

IDPC Briefing Paper

The drug policy reform agenda in the Americas (Version 2)

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Introduction

Latin America has emerged at the vanguard of efforts to promote debate on drug policy reform. For decades, Latin American governments largely followed the drug control policies and programs of Washington's so-called war on drugs.¹ Yet two parallel trends have resulted in a dramatic change in course: the emergence of left-wing governments that have challenged Washington's historic patterns of unilateralism and interventionism and growing frustration with the failure of the prohibitionist drug control model put forward by the US government. In recent years, the regional debate on drug policy issues -- long dormant -- has surged as evident in media coverage, renewed interest on the part of academia, the emergence of grassroots initiatives such as the cannabis reform movement, and perhaps most importantly, calls for reconsideration of prevailing drug policies by a range of local and national officials. For the first time, sitting presidents are questioning the underlining premises of the international drug control paradigm and calling for debate on alternative approaches. Their actions have had repercussions internationally, as those presidents have successfully pushed for debate within the Organization of American States (OAS) and the United Nations (UN).

At the national level, numerous countries have implemented or are debating drug policy

reforms. Most significantly, two countries have boldly challenged the 1961 Single Convention on Narcotic Drugs. Bolivia is the first country to denounce and return to the convention with a reservation, in this case with regards to coca leaf use within its own territory. And Uruguay will likely become the first country in the world with legal, regulated cannabis markets. On July 31, the Mujica administration's proposed legislation won a narrow victory in Uruguay's House of Representatives and it now heads for near-certain approval by the country's Senate. If the legislation is approved as expected, Uruguay will join the U.S. states of Washington and Colorado, which are also putting into place regulated cannabis markets. These developments could encourage other reform-minded governments to explore similar initiatives. This historic moment could be looked back upon as a significant turning point for cannabis reform efforts in the region and around the world.

However, the obstacles to drug policy reform more broadly – at the national, regional and international levels – loom large. Efforts to rewrite drug laws in Argentina and Ecuador, for example, have faced inordinate delays in the face of opposition from powerful conservative political forces and some religious sectors. More often than not, public opinion continues

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to support *mano dura*, or hardline, approaches as a result of popular perceptions and fears that more flexible drug policies will lead to increased drug use and violence. Such fears are fanned by sensationalist or biased media coverage, as well as very real problems of citizen insecurity and violence in the poor neighborhoods where illicit drug use tends to be most prevalent. Regionally, while key Latin American leaders have spoken out in favor of reform, many others have remained silent or wedded to present policy. And internationally, a key group of countries, including the United States and Canada, are vociferously opposed to taking any action outside of the confines of the existing international drug control conventions.

Yet while drug policy reforms will no doubt advance slowly, major fissures are evident in the international drug control architecture so carefully crafted by the United States and other countries. Perhaps nowhere is that more evident than in Latin America. After analyzing the regional debate, national level reforms and impediments to those reforms, this report concludes with concrete policy recommendations that should be undertaken to maintain the momentum and advance drug policy debates and reforms in the region.

The regional debate

At the root of the drug policy debate in Latin America is growing recognition that present policies have failed to achieve the desired objectives, the extremely high costs of implementing those policies paid by Latin American countries, and the need to place higher priority on reducing unacceptably high levels of violence. Of particular concern is the spread of organized crime and the resulting violence, corruption and erosion of democratic institutions. More than forty years after the U.S. “war on drugs” was launched, most Latin

American countries face far deeper problems with drug trafficking. Drug dependency – and related health and societal consequences – continues to spread as trafficking routes multiply, bringing more and more Latin Americans into contact with illicit substances. Jails are bursting at the seams with low-level drug offenders, causing a serious humanitarian crisis, while ineffective or lax law enforcement and corruption ensure that few medium or large-scale traffickers end up behind bars.² As noted, organized crime has spread its reach across the region, posing significant challenges to states characterized by weak law enforcement and judicial institutions. As succinctly stated by Guatemalan President Otto Pérez Molina, “We have seen that prohibitionism and the war against drugs have not given the results hoped for. Quite the opposite, the cartels have grown in strength, the flow of arms towards Central America from the north has grown and deaths in our country have grown. This has forced us to search for a more appropriate response.”³

While discontent with present policy in Latin America had been bubbling under the surface for some time, the 2009 launch of the Latin American Commission on Drugs and Democracy’s report marked a turning point, sparking widespread media coverage of the Commission’s calls for drug policy reform. As a result, more influential newspapers and influential individuals came out in support of drug policy reform. By the launch of the report of the Global Commission on Drug Policy two years later, drug policy was front and center on the regional agenda. However, it is only recently that ex-presidents have been joined by sitting presidents, such as Colombia’s Juan Manuel Santos and Guatemalan President Otto Pérez Molina, in calling for reconsideration of the prevailing international drug control regime.

Another significant shift in the debate came when a long taboo subject, legalization, was put on the table. While President Santos was

the first of those presidents in office today to call for consideration of drug legalization, Guatemala's President Pérez Molina can be credited with inserting the legalization issue into the drug policy reform debate – and Uruguay's President José Mujica took that debate one step further with his proposal to create regulated cannabis markets in that country. While there has been much media confusion over the precise meaning of terms like decriminalization and legalization,⁴ for the first time the idea of legal, regulated markets has become part of the regional drug policy debate. As explained in more detail below, the Uruguayan government's proposal to create legal, regulated markets for cannabis has shown that viable regulation models are an option and can be the subject of reasoned debate.

The Organization of American States

Perhaps the most significant turning point, however, was the outcome of the April 2012 Cartagena summit, where most of the hemispheres' presidents gathered in a private, closed-door meeting at which drug policy was the only topic discussed. As a result of that exchange, President Santos announced that the OAS was being tasked with analyzing the results of present policy and exploring alternative approaches. OAS Secretary General José Miguel Insulza, with the support of OAS staff from the Secretariat for Multidimensional Security and the Inter-American Drug Abuse Control Commission (CICAD), led a two-fold process. First, six studies were drafted with the input of a working group composed of CICAD and other multilateral officials, government representatives, academics and other experts. An analytical report, drawing from the six studies (now annexes to the report), was then prepared by Secretary Insulza's office. Second, two independent organizations, Reos Partners and the *Centro de Liderazgo y Gestión*, carried out a "scenario planning" exercise where a multidisciplinary team of prominent individuals

constructed a set of four scenarios about possible future outcomes resulting from the application of different drug policies, with the objective of framing regional discussions and informing strategic decision making at the national level. These documents were presented to the presidents of Colombia and Panama (which is hosting the next hemispheric summit) on May 17, 2013.

