom introduced an ¨arrest referral scheme¨ in 1999, offering detained persons with drug-use problems the possibility of appropriate therapeutic assistance immediately after their arrest. According to former chief constable Tom Lloyd, this approach "*offered prolifically offending addicts a choice between treatment and arrest. They almost invariably chose treatment, and detectives were surprised to learn that not only did this save time and precious resources, but it was also the most effective way of tackling burglary they had ever seen.*"[9] In some cities in the UK a more comprehensive approach was introduced, identifying the small group of the most frequent offenders, and offering each of them a tailored package of rehabilitation, including housing, employment, health care, and so on. Petty crime rates dropped dramatically. This model was also applied in some of the most seriously affected neighborhoods in major Dutch cities with similarly positive results. In the UK options available for the criminal justice system rapidly expanded, encouraging or directing drug-dependent offenders into treatment. An evaluation concluded that these can be "*effective in producing reductions in drug use and crime, and improvements in mental health and social integration. It should therefore be considered a viable alternative to imprisonment. However, more attention should be paid to issues of treatment process and coordination between treatment and criminal justice systems in order to provide high quality and consistent treatment that is likely to optimise outcomes for individuals and the wider society.*"[10]

TREATMENT AS AN ALTERNATIVE TO IMPRISONMENT

Referral of offending problem drug users to treatment instead of prison can be applied at three distinct stages of the legal proceedings, as listed in the 2005 EMCDDA Annual Report. Generally, probation service and drug treatment providers are included in the procedure and the decision is made with the consent of the client.

Pre-trial stage: Custody and pre-trial detention can be suspended for treatment. Decisions on diversion to treatment are made by the police, prosecutor or remand judge.

Trial/court stage: The judge can decide to suspend proceedings for a certain period to allow the offender access to treatment, or the sentence can be fully or partly suspended conditional on the client entering a particular treatment program.

Post-trial stage: After serving part of the prison term, inmates can be placed in a residential clinic outside the prison. This can also be an option for conditional release.

7. Many drug courts in the US for example only allow drug law offenders who do not have a significant criminal record In Ireland, results of the Dublin Drug Treatment Court have been so disappointing that the small-scale pilot is at risk of being terminated. Between 2002 and 2008 only 22 offenders a year had been admitted to the scheme - a fifth of what had been expected - and only 17% of them had completed the programme to the satisfaction of the court.
8. Alex Stevens, Mike Trace and Dave Bewley-Taylor, *Reducing Drug Related Crime: An Overview of the Global Evidence*, Beckley report 5, London 2005.
9. Tom Lloyd, The war on drugs is a waste of time, in: The Observer, London 20 September 2009.
10. Tim McSweeney, Alex Stevens and Neil Hunt, The quasi-compulsory treatment of drug-dependent offenders in Europe, Final National Report – England, ICPR/EISS, February 2006. For more materials on this issue: http://www.kent.ac.uk/eiss/projects/qcteurope/papers.html

The EU Action Plan on Drugs 2000–2004 proposed that Member States set up concrete mechanisms to provide alternatives to prison, especially for young drug-using offenders. The evaluation of the action plan confirmed an overall increase in community-based alternatives to incarceration, not only for possession but also for non-drug offences committed by problem drug users.[11] According to the ECMDDA, "*this development is consistent with the evolution of more humanitarian paradigms in legislation and criminal justice systems as well as with more advanced psychosocial and medical models of addiction*". Putting addicts in prison for acquisitive crimes, carried out to support their drug habit, is "*limiting the chances of successful treatment and increasing the chances of recidivism*".

