

Informal Drug Policy Dialogue Report

Warsaw, Poland, 14th to 16th February 2013

Executive Summary

The tenth meeting of the Informal Drug Policy Dialogue series, organised by the Transnational Institute (TNI) and Association Diogenis, took place in Warsaw, Poland, gathering over 35 NGO representatives, academics, policy makers and practitioners. The Dialogue comprised five major sessions on drug policy.

During the first session, participants discussed the current state of drug policy in Poland. Recently, drug consumption patterns have shifted in Poland, with decreased levels of problematic heroin use and a rise in use prevalence of cannabis and new psychoactive substances. Limited harm reduction and drug dependence treatment services are currently available for people who use drugs. At the same time Polish drug policy retains severe punishments towards all people involved in the drug trade, including people who use drugs. In 2011, the Criminal Code was revised to allow for diversion mechanisms to be established in order to divert people who use drugs away from prison and into treatment. Although many issues remain regarding Polish drug policy, this reform is a positive development in the country.

The second session focused on the new European Union (EU) Drug Strategy for 2013-2020 and its Action Plan for 2013-2016. In the discussions, the Strategy was considered as an opportunity for EU member states to adopt collective actions in the field of drug policy. Although the new Strategy retains some gaps and weaknesses, the document includes many positive elements, such as the promotion of a balanced, evidenced, human rights-based and harm reduction oriented approach towards drugs. The Action Plan is currently being negotiated by member states. The Strategy and Action Plan can constitute important documents in the lead up to the 2016 United Nations General Assembly Special Session (UNGASS) on Drugs. In the face of regional and global calls for drug policy reform, it is fundamental that the EU supports this new dynamic. The model for civil society involvement developed by the EU with the Civil Society Forum can also be useful to promote NGO participation at the UNGASS debates.

Thirdly, participants discussed cannabis policy reform movements worldwide, with a special focus on the legal regulation of cannabis markets in US states Colorado and Washington and the Uruguayan bill on cannabis policy. Discussions also covered cannabis policy and possibilities for reform in Switzerland, Denmark, Sweden and Poland. Participants discussed the implications of cannabis policy reform on the global drug control system, how these reforms can be justified by governments within the UN drug control conventions, and what role the International Narcotic Control Board has taken on as the 'guardian' of the treaties.

In the following session, participants shared their experience and expertise on different models of decriminalisation, with a specific focus on Poland, Italy and the Czech Republic. The session was also an opportunity to present attempts from the International Drug Policy Consortium (IDPC), TNI and Release at mapping out the different models of decriminalisation that have been established across the world. Discussions revolved around how effective these models have been in practice, highlighting the strengths and weaknesses of decriminalisation. The main conclusions were that, when well implemented, decriminalisation was a positive reform initiative to reduce stigma and incarceration and increase access to healthcare services. However, criticisms were also raised on the fact that decriminalisation was only a 'half-way' solution, with people who use drugs remaining in close contact with the illicit drug market, and that this policy could lead to inconsistencies in national level drug policy, with a medicalisation of drug use, and increased penalties for low level dealing, among other issues.

The final session of the Dialogue provided updates on the 56th Session of the Commission on Narcotic Drugs (CND), which was held from 11th to 15th March 2013 in Vienna, Austria. Although non-governmental organisations (NGOs) have little space in the formal deliberations of the CND, participants discussed various tools and methods that NGOs can effectively use to influence the debates and resolutions. As such, this session was an attempt to strategise around the resolutions that would be presented at this year's CND, the main NGO events and NGO coordination mechanisms in place in Vienna, and the major themes on the agenda of the meeting.

Introduction

The tenth meeting of the Informal Drug Policy Dialogue series took place in Warsaw, Poland, from 14th to 16th February 2013. The aim of the dialogues is to provide a platform for professionals to discuss drug policy issues. The initiative started in Crete in 2004. Subsequent meetings were held in Budapest (2005), Bern (2006), Rome (2007), Berlin (2008), Crete (2009), Amsterdam (2010), Lisbon (2011) and Prague (2012). A similar series of events started in Latin America in 2007 and South East Asia in 2008. The Informal Drug Policy Dialogue series is a joint initiative of the Transnational Institute¹ and the Andreas Papandreou Foundation (APF)². Since 2010, APF has no longer been involved in these dialogues and the drug policy activities of the organisation were taken over by Association Diogenis, Drug Policy Dialogue in South East Europe³. Thanks are due to the European Commission (EC)⁴ and Open Society Foundations (OSF)⁵ for their valuable support in making this Dialogue possible, and to the Polish National Bureau for Drug Prevention for their hospitality and their support,

1 www.tni.org

2 <http://www.agp.gr/agp/content/Home.aspx?d=7&rd=5499005&f=-1&rf=-1&m=-1&rm=-1&l=1>

3 www.diogenis.info

4 http://ec.europa.eu/index_en.htm

5 <http://www.opensocietyfoundations.org/>

especially for their presentation of the Polish drug policy and arrangements to visit *Eleuteria*, an outpatient drug treatment and methadone clinic in Warsaw. We also extend our thanks to Thanasis Apostolou, Martin Jelsma and Ernestien Jensema for organising the meeting.

As per the tradition, the meeting was held under Chatham House rule to ensure confidentiality and allow participants a free exchange of ideas. Over 35 participants attended the meeting, including policy makers, practitioners, academics and representatives from non-governmental and governmental organisations. Five themes were discussed: Polish drug policy; the European Union (EU) Drug Strategy for 2013-2020 and its new Action Plan for 2013-2016; cannabis policy developments worldwide; the decriminalisation of drug possession for personal use and the role of threshold quantities; and updates on the 56th Session of the Commission on Narcotic Drugs (CND). Each session started with introductory remarks from key experts, followed by discussions. This report highlights the main issues covered during the Dialogue. The ideas expressed in the report are those of the participants in their capacity as experts in the drug policy field, and should not be interpreted as reflecting consensus among the group, or endorsement by the organisers.

Session I: Drug policy in Poland

1. The Polish National Bureau for Drug Prevention

The National Bureau for Drug Prevention (NBDP) was established in 1993 by the Ministry of Health. It initially focused on drug prevention, treatment and rehabilitation and to coordinate the work of NGOs providing services to people who use drugs, the objective being to reduce the use of narcotic drugs and psychotropic substances. The NBDP's tasks were broadened in 2001 to encompass the coordination of all actions undertaken to reduce drug demand, on behalf of the Ministry of Health and with the cooperation of law enforcement agencies. In 2010, the NBDC became responsible for the implementation of government policy on non-chemical dependencies, as well as for coordinating and implementing the national drug strategy.

2. Drug use and dependence

There has recently been a rise in drug use prevalence in Poland, especially for cannabis. While 90 to 95 per cent of people used to use opioids in the 1990s, Poland now faces new challenges caused by a rise in the use of methamphetamines and new psychoactive substances, as well as increases in cannabis production. Below is a general overview of drug use and dependence in Poland, substance by substance.