The analytical report, *The Drug Problem in the Americas*,⁵ covers a wide range of issues and viewpoints; however, numerous points highlighted in the report are groundbreaking for an initiative by a multilateral organization and could significantly advance the regional debate. The OAS report stakes out new territory by recognizing the harm caused by drug policy itself and that it is precisely prohibitionist policies that create the illegal economy that generates crime, violence and corruption. It also recognizes that most people consume drugs recreationally and only a very small percentage develops a drug dependency. Of particular significance, a chapter of the report, a scenario and one of the annexes are dedicated to legal and regulatory alternatives. They cover a wide range of material, review the potential impact of the decriminalization of personal possession and use, legislation and regulation, and acknowledge that there are many possible approaches to making drugs legal.

According to the OAS, neither of the reports is intended to provide policy recommendations; nonetheless, the last chapter of the analytical report, "Contributions to the Debate," suggests some useful policy alternatives. The report calls for drug use to be treated from a public health perspective, for people who use drugs not to be criminalized and hence for the decriminalization of drug consumption. Acknowledging that those convicted of lesser drug offenses are incarcerated for extremely long periods of time, the report suggests national drug law reforms to ensure proportionality in sentencing and

alternatives to incarceration for low-level drug offenders. In debunking the “one-size-fits-all” approach to drug policy, the final chapter underscores that drug issues need to be addressed in different ways in different countries depending on the challenges they face. Hence, countries should be given the flexibility to adopt approaches tailored to individual needs. Finally, two far-reaching policy alternatives are included at the very end of the last chapter. First, the report underscores the value of assessing “existing signals and trends that lead toward the decriminalization or legalization of the production, sale and use of marijuana,” noting that, “Sooner or later decisions in this area will need to be taken.”⁶ Second, the report opens the door to convention reform: “Greater flexibility could lead to the possibility of amending domestic legislation or promoting changes to international law.”⁷ For the first time, a regional multilateral organization has raised the issue of reform of the international drug control conventions.

The OAS scenarios report provides an even more pioneering tool for debating policies and informing decision-making processes. The scenarios are stories about what is possible – what *could* happen – and are not mutually exclusive narratives, but rather are meant to be read together. The four scenarios are entitled *Together*, *Pathways*, *Resilience* and *Disruption*. Of these, *Pathways* is the most ground-breaking. It posits that present prohibitionist policies cause too much harm; the alternative is to explore and learn from regulatory frameworks, beginning with cannabis. Both that scenario and *Resilience* advocate for a harm reduction approach. Together, the OAS analytical and scenarios reports offer a great deal of material for debate at the local, national, regional and international level.⁸

Shortly after the release of the OAS reports, the hemisphere’s foreign ministers came together at the annual [OAS General Assembly](#) meeting

which took place in Antigua, Guatemala from June 4 to 6, 2013. At the suggestion of the Guatemalan government, for the first time drug policy was the thematic focus of a General Assembly meeting. Drug policy has long been a taboo topic in official Latin American circles, given the traditional U.S. dominance in defining drug policies in the region, so the mere fact that it was the focus of debate was in and of itself extremely significant. The debate that did take place illustrated the growing recognition across the region that present drug control policies are not working and that some countries in particular are paying a high social, economic and political cost for implementing those policies, hence the need to consider alternative approaches. However, the Antigua meeting also showed a lack of consensus among Latin American and Caribbean countries on the way forward.

As was to be expected, arduous negotiations went into the General Assembly’s final [declaration](#), which is always adopted by consensus. Much of the original language proposed by the Guatemalan government was removed, while more “traditional” language was added, repeating what can be found in other OAS and UN drug policy declarations. In short, the declaration, *Toward a Comprehensive Anti-Drug Policy in the Americas*, lost much of the reform-minded focus intended by the host country. Nonetheless, it calls for countries to initiate a multi-layered process of consultation on drug policy issues in a variety of national and regional forums, taking into account the OAS studies just described, and concludes by entrusting the OAS Permanent Council to convene a Special Session of the OAS General Assembly in 2014 to continue discussion of drug policy issues.⁹ The OAS reports and the process laid out in Antigua ensure that drug policy will remain at the top of the hemispheric agenda for the foreseeable future.

Contrary to what many analysts anticipated, the OAS has emerged at the forefront of

the regional drug policy debate. As more progressive governments have taken power in Latin America, left-wing leaders have created new regional associations, including the Union of South American Nations (UNASUR) and the Community of Latin American and Caribbean States (CELAC), potentially making the OAS less relevant. Some expected UNASUR to play a proactive role in developing alternative approaches to drug policy. However, while its South American Council on the World Drug Problem appeared to get off to a good start, it has largely replicated the working groups that presently exist in CICAD, no country is presently playing a leadership role that could shape a more reform-oriented approach and internal differences between countries have to date stymied reform-oriented action.¹⁰ Similarly, CELAC – which in contrast to UNASUR has no formal infrastructure and is led by foreign ministries – has not developed a leadership role on the issue, though drug policy is often included on the agenda of EU-CELAC meetings and included in subsequent declarations. The next hemispheric presidential summit is scheduled to take place in Panama in 2015; however, it remains unclear whether or not the issue of Cuba's participation will be resolved such that it can move forward. In short, the regional power dynamics between these different bodies are still in the process of being defined, but for the time being the OAS is taking the lead in moving forward the regional debate on drug policy issues.

The 2016 UN General Assembly Special Session on Drugs

Finally, the governments of Colombia, Guatemala and Mexico were successful in getting the issue of drug policy reform on the United Nations' agenda. At the 2012 UN General Assembly meeting, those countries issued a formal statement underscoring the need to “review the approach” of present drug policies and called on the United Nations to “exercise its

leadership...and conduct a profound reflection to analyze all available options, including regulatory or market measures, in order to establish a new paradigm that prevents the flow of resources to groups involved in organized crime. The statement concludes by asking the UN to host “an international conference to allow the necessary decisions to be made in order to achieve more effective strategies and tools with which the global community faces the challenges of drugs and their consequences.”¹¹ These sentiments were echoed in the declaration of the Ibero-American Summit – including all countries of Latin America, Spain and Portugal – which took place on November 16 and 17, 2012. Shortly thereafter, it was announced that a special session of the UN General Assembly (UNGASS) would be convened in early 2016 on the “world drug problem.”