Some promising programs have been set up in the U.S., directed at reducing violence in the drug market. In "Operation Ceasefire/Boston Gun Project" gang members involved in drug trading were offered non-prosecution in return for refraining from lethal violence. The police took the time to learn which gangs were at war. Then they informed each of the gangs: If any members of your enemy's crew gets killed in a gang-style attack, we will take you down for drug dealing. The results were immediate and spectacular. A seemingly immutabe long-standing pattern of youth homicide was abruptly reversed.[12] Further innovation in drug-market policing, was demonstrated in the city of High Point, North Carolina. In that city, long plagued by an open-air drug market, the police spent a long time gathering data on who was active in these markets, contacted the parents of the young sellers and others who might influence their decisions and then presented the information to the sellers, making it clear that they were at great risk of imprisonment if they continued their open activity. The result was fewer arrests but a 25 percent decline in violent and property crime two years after the program was implemented.[13]

3. PROPORTIONALITY OF SENTENCES

The issue of human rights in drug control and proportionality of sentences has received little legislative attention to date. In fact, the trend has been to toughen drug laws and sentencing guidelines, setting mandatory minimums, disproportionate prison sentences and even death penalties in several countries. This increasingly punitive approach can be interpreted as politically driven as it has made no impact on the availability of drugs

11. European Commission, *Communication from the Commission to the Council and the European Parliament on the results of the final evaluation of the EU Drugs Strategy and Action Plan on Drugs (2000–2004)*, COM (2004) 707 final. For an overview of available alternatives to prison in EU countries, see: http://eldd.emcdda.europa.eu/html.cfm/index13223EN.html?nNodeID=13223&sLanguageISO=EN

12. Braga, Anthony A. and Glenn L. Pierce. "*Disrupting Illegal Firearms Markets in Boston: The Effects of Operation Ceasefire on the Supply of New Handguns to Criminals.*" Criminology & Public Policy 4, no. 4, November 2005.

13. Jonathan P Caulkins and Peter Reuter, *Towards a harm reduction approach to enforcement, Safer Communities*,Volume 8 Issue 1, January 2009.

or on prevalence figures. A large-scale review of research on imprisonment carried out for the Canadian government found that offenders who were imprisoned were no less likely to re-offend than those given alternative community sentences, and that those given longer prison sentences were more likely to go back to crime after serving their term than those with lower sentences.[14] All studies undertaken in this field reveal the ineffectiveness of long prison sentences, most notably for nonviolent drug law offenders. At the same time the capacity of the judicial system is stretched far beyond its limits, resulting in slow procedures, lengthy pretrial custody and overcrowded prisons. An additional worry is that legislative reforms in favor of decriminalizing drug users are regularly made politically acceptable, in a trade-off, increasing penalty levels for small trafficking, as happened recently in Mexico, for example.

One of the more positive developments is the growing recognition that greater distinction is required regarding the level of involvement in drug trade. Small-scale cultivation of coca and opium poppy is increasingly seen more as a developmental challenge than one for law enforcement. For trading levels, more jurisdictions acknowledge that 'user-dealers' should be dealt with as a separate category of offenders. Legislation or jurisprudence is more frequently establishing criteria to distinguish between micro-trade, transport/courier, mid-level trading and organized trafficking, taking into account the level of responsibility the offender has in the trafficking chain, earnings and reasons why he/she became involved. Such criteria vary wildly at the moment and inevitably will remain subject to differences in national legal principles.

Two recent examples are more visionary and point to more radical changes in how to deal with lower-level courier trading. At the end of 2008 and early 2009, over 2,000 persons incarcerated in Ecuador for drug trafficking were released. This "pardon for mules" singled out a specific group of prisoners who were victims of the disproportionate laws in effect for many years. With this measure, Rafael Correa´s government took a major step toward reforming draconian laws and solving the prison crisis.[15] The new legislative proposals at present being drafted will have to consider the judicial precedent of the pardoned drug mules. The release criteria were: no prior conviction under the drug law; arrest for possession of a maximum of two kilograms of any drug; either ten percent of the sentence or a minimum of one year served.

The second example is the way The Netherlands tried to deal from 2003 to 2005 with a massive increase of cocaine couriers (the majority swallowers) arriving at Schiphol Airport from the Dutch Antilles. The approach was based on the suggestion of three judges that rather than maintain the conventional practice of detaining as many couriers as

14. Gendreau, P., Goggin, C. and Cullen, F.T., *The Effects of Prison Sentences on Recidivism*. Ottawa: Solicitor General Canada, 1999.