Heroin

According to available data, heroin use and injection are declining in Poland. The number of problematic users has declined from 25,000 to 15,000 people. According to a study by the European Monitoring Centre on Drugs and Drug Addiction (EMCDDA), 0.3 per cent of people who use drugs are considered to be problematic - this percentage is relatively low compared to other European

countries.⁶ Every two years since 2008, studies have been conducted among problematic users at needles and syringe programmes (NSPs). Data from 2010 showed that 71 per cent of these clients were using heroin. In 2011, one third of people admitted to drug dependence treatment in Poland were using heroin. National data show that the HIV infections rate among people who use heroin is stable. With regards to drug-related crime, in 2008 there was a peak in the number of drug offences, but heroin-related crimes fell between 2008 and 2011, from 2,416 to 1,165 people convicted for heroin-related crimes. Despite these positive trends, there was a rise in heroin seizures in Poland in 2011.

Amphetamines/ecstasy

No major changes were recorded for prevalence rates of ecstasy use, and these remain stable at 3 per cent among school children (aged 15-16) and 3.4 per cent among adults. Amphetamine use prevalence is at 5 per cent among school children and at 4 per cent among adults.⁷ Data collected by the National Bureau for Drug Prevention highlighted that 60 per cent of clients at NSPs are now amphetamine users. The purity of these substances remains low in Poland. There has recently been a fall in amphetamine seizures and in the number of detected labs, whereas amphetamine-related crime has increased from 13,275 in 2008 to 14,204 convictions in 2011.

Cannabis

Cannabis has become increasingly popular in Poland, with a lifetime prevalence rate of 24 per cent among students and 17.6 per cent among adults.⁸ This prevalence rate is relatively high compared to other European countries. Cannabis plantations and cannabis products sales are also becoming more popular. It is challenging for supply reduction authorities to respond to both personal cannabis cultivation and large scale production by organised criminal groups and mafias. Cannabis-related crimes have increased dramatically in Poland – today, 70 per cent of all crimes in the country are related to cannabis.

New psychoactive substances

The European School Survey Project on Alcohol and Other Drugs (ESPAD) reported a lifetime prevalence of 11 per cent of designer drugs use among school children in Poland, and 3 per cent among adults (aged 15 to 64).⁹ A 2011 European survey shows that Ireland has the highest use prevalence (at 16 per cent), with Poland coming next with a 9 per cent prevalence among people aged 15-24.¹⁰ The average use prevalence in Europe is at 5 per cent. A study was conducted in 2010 to analyse new trends after the closure of shops selling new psychoactive substances. The study found that these shops were re-opened under new names, and selling continued through online shopping. The drug scene is very dynamic, with new psychoactive substances being introduced in

6 See: <http://www.emcdda.europa.eu/publications/country-overviews/pl/data-sheet>

7 See: <http://www.emcdda.europa.eu/publications/country-overviews/pl/data-sheet>, and data collected by the National Bureau for Drug Prevention (2010)

8 Based on data collected by the National Bureau for Drug Prevention (2010)

9 Based on data collected by the National Bureau for Drug Prevention (2010)

10 http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/2013/docs/20130131_eu_drug_markets_report_en.pdf

the market regularly.

Government response to drug use and dependence

The government's strategy focuses on improving control over the illicit drug market with intensified law enforcement and policing actions, more spending dedicated to services for drug dependence treatment and improving the quality of drug services. The government's policy aims to build on available evidence, and refers to a number of indicators to help review the national drug strategy.

There are 87 in-patient treatment centres in Poland. In 2010, there were an estimated 14,000 patients admitted to drug dependence treatment, including 2,200 patients undergoing methadone maintenance therapy (MMT). The coverage of opioid substitution therapy (OST) is 15 per cent. The new national drug strategy aims to increase coverage by 25 per cent of those who need it. NSPs are available in nine cities for approximately 2,000 clients. As patterns of use evolve, NSPs are becoming less and less relevant. Harm reduction programmes seek to address safer night life. In practice, government institutions prefer to focus efforts on drug prevention programmes, the quality of which has improved in order to bring them in line with European quality standards.

With regards to HIV/AIDS, Poland has one of the lowest HIV testing rates in Europe,¹¹ which makes it problematic to develop an effective harm reduction response. In addition, hepatitis C prevalence among people who use drugs is reportedly very high, reaching 40 to 60 per cent.¹² Harm reduction strategies will need to adapt to new trends in drug use and related harms.

3. Cooperation for drug supply reduction

The first clandestine lab appeared in 1993 in Poland. Between 1993 and 2012, the police dismantled more than 200 clandestine labs. Today, synthetic drug production has stabilised, but there has been an increase in indoor cannabis production and new precursors for synthetic drugs have been introduced in the illicit drug market. International cooperation was described by the Polish representative as being essential to combatting drug-related organised crime, in order to tackle trafficking close to production areas. To that end, a number of cooperation mechanisms have been established at national, regional and international levels to tackle illicit drug supply.

At the international level, the police headquarter and the Ministries of Foreign Affairs and of Internal Affairs collaborate with UN agencies, in particular the Commission on Narcotic Drugs (CND) to negotiate resolutions on drug policy. Poland also works with the Cooperation Programme between Latin America and

11 European Centre for the Epidemiological Monitoring of AIDS (2002), 'End-year report 2001'. *AIDS Surveillance in Europe 2002*, **66**: 7-8. Approximately 36 per cent of incident AIDS cases are diagnosed simultaneously with the HIV diagnosis. See: Rosinska, M. (1 April 2006), 'Current trends in HIV/AIDS Epidemiology in Poland, 1999-2004', *Eurosurveillance*, **11**(4), <http://www.eurosurveillance.org/ViewArticle.aspx?ArticleId=618>

12 European Centre for Disease Prevention and Control & European Monitoring Centre for Drugs and Drug Addiction (2011), *ECDC and EMCDDA Guidance - Prevention and control of infectious diseases among people who inject drugs*, http://www.ecdc.europa.eu/en/publications/publications/111012_guidance_ecdc-emcdda.pdf

the European Union on Drugs Policies (COPOLAD)¹³ to reduce the illicit supply in cocaine and synthetic drugs. Poland is also involved in a new cooperation mechanism led by China which includes EU-China police trainings on precursors used for synthetic drugs, as well as the project 'Reduction of Production and Distribution of Drugs in the EU' (project CHOPIN) to reduce the illicit distribution of drugs in the EU.

At regional level, the police headquarter and the Ministry of Health and Social Affairs engage in discussions with the European Union Horizontal Drugs Group (HDG). Poland also collaborates with the Standing Committee on Operational Cooperation on Internal Security (COSI) within the framework of the European Pact Against Synthetic Drugs (this includes four pillars – countering production, trafficking, tackling legal highs, and law enforcement trainings to combat organised crime and clandestine laboratories), and participates in the European Multidisciplinary Platform Against Criminal Threats (EMPACT) on issues related to synthetic drugs. Poland also works closely with BALTCOM and the European Union Border Assistance Mission to Moldova and Ukraine, and is involved in a number of bilateral cooperation projects with Ukraine, Moldova, Belarus, Georgia and Mexico.