The *Report of the Third Committee on International drug control* to the General Assembly states that the UNGASS review will include “an assessment of the achievements and challenges in countering the world drug problem, *within the framework of the three international drug control conventions and other relevant United Nations instruments* (emphasis added).”¹² Yet meaningful drug policy reform ultimately necessitates convention reform and a key question remains as to whether or not the issue of convention reform will finally make it to the negotiating table. A step forward in that direction was taken when in December 2012 President Santos joined President Pérez Molina (along with numerous former presidents, including former U.S. President Jimmy Carter) in signing the Beckley Foundation Public Letter, *The Global War on Drugs has Failed: It is Time for a New Approach*, which states: “At the root of current policies lies the 1961 UN Single Convention on Narcotic Drugs. It is time to re-examine this treaty which imposes a ‘one-size-fits-all’ solution, in order to allow individual countries the freedom to explore drug policies that better suit their domestic needs.”¹³ The

Beckley Foundation's report, *Roadmaps to Reforming the UN Drug Conventions*, spells out how the conventions might be amended in order to allow countries greater flexibility to experiment with alternative policies.¹⁴ Whether or not the United Nations member states are up to that challenge remains to be seen.

Jockeying has already begun to control the UNGASS agenda. At this year's Commission on Narcotic Drugs (CND) meeting in Vienna, Austria in March,¹⁵ a resolution was presented which would have ensured CND control over the planning process. Reform-minded governments were successful in garnering support for compromise language that refers to "its" leading role in the preparatory process, thereby leaving the door open for more actors to be involved. Reform advocates are proposing that UN agencies and missions in New York take the lead in preparing the UNGASS agenda, with the involvement of a range of agencies in addition to the CND, such as UNDP, UNAIDS, WHO, the Human Rights Council and others. Another crucial question is the role that civil society organizations will have in the process. Having launched the UNGASS on drugs, Latin American leaders have the opportunity to play a key role in defining its content and outcome.

National-level reforms

Even before drug policy alternatives became the subject of regional debate, some drug law reform efforts were already underway. However, key national level reforms described below have often floundered due to a range of political obstacles. Draft legislation pending at the time of this writing in Brazil, a country that was among the first to reconsider its drug law, threatens to set back progress in implementing harm reduction-oriented reforms. The overall balance of advancing drug policy reform in the region over the last few years remains

disappointing and has led some analysts to conclude that change will more likely come from below, as has happened in the United States with regards to cannabis. At the local level, officials such as Bogota Mayor Gustavo Petro are forging ahead with innovative harm reduction-oriented programs designed to provide access to health services to people who use drugs and to reduce the violence associated with the drug trade. An exception to this trend may be with regards to cannabis. A regional cannabis reform movement is slowly being consolidated and significant momentum is building for cannabis law reform. Moreover, the balance could tip in favor of reforms if the Uruguayan government is ultimately successful – and all indications are that it will be – in creating legal, regulated cannabis markets.

Decriminalizing consumption

The decriminalization of the possession of small amounts of drugs for personal use in those countries where it is illegal is one of the more widely discussed reforms.¹⁶ In 2006, Brazil passed a law that partially decriminalized possession for personal use. Subsequently, in 2008, a Sao Paulo judge ruled that imposing sanctions for drug possession for personal use is unconstitutional. In August 2009, Mexico adopted legislation decriminalizing the possession of small quantities of drugs for personal use and mandating the provision of prevention and treatment programs. Though the threshold quantities for determining personal use are problematically low, the law at least recognizes drug consumption as a public health – not criminal – matter.

That same month, the Argentine Supreme Court ruled that imposing criminal sanctions for the possession of small amounts of drugs for personal use is unconstitutional; at the same time, an official commission was drafting new drug legislation. In 2012, that and various other legislative proposals were combined into one law that would decriminalize possession

for personal use, reduce penalties for low-level drug-related crimes, give judges greater discretion in determining penalties and potentially allow the cultivation of cannabis for personal use. Unfortunately, though a political consensus was forged in support of the drug law reform, it was put on hold while a draft law on national drug treatment policy is debated. Yet that draft law is advancing very slowly, while other issues continue to dominate the political agenda. All indications are that President Cristina Fernández de Kirchner does not want to use her dwindling political capital on drug policy-related issues. With congressional elections looming in October 2013, it is likely that any proposed drug-related legislation will continue to languish for some time. However, one significant advance has taken place in Argentina. Two and a half years after its initial approval, the regulations for implementation of the National Law on Mental Health were announced at the end of May 2013. They include very good provisions on the treatment of drug dependency from a public health and human rights perspective.

Particularly noteworthy, upon taking office Ecuadorean President Rafael Correa adopted a reform discourse and the country's new constitution is the only one in the hemisphere that declares drug use to be a public health issue. Article 364 of the 2008 Constitution states: "Addictions are a public health problem... Under no circumstances will these be criminalized or will their constitutional rights be violated."

Setbacks to reform processes

President Correa also implemented a pardon of low-level drug offenders which led to the release of an estimated 2,300 individuals. The pardon was intended as a temporary measure as the countries' drug law was reformed to ensure proportionality in sentencing (Ecuador has one of the harshest drug laws in the hemisphere and it makes no distinction between levels of

involvement in the drug trade, subjecting low-level offenders to excessively long sentences). Significant effort went into drafting new drug legislation as part of a broader criminal penal code reform effort. However, the proposed changes to the existing drug law have suffered steady setbacks as they have gone through various government revisions (although the presently pending legislation would improve proportionality in sentencing). The draft legislation is now in the hands of the National Assembly, where members have repeatedly raised the issue of alleged increases in crime, violence and drug trafficking in order to toughen the legislation. It remains to be seen whether or not President Correa – with elections behind him and a newly-forged majority in the National Assembly – will return to his initial discourse of promoting drug law reform. Incipient indications that Ecuador may follow in Uruguay's footsteps in implementing legal, regulated cannabis markets are a promising sign.