15. See: *Pardon for Mules in Ecuador, a Sound Proposal*, Series on Legislative Reform of Drug Policies Nr. 1, TNI/WOLA, February 2009. http://www.tni.org/en/report/pardon-mules-ecuador

possible, attention should be focused on the drugs--16. They argued that all drugs flown to the Netherlands should be confiscated, but that the couriers could be sent back home, unless they were carrying very high quantities or were recidivists. The approach was not immediately accepted due to political opposition. In response to the increase in trafficking, pre-flight checks at Curacao were intensified and passengers, luggage, freight and crews were systematically searched with the help of scanners and dogs. When the full magnitude of the courier trade was revealed the Minister of Justice soon acknowledged logistical and financial resources of the judicial system had been exceeded, that simply too many couriers were detained and prison capacity was insufficient. Initially, new sentencing guidelines were established for the airport under which couriers carrying less than 1.5 kg would be sentenced rapidly to a maximum of 12 months imprisonment. The Minister then proposed a ¨substance-oriented approach¨. Focus would shift to confiscation of the drugs, rather than prosecution or detention of the courier. Subsequently, couriers carrying less than 3 kg of cocaine on their first offense were not prosecuted at all. Only the drugs were confiscated. The couriers were registered on a blacklist (in cooperation with airlines) to prevent them entering The Netherlands for a period of three years. By 2006 the Caribbean-Dutch trafficking lines were effectively incapacitated.[17] When the number of couriers dropped back to a level the judicial system could cope with the substance-oriented approach and special sentencing guidelines were abandoned due to political pressure. Small couriers are once again imprisoned in The Netherlands.

COURIER SMUGGLING

Between January 2004 and April 2006 complete passenger and baggage checks were carried out on almost 4000 flights from the Dutch Antilles, Surinam and Venezuela to The Netherlands. Incredibly, more than 60,000 couriers were stopped (an average of 15 per plane; in the early stages sometimes more than half of the passengers were carrying cocaine), and in total 76.5 tons of cocaine were seized. By early 2006 the number of couriers detected had dropped spectacularly, as had the purity of cocaine in The Netherlands, indicating a supply shortage. The market disruption was short-lived -- as is nearly always the result of interdiction efforts -- and trafficking routes and modes simply adapted. But a major trafficking route was effectively dismantled, basically without putting anyone in prison. Most couriers are from the poorest population groups, hoping to earn a few thousand dollars to sustain their family. Any one of them imprisoned represents a social and family drama. Around the world tens of thousands of couriers are serving lengthy prison sentences, without any detectable impact on the global drugs market.

16. J.Th. Wit, R.F.B. van Zutphen and P. Wagenmakers, *Over drugs, de Antillenroute en de waan van de dag,* Nederlands Juristenblad (NJB), afl. 7, 15 February 2002.

17. UNODC and the World Bank, Crime, *Violence and Development: Trends, Costs, and Policy Options in the Caribbean*, March 2007.

4. HARM REDUCTION AND DRUG LAW REFORM

Harm reduction refers to policies and practices aimed to reduce adverse health and social consequences for drug users, their families and society as a whole, without necessarily ending drug consumption. The last decade was characterized by major advances in harm reduction programs, particularly among injecting drug users, aimed at decreasing the spread of diseases like HIV/AIDS and hepatitis and reducing deaths from overdose. Harm reduction practices are rapidly expanding, even in countries with very strict anti-drug laws. China, for example, began needle exchange programs several years ago, and intends to have a thousand methadone clinics running by the end of the decade. Countries like Iran, Pakistan and Vietnam are now openly practicing similar basic services. The US federal government has long maintained an ideological crusade against harm reduction, despite many states and cities maintaining needle exchange and opiate substitution programs. The Obama administration shows a willingness to soften the federal position, especially regarding the lifting of the Congressional ban on needle exchange.