Finally, at the national level, the police headquarters works closely with the Ministry of Internal Affairs, the Ministry of Justice and the Ministry of Health to combat organised crime, including drug-related crime.

4. Reforms of the national criminal justice system

For the past ten years, Polish drug policies were restrictive towards drug use and possession of small amounts of drugs for personal use. These offences were subject to a three year prison sentence. In April 2011, discussions started on a new regulation which started being implemented in January 2012. The main change relates to Article 62a of the Polish Criminal Code. The article now gives the possibility to discontinue criminal proceedings for a person caught in possession of small amounts of drugs for personal use. Article 70a of the Criminal Code imposes on the prosecutors and judges to set up an interview with a therapy specialist if the person caught with drugs is suspected to be a drug user. The judge or prosecutor can now suspend the proceedings if the person undergoes drug dependence treatment, and that the treatment outcomes are positive. Finally, Article 73a offers the possibility for a convict in prison to access therapy out of prison under conditional release.

The reform does not change policing practices. Therefore, a person caught in possession of drugs will still be arrested by the police, the drugs will be confiscated and the person will be sent to the court. It is at that level that the change operates. Since January 2012, 1,094 people have seen their criminal proceedings discontinued. This has led to a decrease in the number of people sent to prison for illicit drug possession from 6,226 people in 2011 to 5,650 in 2012, and a PLN 5 million¹⁴ saving in public expenditure, which are now used to fund prevention and harm reduction services. This reform enables the country to focus drug policy more on health than on criminal justice. The reform was made

¹³ For more information, see: www.copolad.eu

¹⁴ Corresponding to USD 1,59 million

possible thanks to the cooperation between the Ministry of Justice, the Ministry of Health, the police, the media, Open Society Foundations (OSF), and other partners.

Nevertheless, although this reform is a positive development in Poland, there are several issues attached to it. For instance, there is currently no definition in the law on what constitutes 'small quantities of drugs'; the decision on this is made by the prosecutor or the judge. In practice, the therapy specialist can help to determine whether a person needs treatment rather than imprisonment. A proposal has been introduced to establish guidelines on small quantities/larger quantities, but it needs to be discussed.

Session II: The European Union Action Plan 2013-2016 in the context of the European Union Drug Strategy and the Lisbon Treaty

A new EU Drugs Strategy 2013-2020¹⁵ has been adopted: 'By 2020, the priorities and actions in the field of illicit drugs [...] should have achieved an overall impact on key aspects of the EU drug situation. They shall ensure a high level of human health protection, social stability and security, through a coherent, effective and efficient implementation of measures, interventions and approaches in drug demand and drug supply reduction at national, EU and international level, and by minimising potential unintended negative consequences associated with the implementation of these actions'.

Under the Irish Presidency, discussion started on a draft Action Plan 2013-2016. A joint EMCDDA and Europol report¹⁶ provides a baseline of what appears to be an increasingly dynamic illicit drug market and calls for 'an equally dynamic, innovative and agile response'. According to the report, 'Not all approaches work and, crucially, not all approaches that worked in the past will be effective in the future. History has shown us that good intentions do not necessarily deliver results in the drugs area. Most importantly, the dynamic and responsive nature of the drug market means that we are faced with a moving target, where any success is likely to be transient. This is why monitoring, analysis and assessment are essential tools for ensuring that our strategies and responses remain fit for purpose'.

The Lisbon Treaty changed the rules of EU drug policy making; are the new rules clear enough and capable to face such complex challenges? To what extent have lessons been learned from the previous strategy and action plans? What are the innovative elements of the new strategy and what should become priorities for its implementation?

1. The new EU Drugs Strategy for 2013-2020

The EU Drugs Strategy for 2013-2020 was developed under the Cypriot

15 Council of the European Union (11 December 2012), *EU Drugs Strategy (2013-2020)*, <http://register.consilium.europa.eu/pdf/en/12/st17/st17547.en12.pdf>

16 European Monitoring Centre on Drugs and Drug Addiction & Europol (2013), *The European drug market - A strategic analysis* (Lisbon), <http://www.emcdda.europa.eu/publications/joint-publications/drug-markets>

Presidency. The strategy is not a law; it is a non-binding policy paper that guides the policies developed by EU member states in the field of drug policy. An evaluation of the previous Drug Strategy for 2005-2012 by RAND Europe¹⁷ concluded that the Strategy does have an impact on national policies, and is a tool to bring member states together to discuss drug policies and strategies.

Traditionally, the EU Drugs Strategy is drafted by the EC. This time, however, it was eventually written by the EU Presidency. In some aspects, the Strategy for 2013-2020 has some weaknesses – it was drafted without any real discussion about the past, present and future of EU drug policy, and tends to avoid discussions on decriminalisation and long-term policy reform. It is also drafted in such broad terms that it can, in fact, be interpreted in many different ways by member states. This is mainly because the Strategy is agreed by compromise among all EU member states, including some that are fairly conservative in their drug strategies, such as Italy and Sweden.

Nevertheless, the Strategy provides an opportunity for EU member states to adopt collective actions in the field of drug policy. Some elements were also strengthened in the 2013-2020 Strategy compared to previous strategies, such as the prominence of harm reduction, a reflection on the unintended consequences of drug policy and the need for a balanced approach. The strategy also includes a list of key priorities:

- It raises concerns about poly-drug use, and the need to include alcohol dependence in drug policy (although the latter was dropped in the final text as it was too complex)
- It highlights the challenges posed by new psychoactive substances, which will be tackled soon in a new EU piece of legislation
- It encourages discussions on the fundamentals of drug policy with non-EU member states
- It highlights the importance of strengthening the evidence-base and fact-base of drug policies through solid evaluation mechanisms
- It promotes the establishment of measures and indicators to evaluate the implementation of the Strategy
- It promotes consultations with, and the inclusion of, civil society organisations, including through the Civil Society Forum on Drugs¹⁸
- It gives prominence to demand reduction strategies over supply reduction efforts, and gives equal importance to drug prevention and harm reduction interventions
- It encourages harm reduction interventions to adapt to new trends and patterns of drug use
- It gives more prominence to human rights (this was not included in previous strategies)
- It calls for funding to be allocated for demand reduction and harm reduction activities

17 Culley, D.M. et al (2012), *Assessment of the implementation of the EU Drugs Strategy 2005-2012 and its Action Plans* (RAND Europe), <http://dl.dropboxusercontent.com/u/64663568/library/RAND-assessment-of-implementation-of-eu-drugs-strategy-2005-12.pdf>

18 For more information about the Civil Society Forum on Drugs, see: http://ec.europa.eu/justice/anti-drugs/civil-society/index_en.htm

- It calls for supply reduction efforts to be more strategic and intelligence-based
- It promotes the development of alternative sentencing and proportionate penalties for drug offenders and people dependent on drugs, to shift the balance from the criminal justice to health prioritisation
- It promotes a shift from crop eradication campaigns towards long-term alternative development programmes (although the ultimate goal remains the eradication of crops deemed illicit)
- It highlights the importance of sincere cooperation so that a government's policy does not undermine the policies and positions of other EU countries
- It finally promotes international cooperation in the lead up to the 2016 United Nations General Assembly Special Session on Drugs (UNGASS).