As noted above, Brazil's 2006 law removes prison sentences for possessing small amounts of drugs for personal use, though it is still a criminal offense. But because the law also increased the prison sentences for drug trafficking without specifying who would qualify as a trafficker or a drug user, one unintended consequence of the law was a dramatic increase in those arrested for street-level dealing. In response, in 2012 civil society organizations launched a sophisticated campaign in support of full decriminalization of drug use.¹⁷ On April 16, 2013, seven former Ministers of Justice sent a letter¹⁸ to the head of the federal Supreme Court requesting it to declare that the criminalization of possession for personal use is incompatible with the country's constitution (as was previously ruled at the state level). Yet at the same time, legislation is pending in the Brazilian Congress that could increase fines and mandatory education programs for users, increase mandatory penalties for small-scale trafficking and potentially institutionalize forced

treatment. The proposed legislation was passed by the House and is now under consideration in the Senate.

Guatemala and Colombia initiate reform processes

On a more positive note, two key presidents who have been advocating for international reforms while maintaining hardline drug policies at home are beginning to talk of domestic-level reforms. Despite his public support for regulated drug markets, President Pérez Molina has increased military involvement in counter-drug activities. Yet he also commissioned a report from the UK-based Beckley Foundation on options for alternative drug policies. Their report, *Paths to Reform*, was presented to President Pérez Molina and his key advisors in January 2013.¹⁹ Its recommendations include, among other proposals, decriminalizing possession of all drugs for personal use; examining the potential implementation of a legal regulated cannabis market; clarifying distinctions between minor and major drug offences and reducing sentences for non-violent, low-level offenders (such as drug “mules”); and establishing a Poppy Commission to examine conversion of illicit poppy crops to licit cultivation for medicinal use, ideally for domestic purposes.

With regards to the latter, President Pérez Molina has said he will consider a proposal to permit legal poppy cultivation for producing pain medications, to be used domestically.²⁰ (Presently, access to such medications in Guatemala is extremely limited.) In early February, the Guatemalan government announced a record elimination of poppy plants for the first part of the year. Interestingly, it also announced that nobody was detained in the process. According to the Minister of Government, Mauricio López Bonilla, as reported by *El Periódico*, “The destruction, focused on attacking the product and not detaining people, was carried out within the

framework of the depenalization model being promoted by President Otto Pérez.”²¹ The Guatemalan government is also moving forward with plans to create a presidential commission to evaluate current policies and propose possible reforms, similar to that established in Colombia (see below).

Perhaps of even greater significance, Colombia's President Santos – who had previously said that a new regional and international consensus was needed in order for reforms to go forward – has also moved in the direction of domestic-level reforms. Between 1994 and 2009, possession of small amounts of marijuana and cocaine for personal use was not prosecuted in Colombia, due to a Constitutional Court ruling that states that the possession of a “minimum dose” of drugs cannot be penalized when it occurs “in the exercise of their personal rights...and the defendant did not affect others.”²² After repeated efforts, former Colombian President Alvaro Uribe was finally successful in amending the country's constitution in order to allow for the criminalization of the minimum dose and illicit drug consumption. In a subsequent citizen security law, an article was included to eliminate the provision in the previously existing law allowing for the minimum dose, thereby codifying the results of the constitutional change into law. In addition, shortly after taking office the Santos government circulated a draft of a proposed National Drug Law which, among other matters, also criminalized possession for personal use. However, in June 2012, the Constitutional Court ruled on the article in the citizen security law referred to above, stating that the constitution does not allow penalizing consumers (similar rulings on individual cases were also handed down by the Supreme Court). Civil society groups and legal experts also played an important role in providing input into the draft legislation and advocating for reforms. The draft drug legislation went through several revisions and in January 2013, Colombia's Justice Minister, Ruth Stella Correa, announced that the revised drug law to be presented to congress will also

decriminalize possession for personal use of small amounts of synthetic drugs, such as ecstasy and methamphetamines, in addition to cocaine and marijuana which is still allowed under current law. The proposed legislation would also obligate municipalities to provide funds for prevention and treatment programs.²³

The Justice Minister also announced the formation of a [Drug Policy Commission](#), which has a broad mandate to evaluate the drug policies implemented over the last ten years and make recommendations for future drug policy. It is to present a final report by the end of the year. The draft drug law described above is not expected to move forward until the commission has made its recommendations (and with presidential elections looming in 2014 could very well be put on hold until after the campaigning). Particularly interesting is the composition of the commission which appears intended to ensure that alternative policies are indeed put forward. The widely-respected webpage, *La Silla Vacía*, refers to it as *una comisión de ruptura*, or a commission designed to make a break from the past.²⁴ It includes former President César Gaviria (member of the Global Commission on Drug Policy), former police General Óscar Naranjo (now on the drug policy event circuit expressing some sympathy towards certain reforms), former Constitutional Court member Rodrigo Uprimny (a leading reform advocate) and Universidad de los Andes economic professor Daniel Mejía Londono (a leading economist working on drug policy issues), who chairs the commission. As noted by *La Silla Vacía*, President Santos is finally sending a “clear signal that he intends to align internal policy with his international discourse.”²⁵ On May 21, 2013, the commission released its first document, focused on consumption, which recommends totally decriminalizing consumption, including for those who commit crimes while under the influence of illicit substances, and providing evidence-based treatment programs for people dependent on drugs.

Drug policy is also on the agenda of the negotiations between the Colombian government and the Revolutionary Armed Forces of Colombia (FARC); it is the second to last agenda item and sub-items include alternative/economic development, prevention and public health, and addressing the problem of production and trafficking. Also according to *La Silla Vacía*, the last draft of the proposed National Drug Law that it obtained in March of this year includes numerous proposals that coincide to a certain extent with those put forward by the FARC. In the context of the negotiations on rural development, the FARC has called for economic development in coca growing regions; an end to the criminalization and persecution of those communities; an immediate and definitive end to aerial spraying and other forms of eradication; the legalization of coca, poppy and marijuana cultivation for therapeutic and medicinal purposes, industrial use or cultural purposes; and the reorientation of land use towards sustainable agricultural production. *La Silla Vacía* reports that the Colombian government's draft drug law also allows for some legal cultivation for licit uses, restricts aerial spraying, and promotes voluntary manual coca reduction. It would also create mechanisms such that coca producers who voluntarily participate in coca eradication would not be held criminally liable for having cultivated coca, which is presently illegal in Colombia.²⁶ Agreement in the negotiations on certain basic principles related to coca cultivation could result in a significant turning point in Colombian drug policy, which has long been the US poster child for criminalization of coca growers and forced eradication.