Most UN agencies (WHO, UNAIDS, UNDP, Human Rights Council) have embraced the harm reduction concept. It remains a controversial term, however, for the UN Commission on Narcotic Drugs (CND) which adopted in April 2009 a new political declaration with drug control guidelines for the next decade, to the shock of many, without explicit reference to harm reduction. However, according to Michel Kazatchkine, Executive Director of The Global Fund, the strong differences of opinion that became so clear during the CND session, *"have helped to show that the consensus that has driven global drug prohibition for 100 years has actually fractured. They give hope that we may eventually have a more nuanced policy in the coming years, in which countries are given the flexibility to implement a drug policy that best fits their needs, rather than be constrained by the stifling 'one size fits all' approach that has served us so poorly, for so long."*[18]

"We must continue to show why drug use is most effectively addressed as a public health challenge, and why punitive approaches that criminalize users, drain the resources of law enforcement agencies and overburden judicial and penal systems, are futile and counter-productive"

Michel Kazatchkine, Executive Director of The Global Fund to Fight AIDS, TB and Malaria, 2009.

18. Keynote address by Michel Kazatchkine, Executive Director, The Global Fund to Fight AIDS, TB and Malaria, Opening Session of the 20th Conference of the International Harm Reduction Association, Bangkok, 20 April 2009.

Effective implementation of harm reduction services is only possible within a legal environment in which drug users are not prosecuted. Hence access to these health care services does not require applicants to first stop their drug use, allowing them to enter programs without fear of arrest. Some countries like The Netherlands, Germany, Switzerland, Spain, Norway, Denmark, Canada and Australia continue to experiment with more advanced harm reduction practices, including heroin prescription and drug consumption rooms for the most problematic user groups. In total there are now about 65 consumption rooms in different countries, supervised facilities where drug users are allowed to consume their drugs in hygienic conditions without fear of arrest. Such pioneer projects require special legal adjustments, like registering heroin as a medicine (as The Netherlands did in 2009), providing a legal framework for heroin maintenance (as is the case in Switzerland and Germany) or special licenses or legal exemptions for the consumption rooms (which has developed into a matter of contention in Canada). By now, there is a convincing body of evidence from evaluations about the effectiveness in reducing overdose deaths, improved health conditions of heroin users, their low-threshold function bringing problematic users in touch with treatment options they would otherwise stay away from, and reduced rates of drug-related crime.

In both North and South America harm reduction programs for smoking/inhaling stimulants (crack/paco or coca base paste) are being experimented with. When sharing home¬made pipes crack users get wounds on lips and gums and are susceptible to diseases such as herpes, tuber¬¬culoses, hepatitis and HIV/AIDS. Crack use often also implicates risky sexual behavior in exchange for crack or as a means to earn some money to buy crack. At the local level in Brazil, Canada and the U.S. harm reduction workers dispense 'safer crack use kits' with condoms, pipes, pipe stems, tissues, vaseline and lip balm to counter infections and sexually transmitted diseases, as well as providing infor¬mation on how to prevent unsafe crack smoking habits. In 2006, a survey of U.S. needle and syringe exchange found that out of 150 responding programs, 51 programs (34 percent) stated that they had distributed safer crack use kit.[19] In Brazil experi¬ments with marihuana substitution treat¬ment for crack users (based on spontaneous ac¬counts by crack abusers that started using cannabis in an attempt to ease withdrawal symp¬toms) have had positive results. [20]

19. International Harm Reduction Association, The Global State of Harm Reduction 2008: Mapping the response to drug-related HIV and hepatitis C epidemics, http://www.ihra.net/Assets/1396/1/GSHRFullReport1.pdf

20. A study showed that 68% of crack users were suc¬cessful in abrogating crack habits over the course of nine months through the use of cannabis. See: Eliseu Labigalini et. al., Therapeutic use of cannabis by crack addicts in Brazil, Psychoactive Drugs, Vol 31, No. 4, Oct-Dec 1999. http://www.ncbi.nlm.nih.gov/entrez/query.fcgi?cmd=Retrieve&db=PubMed&list_uids=10681113&dopt=Abstract