The EU is now in the process of drafting a 4-year long Action Plan which aims to break down the Strategy's objectives into concrete steps and detailed actions for EU member states and the EU itself to implement. Each action is attached to indicators to facilitate monitoring and evaluation. Participants at the Informal Drug Policy Dialogue considered a few priority issues that should be included in the Action Plan for 2013-2016. These include:

- Mechanisms to tackle new psychoactive substances. The UK has been very active on promoting new regulatory methods for the less harmful substances. The New Zealand experience can also be useful in this regard
- A harm reduction approach that can be adapted to adequately respond to the new trends and patterns of drug use, including the use of new psychoactive substances.

Once again, the Action Plan constitutes guidance for EU member states to follow on what should be achieved. The drafting of Action Plan for 2013-2016 is expected to be completed during the Irish Presidency, during the first half of 2013. There have been basic discussions at the HDG on the contents of the Action Plan.¹⁹

2. **The EU Drugs Strategy and Action Plans - The Slovenian perspective**

In Slovenia, there is currently no national drugs strategy to replace the one that expired in 2009. The new EU Drugs Strategy is therefore important for the country as it almost acts as a binding document to guide future drug policy actions at national level. This Strategy is particularly important because of the prominence it gives to harm reduction, and the guidance it offers for both illicit and non-illicit drugs. The EU Drugs Strategy can also be useful to promote the development and scaling up of demand reduction services in Western Balkan countries, especially those countries that have an ambition to join the EU. In the past, the Pompidou Group has played an important role to make this possible, although the Group seems to have recently lost some credibility and influence.

According to the Slovenian speaker, the new EU Drugs Strategy has two gaps: it

¹⁹ The first draft can be found at :

http://www.eumonitor.nl/9353000/1/j4nvgs5kjg27kof_j9vvik7m1c3gyxp/vj7e8gvjtoze/f=/5418_1_13_rev_1.pdf

would have been useful to include guidelines on how to handle possession for personal use, as well as add information on the installation of drug consumption rooms. The Slovenian government is now looking to open such a facility. In 2011, the government amended the Slovenian criminal code to make this reform possible, but Slovenia is now seeking funding for the programme. Support from the EU Drugs Strategy on the implementation of drug consumption rooms would have been useful in that regard.

3. The EU Drugs Strategy and Action Plans - The Norwegian perspective

Norway has the highest prevalence of overdose deaths in the EU. The Government has just launched a White Paper on policies related to illicit drugs, alcohol and doping²⁰ which has been criticized by Norwegian press and other countries. In Norway, there has been no debate about the adoption of the EU Drugs Strategy, as the country is not part of the EU. Yet, Norway is influenced by the Strategy as it is part of the EMCDDA and therefore has to report on its national drug policy.

The Norwegian speaker described the EU Drugs Strategy as containing a lot of good elements, but being so broad that it could indeed be interpreted in many different ways. The issue will therefore relate to how EU member states use the objectives of the Strategy in their national policies and programmes. It was regarded as positive that the Strategy mentions hepatitis C as 90 per cent of people who use drugs are infected with the disease in Norway. In the field of drug prevention, the Norwegian speaker believed that the EU Drugs Strategy should have given more prominence to universal prevention, as well as prevention programmes that do not only focus on health. Concerns were also raised on the definition of 'evidence base' – whether this would relate to scientific evidence, social evidence, etc. The model adopted by the EMCDDA on 'evidence' focuses on epidemiology. Today, there is a shift from solely focusing on evidence of reductions in the prevalence of drug use, towards evaluating reductions in harmful patterns of use. The objectives of the future EU Action Plans should be clear in that regard. Finally, it was considered that the overall objective of the Strategy to contribute to a disruption of the illicit drug market was quite ambitious, although it is more realistic than the objective included in previous strategies which aimed to 'eradicate' the illicit drug market. Regarding supply reduction, the Strategy also omits to mention how the EU can help tackle the new drug trafficking routes in West Africa and the impact they have had on corruption, organised crime and terrorism.

4. Discussion

The EU Drugs Strategy in international forums

Some international forums, such as the CND, have been very conservative on drug policy. The EU Drug Strategy may be a useful tool to influence the debates

20 This is the first white paper in Norway setting out a comprehensive drugs and alcohol policy that covers alcohol, drugs, addictive medicinal drugs, and doping as a social problem. For more information, see: SIRUS Norwegian Institute for Alcohol and Drug Research (2012), *The drug situation in Norway 2012 - Annual report to the European Monitoring Centre for Drugs and Drug Addiction*, http://www.sirus.no/filestore/Import_vedlegg/Vedlegg_publicasjon/drugsit_norway122.pdf

at CND, in particular to show that all 27 EU member states support harm reduction. However, because decisions are taken in unanimity at the CND, EU member states do not have much space or power in the debates. Therefore, even though the EU can mention the Strategy at international level, strong language on harm reduction is unlikely to be included in forthcoming CND resolutions.

The role of the EU at the 2016 UNGASS

EU countries have been pioneers in developing harm reduction services and promoting the decriminalisation of drug use to ensure adequate access to these services. Today however, these reforms have shown their limits in addressing the dramatic crises related to drug production and trafficking in Latin America and other regions of the world (e.g. explosion of drug-related violence, organised crime, corruption, etc.). In parallel, EU countries have become less and less willing to press for discussions on drug policy reform at international level. Today, these calls for reform are mainly coming from Latin America, where countries such as Guatemala, Mexico and Colombia are striving to tackle drug market related violence. The Organisation of American States (OAS) is currently working on possible scenarios for drug policy reform. Latin American heads of state have also requested that a debate take place at the UN level on current drug policy approaches, which led the UN Secretary General to convene a UNGASS in 2016.

It is fundamental that the EU supports this new dynamic for reform. There are currently some confusions as to what changes need to be made and what the debate should focus on – whether it should be on UN treaty reform, legal regulation, reducing violence, countering drug trafficking, etc. The EU can help adopt a common position on these matters and frame the agenda at the 2016 UNGASS to ensure meaningful debates. Indeed, in the strategy member states agreed to engage in a discussion about ‘the fundamentals of drug policy’.²¹

There are some criticisms related to the fact that the UNGASS is happening in 2016, when most current heads of government will have changed. There are concerns, therefore, that the 2016 UNGASS may only be a roll-over of the 1998 and 2009 reviews. Civil society has a major role to play to ensure that key issues are included in the agenda and to broaden the debate to issues related to human rights, health, social issues and development. They should therefore have a space for involvement in the 2016 review process. Regarding civil society engagement, it might not be helpful to replicate the ‘Beyond 2008’ initiative,²² but there should be a strong model for civil society engagement, perhaps under the model of the CSF on Drugs at the EU level. In order to ensure that all relevant issues are discussed at the 2016 UNGASS, it is also necessary that all UN bodies are involved in the debate.