Finally, Bogota mayor Gustavo Petro is playing a significant role in advancing a public health focus in the drug policy debate in Colombia, implementing a novel program, the Medical Care Center for Dependent Drug Users (*Centros de Atención Médica a Drogodependientes*), or CAMAD.²⁷ Launched in September 2012, the

CAMAD is a pilot project focused primarily on the use of *bazuco*, or cocaine base, in the Bronx, an extremely poor neighborhood of Bogotá where homeless people are concentrated and drug use, trafficking and violence proliferate. An estimated 7,500 *bazuco* users – who often panhandle or commit crimes to support their habit – and 9,500 homeless people are in the Bronx.²⁸ The CAMAD began as a mobile medical care center staffed by psychiatrists, psychologists, doctors and nurses that refers dependent drug users to detoxification and rehabilitation treatment. The next phase of the project is a program to reduce *bazuco* consumption by replacing it with marijuana and possibly coca, in order to reduce the anxiety caused both by consuming *bazuco* and in trying to get off the drug. In addition to weaning patients off drugs, the idea is to eliminate the violence associated with *bazuco* consumption. Initially, a small group of people dependent on drugs from the Bronx who are already receiving assistance from the CAMAD will undertake an 8-month program that also includes counseling, job training and other services. According to the Director of Acción Técnica Social, Julián Andrés Quintero, ‘This project is not aimed at getting people to quit using. This is about reducing the risks and mitigating the damage. We want people to quit a substance that is very, very damaging and transition to something less dangerous and which will allow them to function in society.’²⁹ If successful, the presently controversial program will be expanded.

The cannabis reform movement

The most radical reform presently under discussion in the region has come from the Uruguayan government, which on June 20, 2012 unveiled a proposal that, if adopted by the country’s legislature, would create legal, government-controlled markets for cannabis, as part of a broader strategy to promote

a public health-oriented drug policy and separate the marijuana market from the far more dangerous *paco* market. (Though there are a variety of theories about what *paco* is and it appears that production varies depending on where it is produced, *paco* is usually described as being produced from the refuse in making cocaine mixed with various solvents. Its use is highly addictive and damaging.) In regulating cannabis, the government intends to prevent people who use cannabis from exposure to more dangerous drugs when purchasing on the black market and free up resources to focus on more harmful substances. The government’s proposal has received significant support from a civil society platform called Responsible Regulation, which has carried out a public education and media campaign. In a visit to Uruguay the week before the vote in the lower House, OAS Secretary General José Miguel Insulza lent his political clout to the debate, personally endorsing the proposal.

If adopted by the Senate as expected, the legislation approved on July 31 in the House of Representatives will legalize and regulate the entire cannabis production and distribution chain. It will allow individuals to cultivate up to six plants in their homes. It will also allow for the creation of cannabis clubs, cooperatives of between 15 and 45 members allowed to collectively cultivate up to 99 plants. Finally, the bill will allow the government to grant licenses to private businesses to grow cannabis, which will be purchased exclusively by the state and sold in pharmacies. A new government office, the Institute of Regulation and Control of Cannabis, will be created to implement the legislation. The highly-regulated market will include strict age limits, electronic controls limiting the amount purchased per month (up to 40 grams per person per month), and prohibit public use or purchase by non-Uruguayan citizens. All other forms of cannabis cultivation, distribution, sale and cross-border trafficking will remain illegal.³⁰

The legislation faced its biggest hurdle in the lower House, where it squeaked by with 50 votes out of the 96 lawmakers present. It is expected to face less opposition in the Senate, where it will come up for a vote in the coming months. It is possible that the Senate will make changes that will need to be re-approved by the House, but local analysts predict it will be signed into law by President José Mujica, who has championed the legislation, by October 2013. At that point, Uruguay will become the only country in the world where cannabis can be cultivated, sold and consumed legally (even in Holland production remains illegal, though the purchase and consumption of small amounts of cannabis in coffee shops is tolerated).

Prior to the government's announcement of its intention to legally regulate cannabis, legislation was already pending in Uruguay that would allow for *auto-cultivo*, the cultivation of cannabis for personal use – and it appeared to have a very good chances of congressional approval. As noted, Argentina is contemplating similar action and there is also a movement in Brazil to allow for the cultivation of marijuana for personal use. In countries where full-scale regulated markets are not politically viable, *auto-cultivo* may be a reasonable alternative.

Congressional initiatives to legally regulate the cannabis market have also been introduced in Chile and Mexico and as noted, the Correa government in Ecuador has also indicated that it might consider a similar reform. While in Mexico the proposal has little, if any, chance of being approved at the national level, it has gained momentum in Mexico City. The legislative assembly of the Federal District of Mexico, where the nation's capital is located, is seriously considering one such proposal. In August 2013, the local legislature will carry out a series of forums for legislators and officials on the topic, in coordination with CUIHD and UNODC. The Federal District faces a similar situation as that of the U.S. states that have

approved legal, regulated cannabis markets: federal laws prohibiting drugs use, production and sale remain firmly entrenched while local governments begin to experiment with alternative approaches. Local analysts believe that the cannabis regulation initiative has a good chance of moving forward in Mexico City.

Proponents of creating legal, regulated cannabis markets point out that it poses comparatively smaller risks than many other substances (including legal drugs) and yet the prohibitionist approach causes enormous harm to those caught up in the criminal justice system. More tolerant attitudes towards cannabis use in many countries – including the United States – suggest that sooner or later, more and more countries will begin the shift toward legal, regulated markets.

Nowhere is this trend clearer than in the United States, and Uruguay and other Latin American countries are closely watching Colorado and Washington. In the November 2012 U.S. elections, in the state of Washington 55.4 percent voted to “legalize the production, distribution and possession of marijuana, and establish regulations.” A similar initiative passed in Colorado with 54.8 percent of the vote. In both cases, possession for personal use is now legal and ultimately cannabis will be sold at state-licensed stores. The Colorado initiative also allows individuals to cultivate up to six plants. Washington's 66-page regulatory proposal was carefully written to stand up to federal pressure.