5. RECLASSIFICATION OF SUBSTANCES

There is growing recognition in the drug policy debate that talking about ¨drugs¨ is too often a not very helpful generalization and that a more refined distinction is required to define appropriate control measures according to the specific characteristics of substances, their health risks, the dynamics of their markets and their user groups. The classification schedules attached to the UN 1961 and 1971 Conventions do not provide sufficient differentiation to enable more targeted policy interventions. The zero-tolerance ideology embedded in the treaties, along with considering such diverse substances as coca, cocaine, cannabis, opium and heroin in the same schedule, has hampered the development of more targeted and effective responses that take account of their completely different properties and the reasons people use them.

The essential and politically sensitive issue is how to deal more effectively with cannabis, quantitatively the vast majority of "illicit drugs". A wealth of scientific studies clearly indicates there are long-term health risks associated with high-intensity use, but equally clearly points to undeniable medicinal merits. Not a single expert in the field would still argue that it belongs in the same category as heroin, where it was placed in the 1961 Convention, in schedules I and even IV, the latter reserved for just a few substances with ¨particularly dangerous properties¨ and no medicinal benefit. And few recognized experts would still argue it not be controlled under similar schemes as have been developed for alcohol or tobacco. Many countries have already introduced legislation or prosecutorial guidelines distinguishing cannabis from other drugs, with the Dutch coffeeshop system and the medical marijuana model applied in California approaching a situation akin to a regulated market.[21] An interesting initiative is developing in Spain, where cannabis users have established producer cooperatives, a first attempt to organize a legally regulated supply for recreational use.

In its report *Cannabis Policy: Moving Beyond Stalemate*, the Global Cannabis Commission of the UK-based Beckley Foundation concludes that despite methodological flaws in research and pitfalls of cross-country comparisons "*there does not appear to have been any large increase in cannabis use in countries that have maintained the de jure illegality of cannabis but implemented reforms which, either at a national or sub-national level, have reduced the penalties to civil or administrative sanctions.*" Law enforcement and criminal sanctions seem to have hardly any impact on rates of cannabis use. Trends in consumption appear to be more influenced by poorly understood social, cultural and economic factors than cannabis control laws.

21. Tom Blickman and Martin Jelsma, Drug Policy Reform in Practice, Experiences with alternatives in Europe and the US, Nueva Sociedad, July 2009.

A few countries (like The Netherlands, the United Kingdom, Cyprus) maintain national schedules which explicitly place cannabis in a different category of less harmful substances, diverging from the UN classification system. Quite a few other countries, like Belgium, Ireland, Luxembourg and Greece have not classified cannabis differently from drugs like cocaine or heroin, but made a specific distinction in their laws for cannabis that render prosecution or sentencing more lenient than for other drugs. In Spain, classification of drugs is also analogous to the UN schedules, but there is a distinct lower penalty range for trafficking in drugs that are not considered ¨very dangerous substances¨ and jurisprudence shows this to be interpreted as cannabis.[22] Similarly, some other national laws (as in the Czech Republic) and also the European Union sentencing guidelines refer to the "dangerous nature" of the substance being one of the criteria (together with the quantity, previous criminal record, and so on) taken into consideration when deciding penalty levels. All these cases defy the all-encompassing nature of the schedules attached to the UN conventions and reflect the reality that cannabis should be treated as a special case.