A resolution was introduced by the Chair of the CND (i.e. Peru) at this year’s CND on the process at the 2014 mid-term high level review of the 2009 Political Declaration and Action Plan and the 2016 UNGASS (see, for more information, Session V below on the CND).²³

21 See: Council of the European Union (11 December 2012), *EU Drugs Strategy (2013-2020)*, <http://register.consilium.europa.eu/pdf/en/12/st17/st17547.en12.pdf>, paragraph 27, p. 13

22 For more information on ‘Beyond 2008’, see: http://www.vngoc.org/details.php?id_cat=8&id_cnt=56

Session III: Cannabis policy worldwide developments

The announced legal regulation of the cannabis market in Uruguay and the successful referenda in the US States of Washington and Colorado, have accelerated cannabis policy developments worldwide. A lively debate has started especially in the Americas about the potential merits of taking cannabis out of the prohibitive drug control equation. What kind of regulatory models are under consideration in Uruguay and the US? How big is the chance that these recent initiatives can actually be implemented and what are potential obstacles still to overcome, in terms of public opinion, federal opposition, details of the regulatory system and legal conflict with international treaty obligations? So far in Europe policy trends have focused on various forms of cannabis decriminalization, the introduction of medical marihuana, the Dutch coffee shop model and the more recent innovative cannabis social club model in Spain. Is there a chance that some countries in Europe will any time soon follow the breakthrough in the Americas and move towards cannabis regulation as well?²⁴

1. The Uruguayan regulation initiative

The Uruguayan government has developed a bill on cannabis regulation which has generated wide debate among the government, the population and the media.

Historical context

The Latin American Commission on Drugs and Democracy²⁵ has been instrumental in highlighting the failings of the global drug war. Indeed, drug consumption in Latin America has expanded to new markets and new drugs (such as pasta base), and the age of initiation for drug use is lower than in the past. Drug criminalisation has pushed Latin American society to a disintegration of communities, violence, corruption and a rise of organised criminal groups. It has also led to a large increase in the prison population, with one third of prisoners being incarcerated for drugs offences in Uruguay. Drug dependence treatment does not constitute an integral part of Uruguayan drug policies and is mostly unavailable, with only a few private clinics offering treatment services in the country.

For decades, the United States of America (USA) has sought to eradicate drugs in Latin America. Recently, Bolivia chose to adopt a different approach, with the government deciding to withdraw from the 1961 UN Single Convention on Narcotic Drugs to then re-accede with a reservation allowing for coca leaf chewing – hence protecting the traditional right of indigenous people to use the substance in the country. Today, Bolivian President Evo Morales has emerged as the leader of *cocaleros* in the region, against the USA. Other Latin American

23 The final version of the resolution is now available here: E/CN.7/2013/L.13/Rev.1: 'Preparations for the high-level review of the implementation by Member States of the Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem', <http://www.unodc.org/unodc/en/commissions/CND/session/56-draft-resolutions.html>

24 For more information, see: Blickman, T. (November 2012), *Highs and lows in cannabis policy reform - Recent developments in cannabis regulation*, weblog, <http://www.undrugcontrol.info/en/home/item/3497-highs-and-lows-in-cannabis-policy-reform>

25 <http://www.drogasedemocracia.org/english/>

countries have also become increasingly aware of the fact that US policy should no longer be considered as guidance for drug control approaches in the region. At the same time, the human rights agenda has become more prominent in the political agenda of many Latin American countries.

Uruguay has a strong democratic political culture, high levels of alphabetisation, and advanced social and labour protection laws compared to other Latin American countries. It is also one of the safest countries in the region. However, nowadays, public safety has become one of the top issues on the political agenda of the country, and a concern for many citizens. As a result, new personnel were hired, and a new budget was drafted, to respond to public security concerns. The level of criminal responsibility was also lowered from 18 to 16 years old.

The cannabis regulation proposal

In June 2012, the Uruguayan President presented a political document which includes 15 proposals for the country to respond to current concerns. Some of these proposals contradicted one another, and included harsher penalties for the trafficking of pasta base, compulsory treatment for people dependent on drugs, etc. while the text also included a project to legally regulate the production, sale and consumption of cannabis. The latter was also one of the most controversial measures put forward.

The proposal on cannabis regulation was justified by the President by the fact that one country should take the lead in drug policy reform in Latin America. It was also justified by an event that raised much debate on the issue of cannabis production for personal use – in early 2012, a 56 years-old woman was arrested and sent to prison for producing cannabis plants in her backyard for personal use. As this woman did not respond to the general image that the Uruguayan had of the ‘criminal individual involved in the drug trade’, this event raised many questions on cannabis plantations for personal use and for intent to supply.

Since 1974, the consumption and possession of small amounts of drugs has been decriminalised in Uruguay, although there is no definition of what constitutes a ‘small amount’ in national drug laws. In May 2012, a university study was released on drug consumption in Uruguay, concluding that the lack of specifications on what constituted a ‘small amount’ of drugs for personal use was the main cause of failure of the national drug policy. Another concern raised by the study was that consumers had to be in contact with the illicit drug market to buy drugs, and would usually wish to buy larger quantities that would last for a month. Although these larger quantities were for personal use, they would be taken as evidence for intent to supply, and the person caught in their possession would end up in prison.

In order to respond to these issues, the proposal²⁶, which has now been submitted to the Uruguayan Parliament, provides that the State would be responsible for the importation, plantation, distribution and sale of cannabis. This would be carried out through the framework of the country’s harm reduction strategy. The experience of the 56 year-old woman being imprisoned for cannabis production led the government to propose that consumers be allowed to produce up to 9 cannabis plants for their personal use. A National Institute of

²⁶ The latest information regarding the state of affairs in Uruguay can be found at: <http://www.druglawreform.info/en/country-information/uruguay>

Cannabis will be responsible for the control and regulation practices around cannabis, the registration of cannabis clubs (based on the Spanish model²⁷) and its members (maximum of 15 members, producing a maximum of 7kg a month), etc.

This new policy seeks to respond to the differences between cannabis and other drugs, such as pasta base. For now, the drug mostly used in Uruguay is alcohol (prevalence is five times higher than that of cannabis use), and then cannabis (12 per cent prevalence among young people).

Challenges: public opinion, political opposition and the UN conventions

The cannabis regulation proposal was met with mixed feelings among politicians and the population. A recent poll showed that 53 per cent of the population in Uruguay were against a cannabis regulatory model, as many consider that this would lead to higher levels of use, crime and violence. Following the poll results, the government became reluctant to go ahead with the project against public opinion. It therefore launched a public debate focusing on the benefits of the project. The project is now at the Deputy Chamber of the Parliament. The President of the National Drug Bureau announced that the vote would need to take place this year, since the Presidential elections later in 2013 might lead to a deadlock in adopting the proposal.