The Obama administration faces a political conundrum as it defines its response to the cannabis legalization initiatives approved in Washington and Colorado, which pit state law against federal law. (The federal Controlled Substances Act prohibits the production, sale and possession of marijuana.) A range of policy tools are at its disposal, including stepping up Drug Enforcement Administration

(DEA) enforcement activities, taking action in the courts, or threatening to seize marijuana tax revenues. An April 2012 report by the Brookings Institution and the Washington Office on Latin America argues that a more appropriate response would be for the U.S. Justice Department to “use its considerable leverage to ensure that state regulators protect the federal government’s interests in minimizing exports across state lines, sales outside the state-regulated system, sales of unduly large quantities, sales of adulterated products, sales to minors, organized crime involvement, and other abuses.”³¹

Upon taking office, President Obama initially promised to respect state laws on medical marijuana. However, the DEA publicly expressed opposition to that position and over time has significantly increased its raids of medical marijuana facilities. The DEA is part of the Department of Justice and hence should follow White House directives; however, in this case it appears that there was no attempt on the part of the White House to object or attempt to reign in the DEA. Two years ago when California voted on Proposition 19, which would have legally regulated marijuana, Attorney General Eric Holder spoke out forcefully against it. This year, however, the Justice Department remained silent prior to the voting in Washington and Colorado. (Some speculate that was because Colorado was a battle-ground state and Obama needed the youth vote.) Since the elections, officials have made only broad statements that they are reviewing the situation and that drug enforcement policy has not changed. In December when asked about recreational marijuana users in the states where it has been legalized, President Obama responded, “We’ve got bigger fish to fry.”³² U.S. Attorney General Eric Holder has only said that he has had “good conversations” with elected leaders in Washington and Colorado; at the time of this writing he has yet to provide any more details on the administration’s response. Some

analysts think that Justice Department officials are waiting for more details on the proposed regulatory frameworks before reacting.³³

Such prudence is warranted given the broad popular support received in each state – and given the clear trend in the United States towards relaxing marijuana laws. Polls now show that more than half of all Americans support some form of legalization. Sixteen U.S. states have decriminalized marijuana use, 20 states and the District of Columbia have legalized marijuana for medical use, and two states are in the process of implementing legal, regulated markets. Six states have marijuana legalization bills pending and three more are likely to join them soon. At least two more states, including California, are likely to have referendums to legalize marijuana in the next presidential elections in 2016.³⁴ And legislation has been introduced in the U.S. Congress to legalize cannabis at the federal level, though it has little chance of passing anytime soon.

The inconsistency in the United States’ situation – with the federal government advocating for strict prohibition while more and more states move in the direction of relaxing cannabis laws – has not been lost on Latin America. In public comments immediately following the U.S. elections, Luis Videgaray, who at the time was leading Mexican President Enrique Peña Nieto’s transition team, called the vote a game-changer, stating that “Obviously we can’t handle a product that is illegal in Mexico, trying to stop its transfer to the United States, when in...at least part of the United States it has a different status.”³⁵ At the Davos meeting in January 2013, the governments of Costa Rica, Mexico and Colombia announced that they were initiating talks with U.S. officials to prepare for the legalization of marijuana in Colorado and Washington. These developments further erode U.S. credibility in the regional drug policy debate, providing more political space for those countries like Uruguay, Guatemala

and Colombia that are advocating for national, regional and international drug policy reform.

Coca and the conventions

The fact that the United States, one of the primary architects of the international drug control conventions, is now in violation of those conventions has also not been lost on the Bolivian government. The 1961 Convention mistakenly classifies the coca leaf – which has been consumed in its natural state for centuries by indigenous peoples in the Andean region of South America – as a dangerous narcotic, along with cocaine. Yet Bolivia's 2009 Constitution (Article 384) states: "The State shall protect native and ancestral coca as cultural patrimony, a renewable natural resource of Bolivia's biodiversity, and as a factor of social cohesion; in its natural state it is not a narcotic. Its revaluing, production, commercialization, and industrialization shall be regulated by law." The Constitution allowed for a period of four years for the government to "denounce and, in that case, renegotiate the international treaties that may be contrary to the constitution." In other words, Bolivia had to reconcile its new constitution with its international obligations.

As a first, more modest effort, the government of Bolivia sought to amend the Single Convention by deleting its provision requiring that "coca leaf chewing must be abolished" within 25 years (Article 49), a period that ended in 1989. Without any objections, Bolivia's request would have been approved automatically. But the U.S. government organized a "friends of the convention" group that led to 18 countries objecting to Bolivia's request. In response, the Bolivian government took more drastic action.³⁶

In June 2011, the Plurinational State of Bolivia withdrew from the 1961 Convention on Narcotic Drugs as amended by the 1972 Protocol with the

intention to re-adhere with a new reservation allowing for the traditional uses of the coca leaf in its territory. In order to block Bolivia's return to the Single Convention, one-third or more of the 184 UN treaty members would have had to formally object by January 10, 2013. Bolivia launched a diplomatic campaign to secure support and gained an important victory at the November 2012 [Ibero-American Summit](#) held in Cádiz, Spain. At that summit, a special communiqué was adopted on the traditional use of coca chewing in which the presidents unanimously stated:

Conscious of the importance of conserving the ancestral and cultural practices of indigenous peoples, in the framework of respect for human rights and the fundamental rights of indigenous peoples, in accordance with international instrument ... We recognize that the traditional use of coca chewing (*akulliku*) of the coca leaf is a cultural and ancestral manifestation of the people of Bolivia and Peru and should be respected by the international community.

In other words, Bolivia gained at least tacit support from all Latin American countries, as well as Spain and Portugal, for eliminating the international stigma presently—and erroneously—associated with the coca leaf.

By the January 10 deadline, only 15 countries had formally objected.³⁷ Bolivia is now again a party to the Single Convention, having won a significant victory in its efforts to right the historic wrong in the classification of the coca leaf as a dangerous narcotic. Bolivia is the first country to ever denounce the 1961 Convention and then re-accede with a reservation (though other countries included reservations with their original adoption of the convention) However, the right to traditional uses of the coca leaf only pertains to Bolivia; the exportation and use of coca leaf internationally remains prohibited.