Another urgent re-classification issue appearing on the international agenda this year is the legal status of the coca leaf. The inclusion of the coca leaf as a narcotic drug in Schedule I of the 1961 Convention and the treaty article demanding that the chewing of coca leaf must be abolished was a blatant example of Northern values being imposed upon the South.[23] The Bolivian government has initiated UN procedures to delete the article and announced it would soon initiate the WHO procedure to ¨unschedule¨ the coca leaf. This would restore respect for cultural and traditional rights, as well as allow an international market of natural coca products to develop. At national levels, the Bolivian and Peruvian legislation have maintained the legal status of coca domestically, in spite of being treaty-bound to abolish coca chewing. Colombia introduced a legal exemption for indigenous groups who have used coca traditionally. Argentina is the only other country that by law allows possession and consumption of natural coca, when article 15 was inserted in its drug control law 23.737 saying: "*The possession and consumption of coca leaves in their natural state, intended for the practice of chewing or use as an infusion, will not be considered to be possession or consumption of narcotics.*" The Argentinean case is one more example of a state challenging the wisdom of the UN treaty classification system.

22. EMCDDA, *A Cannabis Reader; global issues and local experiences, Perspectives on cannabis controversies, treatment and regulation in Europe*, EMCDDA Monograph 8, Chapter 7: Cannabis Control in Europe, Lisbon 2008.

23. Anthony Henman and Pien Metaal, *Coca Myths*, Drugs & Conflict Debate Paper 17, TNI, June 2009.

CONCLUSIONS

After decades of mass incarceration and ever-increasing sentencing levels (stiffened by the 1988 Convention requirements), evidence indicates that law enforcement measures are not an effective means of reducing the extent of the illicit drugs market.[24] The overly repressive enforcement of the global prohibition regime has caused much human suffering, disrupting family lives and subjecting those convicted to disproportionate sentences in often abominable prison conditions. It has overburdened the judicial system and prison capacity and has absorbed huge resources that could have been made available for more effective treatment, harm reduction and crime prevention programs, as well as allowing law enforcement to focus on organized crime and corruption.

As demonstrated above, the removal of criminal sanctions for the possession of drugs does not lead to a significant increase in drug use or drug-related harm. Criminalizing users pushes them away from health services out of fear of arrest, drives them into the shadows, and locks them up in prisons, which serve as schools for crime. This cycle derails lives even more than drug dependence itself and diminishes chances of recovery. This also applies to the way drug users are treated when committing nonviolent property crimes to sustain their habit. The 1961 Convention, the backbone of the global drug control model, already endorsed the principle that "*when abusers of drugs have committed… offences, the Parties may provide… as an alternative to conviction or punishment ... that such abusers shall undergo measures of treatment, education, aftercare, rehabilitation and social reintegration…*" (Art. 36.1b).

Regarding illicit trafficking offences, the few existing examples of significantly lowered sentencing levels applied to the lower parts of the chain merit consideration and international debate to share and fine-tune current thinking about delimitations in trading levels and proportionality of sentences. There is a strong case to make for substantially revising sentencing guidelines, reducing penalties for those involved at lower levels, with no organizing responsibility, low earnings, and connected to the illicit market due to economic necessity. Existing evidence indicates that harsher penalties fail as a deterrent to the individual and have no discernible impact on the way the illicit market operates. In fact, evidence links severe sentences with increased recidivism. Enormous resources can be saved by rejecting this punitive and not infrequently politically driven approach.

There is, on the other hand, no evidence that any of the more lenient approaches in cannabis policy have led to increased levels of cannabis use. If policies had been based on evidence, rather than legally limited by the UN conventions, more radical shifts would have been the rule in can-

24. Dave Bewley-Taylor, Chris Hallam, Rob Allen, The Incarceration of Drug Offenders: An Overview, Beckley report 16, London March 2009.

nabis control legislation. The urgency to initiate experiments with models for a legally regulated cannabis market is clear when one considers that the cannabis market represents roughly half of the global illicit drugs trade, including all the criminal earnings, related violence and corruption, as well as the law enforcement resources devoted–unsuccessfully—to suppress it. Countries wishing to take this market out of criminal hands should invest the time and effort to experiment. Those preferring to maintain the status quo of strict cannabis prohibition can do so, in the same way several Islamic countries maintain strict alcohol prohibition.