In terms of the UN drug control conventions, it remains unclear how the government will justify its cannabis proposal at the international level. It was felt from the discussions during the meeting that the debates around cannabis in Uruguay paid little attention to obligations around the UN conventions.

2. The implementation of the Washington and Colorado referenda and expectations about the federal response

Legal issues: Relationship between the states, the federal government and the UN drug control treaties

Under US laws, there is a national/federal government, and state governments. In terms of sharing competences, the federal government retains full authority on certain issues, while competence is shared for other issues, as is the case for drug control. The list of drugs deemed illegal is the same at both levels of government, and lead to similar penalties. However, the capacity for drug law enforcement varies greatly at state and federal levels – usually, states have greater capacity to enforce drug laws. Indeed, while the DEA focuses on tackling criminal organisations, 90 per cent of cannabis arrests and prosecutions are happening at state level.

With this in mind, in the 1970s, a handful of states decriminalised personal possession of drugs. In the case of decriminalisation, there was little conflict between the federal and state law enforcement. Nowadays, about 15 states have decriminalised cannabis possession for personal use.

The next step for drug policy reform was that of medical cannabis – several US

27 For more information, see: Alonso, M.B. (January 2011), Cannabis social clubs in Spain: A normalizing alternative underway - TNI Series on Legislative Reform of Drug Policies Nr. 9 (Transnational Institute & Federation of Cannabis Associations), <http://idpc.net/publications/2011/01/tni-cannabis-social-clubs-in-spain>

states have now withdrawn federal penalties for cannabis used for medical purposes. Although federal law continues to treat cannabis consumption for medical purposes as a crime and could theoretically arrest users, this did not materialise in practice. Some states also allowed the production and sale of cannabis for medical purposes – this did bring the attention of the federal government under the Bush Administration, leading to the incarceration of some individuals for lengthy periods of time going up to 20 years. However, in practice, 90 per cent of those involved in the production, sale and consumption of medical cannabis never faced any criminal sanctions. Under the Obama Administration, there has been less danger of being criminalised for medical cannabis offences, but tools other than arrest and prosecution were used, such as the confiscation of a building or premises, etc.

The final step towards reform of cannabis policy has now been implemented in Washington and Colorado, with the establishment of a fully regulated market for cannabis production, sale and consumption. Two years ago, California put forward a proposal for the taxation and legal regulation of cannabis. The proposal was eventually rejected, but it was a fascinating process – before the vote, 56 per cent of people were in favour of the proposal, but support for the bill started declining two weeks prior to the vote, until it reached 46 per cent of people in favour of the proposal. If we look at public opinion in California, only a few groups of individuals like cannabis use. Broadly speaking, a third was against the bill, a third was in favour and a third was undecided. It is on the latter that campaigns in favour of the bill focused, but many people eventually voted ‘no’ as they were not convinced about the system promoted by the proposal.

In the case of Washington and Colorado, many commercials²⁸ were put together to explain how the reform would manage to better regulate cannabis. The campaign was serious, and was promoted by highly respected spokespeople.

Regulatory cannabis systems in Washington and Colorado

It is the first time in history that an entity has chosen to establish a legal framework for marijuana. There are two levels for regulation of cannabis in such a system:

- Level 1 of regulation: The state withdraws criminal sanctions for cannabis production, sale and use. Under federal law, this means that a person caught for cannabis production, sale and consumption is still considered to be a criminal; however, the federal police do not have the capacity or inclination to go after those individuals. There is a precedent in US jurisprudence which stipulates that, under the 10th Amendment of the US Constitution, the federal government cannot dictate to the state what there is in the law.
- Level 2 of regulation: The state engages directly in establishing a regulatory system for cannabis. To create a regulated market for cannabis requires a complicated set of rulemaking which will last for approximately a year on how cannabis will be grown, transported, advertised, consumed, bought, etc. It is a very complicated set of tasks. The federal government engages differently in this because all of these rules contradict federal law.

²⁸ Watch the video ‘A new approach to marijuana in Washington’, by the Hungarian Civil Liberties Union, to view some of these commercials:

<http://idpc.net/alerts/2013/01/a-new-approach-to-marijuana-in-washington>

The federal government has the tools to block this regulatory process by withdrawing selling licences from stores, issuing an order to stop licences, confiscating property and premises, etc. Practically, this may happen, although it is unlikely politically – indeed, the President is elected thanks to a handful of swing states, and Colorado is one of them. Therefore, if the president were overtly hostile in Colorado on marijuana, this would be detrimental to the next presidential elections, with young voters turning against Democrats. If the federal government shuts down these initiatives, it might also have some effects on other states that could then choose to fully legalise cannabis rather than regulate it, in order to avoid being targeted by the federal police. The federal government therefore has an interest in remaining silent on the issue.

One element is crucial – that an adequate system is established and works in Washington and Colorado in order to create a positive precedent. There will be intensive and careful evaluation on road and traffic safety, criminal cartels and violence, the health of young people, etc. The way it plays out in the next two to three years and the data gathered will be very important. By then, some more states are likely to move towards regulated markets as well. It is only a matter of time until a change happens at the federal level. An initiative was indeed presented in Congress by several senators to introduce a bill that would give competence on cannabis to the states. For now, it is unlikely that this bill will be approved.

Public opinion and incremental change

The de-stigmatisation of cannabis was accomplished through an incremental change process. Historically, in the whole range of social and political issues in the USA, two topics have always benefited from a steady progression for public opinion support – gay rights and cannabis. Polls showed that if the interviewed person had a friend who uses cannabis, they would be more likely to favour legal regulation; but if the person had a family member who uses cannabis, they would be more likely to be against it.

The issue with the California proposal was campaigns in favour of legal regulation did not manage to convince voters that the regulatory system would be beneficial for society. In Washington and Colorado, the campaigns were much more serious. The regulatory system adopted in these two states will also seek to respond to concerns from the public. For example, an age limit will be established for accessing cannabis. Although this might not be the best regulatory measure, it will need to be considered in the rules to satisfy both political opponents and public opinion.

3. Discussion on cannabis policy reform in Switzerland

Cannabis decriminalisation reform

In May 2011, the revised Swiss federal law on narcotic drugs came into force. The law included undisputed elements to protect youth, etc., but most of the debate focused on cannabis. Eventually, the government established a working group to discuss the substance.

Today, cannabis consumption and possession of small amounts of cannabis (fixed at 10g) no longer constitutes a criminal offence, and adults caught for personal use offences are given administrative sanctions. Cannabis remains a prohibited

and controlled substance, so it is different from the regulatory model established for alcohol and tobacco – a cannabis use offence is usually dealt with in the same way as a parking or a speeding ticket. However, this only applies if it involves adults, and if it is the only felony committed. If the person caught with cannabis use has committed another felony at the same time, then criminal proceedings will be opened.