Impediments to reform

Despite these promising signs, the response by other Latin American governments to the Bolivian and Uruguayan initiatives illustrate the myriad of political and other obstacles to drug policy reform in the region – and beyond. Although Bolivia secured recognition of the licit uses of the coca leaf at the Ibero-American summit in Cádiz in November 2012, Mexico broke ranks and was the only Latin American country to oppose Bolivia's re-entry to the 1961 Convention. Countries around the region initially criticized Uruguay's actions. Perhaps the toughest condemnation came from Colombia's President Santos, who – at the time the proposal was announced – reiterated his assertion that national reforms should only be implemented after a new international consensus is reached. At the November 2012 bi-annual meeting of the OAS's CICAD, following a presentation on the Uruguayan government's cannabis initiative only one country offered concrete support, Guatemala. However, the reference to regulated markets for cannabis in the OAS report, as well as the *Pathways* scenario, and OAS Secretary General's personal endorsement of the Uruguayan plan for regulated cannabis markets may blunt any such criticism in the future.

Efforts by Guatemalan President Otto Pérez Molina to create a united front among Central American countries in favor of drug policy reform have failed to bear fruit. Prior to the Cartagena summit, Guatemalan President Pérez Molina invited Central American presidents to attend a regional summit to shape a joint position on drug policy alternatives. In response, U.S. officials went on a 'charm offensive' in Central America sending more U.S. officials to the region in a one month period than at any time in recent history, including Vice President Joe Biden, Homeland Security Secretary Janet Napolitano, then-Under Secretary of State Maria Otero and the State Department's top drug official, William Brownfield. The effort paid off: Though all of

the Central American presidents had initially accepted the invitation, the presidents of El Salvador, Honduras and Nicaragua dropped out at the last minute – no doubt due at least in part to U.S. pressure. Costa Rican president Laura Chinchilla did attend the summit and initially adopted a more reform-oriented discourse, at least for an international audience. But as her popularity has plummeted and popular concerns about crime and drug trafficking have grown, she too has adopted a hardline approach, proposing “looser wiretapping laws, easier confiscation of suspect assets and quicker approval of U.S. warships docking in Costa Rican ports. President Laura Chinchilla also wants to drop a longstanding ban on extraditing Costa Ricans for prosecution.”³⁸

As noted above and as evident in Costa Rica, governments often face pressure from media and some political sectors to maintain “tough” drug policies. Both foment popular perceptions and fears that more flexible drug laws will lead to increased drug use and violence. As has long been the case in the United States, politicians often fear that they have a lot to lose and little to gain in promoting alternative drug policies. In contrast to shifting public opinion in the United States on cannabis legalization, public opinion in Latin America by and large remains in favor of prohibitionist and *mano dura* approaches. Improved and more informed media coverage and public education is needed to promote an evidence-based debate on drug policy and drug policy alternatives in the region.

In short, while key Latin American countries have spoken out in favor of reform, many others have remained silent or remain closely allied with the United States and Canada, strong defenders of the prevailing drug control paradigm. Countries with leftwing governments that have played a leading role in creating Latin American policies and positions independent from Washington – such as Brazil and Venezuela – have failed to advocate for regional or international drug policy

reforms and often resist efforts to promote more debate. (Indeed, the strongest advocates of reform, Presidents Santos and Pérez Molina, come from conservative political backgrounds and Pérez Molina, a retired general, faces troubling allegations of responsibility for human rights violations.) Since taking office in late 2012, Mexican President Enrique Peña Nieto has not yet shown an inclination to join Presidents Santos and Pérez Molina in advocating for an international debate on drug policy alternatives, as his predecessor, Felipe Calderón, ultimately did. In Latin America, the scale remains tipped towards those governments supporting the status quo.

Continued Militarization

For its part, Washington largely continues on auto-pilot when it comes to the implementation of drug control programs in Latin America.³⁹ In response to the growing drug policy debate in Latin America, US officials have made clear their willingness to discuss any policies – as long as they fall within the confines of the existing conventions. This approach has continued into President Obama’s second mandate. To their credit, since taking office President Obama and the Director of National Drug Control Policy, Gil Kerlikowske, have refrained from using “drug war” rhetoric and have focused much more on the issue of U.S. demand for illicit drugs, publicly recognizing the U.S. role in stimulating illicit drug trafficking. The change in tone was evident in President Obama’s recent visit to Mexico and Costa Rica where, following Mexican President Peña Nieto’s lead, he focused on economic development and trade issues, downplaying security concerns.

Yet despite the Obama Administration’s change in rhetoric, in reality the U.S. “war on drugs” continues to be waged across the region. On any given day, 4,000 US troops are deployed

across Latin America on counter-drug missions. In addition, as many as four U.S. Navy ships are on patrol, U.S. pilots are clocking tens of thousands of hours per year flying drug-control missions and agents from at least 10 U.S. agencies are involved in training and other drug control activities in the region.⁴⁰ As Plan Colombia and the Merida Initiative in Mexico wind down, U.S. attention has steadily shifted to Central America. U.S. sources report that an estimated 80 percent of the cocaine bound for the United States now passes through the isthmus. U.S. drug control assistance to Central American security forces has steadily increased through the Central American Regional Security Initiative (CARSI). A variety of U.S. agencies are now on the ground in Central America; in Guatemala, U.S. marines have trained the feared Kaibiles special forces unit, while the DEA’s Foreign-Deployed Advisory Support teams (FAST) accompany Honduran forces on anti-drug missions and in the process have been implicated in various killings.⁴¹ In 2011, the U.S. Defense Department trained more than 300 Honduran military personnel and spent nearly US\$90 million to maintain Joint Task Force Bravo, the 600-member U.S. unit stationed at the Soto Cano Air Base.⁴² Yet the dangers loom large of further militarization in a region with a tragic history of U.S. intervention and internal conflict, violence and extremely weak and often corrupt institutions.