Despite the image of strict prohibition at the federal level in the United States, actually some of the good practices on decriminalization of cannabis and harm reduction have been initiated at the local and state level. While the U.S. successfully exported its punitive zero-tolerance model to the rest of the world, the federal government has had significant difficulty in maintaining its own policy domestically. Despite substantial differences across counties and cities, the "California model" of exempting medical use of cannabis from criminal penalties and allowing individuals to "possess, cultivate and transport" cannabis as long as it is used for medical purposes with a doctor's prescription has grown into something close to *de facto* legalization.

The paradigm shift from zero tolerance to harm reduction has resulted in a greater diversity of treatment options, less stigmatization of drug users, prevention of diseases and overdoses, and reduction of crime. But this model, originally conceived as a response to heroin injection and HIV infection, cannot simply be transposed to Latin America where injecting drug use is a major concern only in Mexico (heroin) and Brazil and Argentina (cocaine). For Latin America a similar paradigm shift should focus on harm reduction for smoking/inhaling stimulants (crack/paco and coca base paste), as opposed to injecting opiates. The kind of experimentation done in Brazil, Canada and the U.S. merits serious consideration regarding expansion into the rest of Latin America. Harm reduction should apply to social harms as well, especially reducing levels of drug-related violence, one of the major concerns in Latin America. Wider applicability of the lessons learned with the Boston's Operation Ceasefire is well worth consideration in that regard.

A more rational listing of psychoactive substances according to their health risks, a better understanding of the variety of drug submarkets and the difference between recreational use and more problematic patterns of abuse should be the cornerstones for developing more adequate policy response. Two recent attempts have been undertaken by scientific panels to develop a rational scale to assess the harmfulness of drugs, looking at the toxicity (acute or chronic physical harm), the potential for dependency and the social harm at individual, family and society levels (see box).[25]

25. David Nutt et al., *Development of a rational scale to assess the harm of drugs of potential misuse*, The Lancet, Volume 369, Issue 9566, Pages 1047-1053, 24 March 2007. And: J.G.C. van Amsterdam et al., *Ranking van drugs, Een vergelijking van de schadelijkheid van drugs*, Rapport 340001001/2009, Rijksinstituut voor Volksgezondheid en Milieu (RIVM) 2009.

The change in legal practices discussed above is clear evidence that a paradigm shift in drug control is starting to take root in legislative reforms around the world. Drug consumption is seen more and more as primarily a health issue and policy objectives are shifting from the unrealistic goal of a drug-free society toward more achievable goals of harm reduction and reducing drug-related violence. Consideration of human rights and proportionality of sentences are becoming essential elements in a growing number of countries' application of drug legislation. Today's trends are creating legal contradictions to the obligations set in the UN treaties. The resultant tensions and discord will only increase until the zero-tolerance model of the three conventions is readdressed. More room for manoeuver is required for these promising legislative reforms to further develop.

RANKING OF DRUGS ACCORDING TO HARM

The Lancet (UK)	**RIVM (NL)**
1. Heroin	1. Crack
2. Cocaine	2. Alcohol
3. Barbiturates	3. Heroin
4. Street methadone	4. Tobacco
5. Alcohol	5. Cocaine
6. Ketamine	6. Methadone
7. Benzodiazepines	7. Methamphetamine
8. Amphetamine	8. Amphetamine
9. Tobacco	9. Benzodiazepines
10. Buprenorphine	10. GHB
11. Cannabis	11. Cannabis
12. Solvents	12. Ecstasy
13. 4-MTA	13. Buprenorphine
14. LSD	14. Ketamine
15. Methylphenidate	15. Methylphenidate
16. Anabolic steroids	16. Anabolic steroids
17. GHB	17. Khat
18. Ecstasy	18. LSD
19. Alkyl nitrates	19. Mushrooms
20. Khat	

This briefing summarizes good practices in legislative reforms around the world, representing steps away from a repressive zero-tolerance model towards a more evidence-based and humane drug policy. The examples provide lessons learned in practice about less punitive approaches and their impact on levels of drug use and drug-related harm to the individual and society.