The age limit was established at 18 years of age for decriminalisation of cannabis use was justified by health concerns, as well as by the fact that if a young person is caught for cannabis use, the criminal proceedings will encourage his/her parents to discuss problems the young person is experiencing with regards to drug use and other issues.

This new approach towards cannabis use has been crystallised into federal law. *Cantons*²⁹ across Switzerland will then be responsible for adopting and implementing the law locally. In practical terms, this means that *cantons* will establish rules and processes to ensure that the law is effectively implemented in practice. This might include, for example, creating the ticket to be given when a person is fined for cannabis use, setting up police trainings so that police officers are able to recognise cannabis, etc.

From a legal point of view, this cannabis law reform is a positive move as it is a relaxation of the law. However, in practice, this might lead to ‘net widening’ – that is, the police, who tended to ignore cannabis users before the law was passed, are becoming more restrictive on cannabis use and start stopping and fining more people than before, because of the relaxation of the procedures, and because this might be an effective way to generate money for the cantons. The police might still choose to turn a blind eye on cannabis use, but there is a risk that more zealous law enforcement interventions might operate against cannabis users as a result of the law.

Medical cannabis

Medical cannabis is not an important issue in Switzerland. It used to be prohibited, but laws and regulations have now been reviewed to allow for the medical use of products derived from cannabis plants.

There are still some debates on the negative effects of cannabis use – evidence shows that there is a micro-toxin included in cannabis that leads to psychosis and depression. There are many contradictory pieces of research on the issue, many of them based on ideology, rather than evidence and data. The effects of cannabis also depend from one person to another – cannabis can have negative consequences on the health of a person pre-disposed to mental illness, whereas for other people, cannabis may have beneficial effects. A participant considered that these issues could be seen as a justification for the legal regulation of cannabis, since such a model would enable governments to control THC levels and ensure that cannabis be safe for use.

Additional concerns relate to driving under the influence of cannabis. This is a more difficult debate than alcohol since little evidence is available on which level of THC can impact driving. One of the top three reasons why people rejected cannabis legal regulation in California related to concerns over drugged driving.

²⁹ *Cantons* are the geographic administrative divisions in Switzerland. In this context, it corresponds to local authorities responsible for adopting and implementing policies at local level

Drawing from this experience, the Washington proposal included tight regulations on driving under the influence of cannabis, and it is likely that Colorado will pass a statute on presumption of impediment.

Experimental trial on cannabis legal regulation at local level

An interesting development is now happening in Zurich and Basel, where the *cantons'* authorities are working on establishing a research trial on the controlled production and sale of cannabis for recreational use. It remains unclear what the relationship between this trial and the federal law will be. The research project will have to be reviewed by the federal officer of public health. For now, the Parliament has given the go-ahead to the *cantons* to conduct the research. Historically, *cantons* have usually taken the lead in experimenting drug laws before they were adopted at federal level.

At the national level, before the consensus law of 2011, an older version of the bill touched upon the legal regulation of cannabis with a clearly controlled regime for production and sale. One of the reasons why this proposal failed in the public vote was because people were worried about associations with mental health. Not enough research had yet been conducted to discredit these claims. In the end, this draft never came into force.

4. Other examples of calls for cannabis policy reform

Denmark

Denmark has a very high prevalence of hashish users, with almost 50 per cent of the population having used the substance in their lifetime. There has therefore been a push to adopt more realistic and pragmatic approaches to cannabis use. Arguments brought forward by the Social Democratic party have highlighted that the status quo on drug policy had not been successful and had resulted in higher levels of violence and crackdowns on cannabis users, while the law prevented social workers from approaching and supporting some of the people suffering from the effects of cannabis. Proposals were sent to the Danish government to change the national law on cannabis, but the government rejected these applications twice. Today, there are more and more supporters for the establishment of an open and legally regulated cannabis market. Nevertheless, the police remain conservative and the health authority has concerns that regulated cannabis markets may lead to mass consumption of the substance. It is probable that the national government will not support such a reform process.

Sweden

In Sweden, there seems to be a disconnect between the national political level and administrative authorities, with the former being opposed to cannabis policy reform, while the latter being in favour of cannabis legal regulation.

Poland

In Poland, the government started monitoring the attitude of Polish society towards cannabis use. In 2002 and 2006, 87 per cent of the population were against a more lenient law towards cannabis consumption. In 2010, a new poll on public opinion showed that 71 per cent of people remained against cannabis policy reform. The polls eventually led the government to adopt harsher laws towards drug use. However, within the Parliament, one political party does promote cannabis legal regulation in the country.

Europe

In 2008, a question was asked to governments within the European Union on how cannabis use should be tackled. 36 per cent of respondents said that it should be legally regulated. The Eurobarometer showed that support for legal regulation increased to 46 per cent in 2011. However, 89 per cent of respondents considered that no other drugs should be legally regulated.

5. Cannabis policy reform and the UN drug control Conventions

The question is now being asked on whether the legal regulatory models proposed in Uruguay and the USA fit within the UN drug control conventions. The International Narcotics Control Board (INCB) has clearly stated that these reforms were in direct violation with the 1961 Single Convention on Narcotic Drugs. Although the INCB has often been unreasonable on many policy reform issues, this time, they do have a strong point. Indeed, the 1961 Convention clearly states that the production, sale and consumption of drugs controlled within the treaty should be limited exclusively to medical and scientific purposes.

In the USA, the main argument put forward to justify cannabis reform was around questions of supremacy, constitutional limitations, and dealings between federal and national laws. From an international law perspective, it is difficult to uphold the argument that states are not bound by international obligations of their country because they are within a federal system.

In Uruguay, there have been many debates around the UN drug control conventions, and no formal position has yet been adopted. So far, the government has been referring to the article, within the 1961 Convention, which mentions that countries can decide not to criminalise cannabis, but should establish state monopoly on production and sale, as well as a government body to oversee the regulation system. However, this article only relates to medical purposes, and not to the recreational use of a controlled substance.

Despite tensions with the international drug control treaties, there are some good and well-articulated arguments to justify cannabis regulatory reforms. The most basic of these arguments relates to the question of legitimacy of the inclusion of cannabis in the conventions. In 1925, the British head of the mental health hospital in Cairo used very shaky justifications for including cannabis in the Geneva Convention signed that year. In 1961, the Secretary of the Expert Committee of the World Health Organisation (WHO) took the lead in drafting a paper on the mental health problems related to cannabis. The reasoning was adopted by the Expert Committee and sent over to the CND to prohibit cannabis and include it in Schedule IV of the 1961 Convention - a position that would be un-defendable nowadays, since cannabis has clear medical purposes.

Countries now have several options at their disposal in order to reconcile their local or national level policies with their international obligations:

- The US government may disregard the tensions with the treaties (which is what the US Senate tends to do when there are conflicts between national priorities and international obligations). This position would be positive for federal governments, with states being able to go on with regulatory models, and this would de-legitimise the leading role of the USA as the protector of the UN drug conventions. This may eventually create more

space for policy reform.