The ruling Conservative party in Canada has also stepped up its military assistance for counter-drug efforts in Central America. Since 2006, Canadian forces have joined with other countries in an unprecedented increase in military involvement in drug interdiction in Latin America.⁴³ Though the Canadian government has long participated in naval operations in the Caribbean and has provided radar and reconnaissance patrol aircraft to countries in the region, the commander of Canada’s operational forces, Lt.-Gen. Stuart Beare, recently announced stepped-up efforts

in Central America and the Caribbean. “We’re staying connected in the hemisphere, in particular, in capacity-building partners in the Caribbean Basin, sustaining a great effort with Jamaica, reaching into Belize and Guatemala, helping them to build their own capacity, to manage their own security forces and security conditions,” he told the CBC. Canada now has a “forward-deployed operational staging center” in Jamaica and is training its troops in jungle warfare in Belize, as it provides military support to that country.⁴⁴

Canada also participates in ongoing counter-narcotics missions in the Caribbean Sea and the eastern Pacific. Canadian warships and aircraft have acted as eyes and ears for the U.S.-led Joint Interagency Task Force – South (JIATF-S) to prevent transport of drugs and money by air and sea between South America, Central America, the Caribbean islands and North America.⁴⁵ Canadian military aircraft and warships have been involved in interdiction efforts in the Caribbean Sea including assisting the U.S. Coastguard to board vessels and seize illegal drugs. Canadian military aircraft have been involved in surveillance sorties in the region.⁴⁶ Canada also participates in Operation Martillo, a multilateral counter-drug interdiction effort in the Caribbean Basin led by the United States, through Operation CARIBBE, which provides Canadian ships and aircrafts to the multilateral initiative.⁴⁷ These moves are consistent with Canada’s recent objections to Bolivia’s reservation on the coca leaf and its return to the 1961 Convention, as well as its opposition to the UNGASS 2016 debate on global drug policy.⁴⁸

For Central American governments and peoples, a fundamental concern is the potential for drug trafficking and organized crime to further exacerbate the region’s high levels of crime and violence. Crucial to mitigating the corrosive impact of drug trafficking and other forms of crime are solid institutions, particularly Central American judiciary and police forces, which

remain among the weakest in the hemisphere. Yet institutional reform and institution-building are medium to long-term strategies. In the short term, viable strategies to reduce crime and violence and needed in order to give governments the space they need to pursue a longer-term reform agenda. More promising options are focused-deterrence and selective targeting strategies, which have shown some success in reducing violent crime in numerous locations in the United States. According to Vanda Felbab-Brown, these strategies “seek to minimize the most pernicious behavior of criminal groups, such as engaging in violence, or to maximize certain kinds of desirable behavior sometimes exhibited by criminals...”⁴⁹ In other words, enforcement efforts are designed to shape criminal behavior in ways that, in this case, discourage violence. For example, police can clearly communicate that they will target those criminal groups that engage in the most violent behavior and act accordingly. While the amount of illicit drugs available will not necessarily be impacted, homicides and other violent crimes should decline.

Policy recommendations

Meaningful drug policy reform will no doubt be a long and messy process, yet demands for reform are steadily growing across the hemisphere. Latin American leaders have played a key role in advancing regional and international drug control debates and some countries, such as Bolivia and Uruguay, are moving forward with significant reforms. Numerous efforts could and should be undertaken to maintain the momentum and advance drug policy debates and reforms:

- President Obama should allow Colorado and Washington to implement the referendums approved by the citizens in those states and should participate constructively in the drug policy debate at home and abroad; in the

- least, the U.S. and Canadian governments should show greater tolerance for the drug policy debate that has blossomed across Latin America.
- As the drug policy debate continues, there are a series of reforms that can be undertaken now by countries that are in-line with the flexibility allowed by the conventions. Of these, perhaps the most significant are the decriminalization of possession of small amounts of drugs for personal consumption; drug law reform to ensure proportionality in sentencing and alternatives to incarceration for those convicted of low-level, non-violent drug offenses; and the expansion of evidence-based treatment services for people dependent on drugs, which remain woefully inadequate across the region.
 - In Central American and other countries facing high levels of violence, law enforcement agencies should consider adopting focused-deterrence and selective targeting strategies aimed at reducing violence and promoting development, rather than simply focusing on attempts to stifle the flow of drugs to the United States and Europe.
 - Countries across the region should support the efforts of the government of Uruguay to create legal, regulated markets for cannabis. Countries should be given the flexibility to experiment with and implement policies that are appropriate for their national realities. In addition, much could be learned from the Uruguayan experience about basic questions such as how to implement regulatory frameworks that avoid, or limit, parallel black markets and the impact of creating legal, regulated markets on the consumption of cannabis, other drugs and alcohol.
 - Bolivia's experience to gain international acceptance for the use of the coca leaf in its natural form points to the need for the modernization and revision of the existing international drug control conventions. On the coca issue, the WHO should undertake a review of the coca leaf and consider the possibility to remove it from Schedule I of the 1961 Single Convention on Narcotic Drugs. More broadly, serious convention reform is needed to make them "fit for purpose" and the 2016 UNGASS on Drugs provides an ideal forum for initiating that process.
 - Having launched the 2016 UNGASS on drugs, Latin American leaders should take advantage of the opportunity, through their foreign ministries and missions in New York and Vienna, to play a key role in defining its content, ensuring that it maintains a reform-oriented focus.
 - Latin American governments and civil society organizations should organize forums for debating the OAS analytical and scenarios reports at the local and national level. They should ensure an active debate on drug policy issues at regional forums, including the Meeting of Ministers Responsible for Public Security in the Americas, to be held in Medellin, Colombia in November 2013, and the next bi-annual CICAD meeting also to be held in Colombia in December 2013. These should lay the groundwork for the 2014 OAS General Assembly Special Session focusing on drug policy, which should be structured to ensure a serious, informed debate and to allow the hemisphere's foreign ministers to come to consensus on at least initial drug policy reforms.⁵⁰

Endnotes

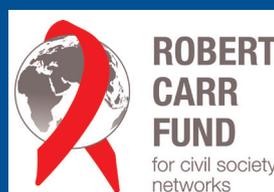
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The International Drug Policy Consortium (IDPC) is a global network of NGOs and professional networks that promotes objective and open debate on the effectiveness, direction and content of drug policies at national and international level, and supports evidence-based policies that are effective in reducing drug-related harms. IDPC members have a wide range of experience and expertise in the analysis of drug problems and policies, and contribute to national and international policy debates.

For decades, Latin American governments largely followed the drug control policies and programs of Washington's so-called war on drugs. Yet, Latin America has recently emerged at the vanguard of efforts to promote debate on drug policy reform. After analyzing the regional debate, national level reforms and impediments to those reforms, this report concludes with concrete policy recommendations that should be undertaken to maintain the momentum and advance drug policy debates and reforms in the region.

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