- The US government may declare that its states indeed can legally contravene the UN drug conventions as the federal government is the only entity is bound by international treaty obligations. Such an argument, however, could not be used by countries such as Uruguay, which do not have a federal system.
- States leading on cannabis reform might call for a reform of the UN drug control treaties. However, it is very difficult to change the treaties, or to change one country's relation with the treaties. Many governments do not dare to re-open negotiations on the drug control framework for fear of not being able to reach another consensus on the matter. In terms of cannabis reform, one possibility at the international level would be for the WHO to issue a new recommendation on cannabis scheduling, but even then, the final decision maker is the CND and this political body may have difficulties in accepting a rescheduling of the substance, as there is fear among some governments that this will constitute a precedent to re-schedule other substances.
- Yet another possibility would be to adopt an approach similar to that of Bolivia – that is, denouncing the convention and re-accessing it with a reservation on cannabis control. However, this process would be politically difficult for countries such as the USA and the Netherlands to adopt, since they openly criticised Bolivia's move as a breach of the spirit of the conventions. This could nevertheless be an option for Uruguay. The case of India, in this regard, is interesting, since cannabis can be used for traditional purposes in the country, thanks to a reservation introduced by the Indian government when it signed the 1961 Convention. However, for both Bolivia and India, these reservations are specific to the local context at hand.
- One last option would be a long-term action, where a coalition of countries openly acknowledges the tensions raised by the conventions and the absence of a simple remedy. Together, they would design steps of denunciation of the conventions, backed by recommendations of the WHO Expert Committee on Drug Dependence,³⁰ and adopt a new treaty on cannabis regulation, for instance based on the tobacco framework.

In adopting new models of drug control, it is important to look outside of the drug control framework and consider human rights treaties and other relevant conventions. We also need to consider that there are many opportunities for reform within the realm of the treaties, despite the narrow interpretation that the INCB has adopted towards the conventions. The Portuguese drug policy is proof of this. However, in cases where reforms are in opposition with international obligations, countries will need to be creative and start questioning the international drug control system, especially when reform is triggered by a democratic decision. In the case of cannabis reform in Washington and Colorado, but also with the opening of drug consumption rooms in Switzerland, criticisms

³⁰ The WHO Expert Committee on Drug Dependence meets irregularly, subject to available funding. Cannabis and coca were reviewed by the Expert Committee reviewed for the last time in 1956. Opium and morphine have never been reviewed by the Expert Committee.

by the INCB have had little weight in the face of the direct and overwhelming democratic vote in favour of reform. As the Swiss representative explained, 'We agreed to disagree with the INCB' regarding legal expertise around the efficacy of drug consumption rooms.

Based on the discussions, one element is clear - there needs to be more flexibility within the conventions to allow for experimentation and the possibility to research new approaches to drug control.

Session VI: Decriminalisation of possession of drugs for personal use and the role of threshold quantities

Decriminalisation practices continue to spread around the world, a report by Release presenting a worldwide overview of decriminalisation reforms referred to the trend as a 'quiet revolution'.³¹ The diversity of legal schemes under this heading, however, continues to generate confusion. In order to develop a better evidence base about what works best, distinctions between different models of decriminalisation need to be made more explicit. Some of them abolish any type of sanctions, others replace criminal sanctions with administrative ones or rather introduce diversion options from the criminal justice system into drug dependence treatment, either voluntary or coercively. In many such schemes, quantity thresholds are used as important legal criteria to distinguish between possession for personal use and for intent to traffic the substance. Sometimes the quantity in possession can be a determinative factor but often a certain level of discretion is left in the hands of the police, the prosecution or the judge to take other factors into consideration to decide the nature of the offence and the corresponding legal response. What are lessons learned so far in practice about these different models and what are the chances that this 'quiet revolution' will spread further, including in those European countries still criminalising people who use drugs?³²

1. Decriminalisation dilemmas in Poland

Polish drug policy remains one of the most restrictive in the EU - the illicit possession of drugs continues to be punished by imprisonment and the opening of a criminal record, which can have severe consequences on the person's life. Although some alternative sanctions (e.g. fines) have been established for possession, these are rarely used in practice.

In 2012, the illicit possession of small amounts of drugs was decriminalised -

31 Rosmarin, A. & Eastwood, N. (2012), *A quiet revolution: Drug decriminalisation policies in practice across the globe* (London: Release), <http://dl.dropboxusercontent.com/u/64663568/library/release-quiet-revolution-drug-decriminalisation-policies.pdf>

32 For more information, see: Zuffa, G. (August 2011), *How to determine personal use in drug legislation, The "threshold controversy" in the light of the Italian experience*, *TNI Series on Legislative Reform of Drug Policies Nr. 15* (Amsterdam: Transnational Institute), <http://druglawreform.info/en/publications/legislative-reform-series-/item/2710-how-to-determine-personal-use-in-drug-legislation> ; Harris, G. (May 2011), *Conviction by Numbers, Threshold Quantities for Drug Policy*, *TNI Series on Legislative Reform of Drug Policies Nr. 14* (Amsterdam: Transnational Institute), <http://druglawreform.info/en/publications/legislative-reform-series-/item/1291-conviction-by-numbers>

under the new Article 62a of the Criminal Code, prosecutors can now suspend the proceedings (see section I 'Drug policy in Poland' for more information about the reform).

In practice, the reform does not seem to have been highly successful since people keep being arrested for simple possession for personal use. In addition, in case of recidivism, the offender may end up spending years in prison, despite the fact that he/she is dependent on drugs. This can have a dramatic effect on heavily dependent users. Another problem with the reform is that what constitutes a 'small amount of drugs' is not defined in the Criminal Code. The implementation of the decriminalisation model therefore varies considerably, with people in possession of 2g of cannabis seeing their sentence suspended while people caught with 0.2g of cannabis being sent to prison for two years. One solution would be for threshold quantities to be introduced in order to reduce the level of discrepancy in implementing the decriminalisation model. However, if threshold quantities were to be introduced, the level would most probably be very low, and a lot of resources would need to be dedicated to educating judges and prosecutors on how to use the law.

The Polish Drug Policy Network (PDPN)³³ prepared an amendment to the Act on drug dependence and gave it to one of the political parties in Poland – the *Ruch Palikota* – which promotes the legal regulation of marijuana. The party submitted the proposal to the Parliament, although it is unlikely that it will be adopted, because of lack of support for the proposal by public opinion, but also because of internal conflicts between the *Ruch Palikota* and the leftist movement, NGOs, etc.

2. The Italian experience of decriminalisation

Different models of decriminalisation of drug possession for personal use were established in Italy,³⁴ some of which have been very problematic. Following the 'zero-tolerance' approach introduced by the Berlusconi government in 2006, people caught in possession of quantities below the threshold set out in the law, although not punished with criminal sanctions, are nevertheless imposed severe administrative sanctions. These sanctions are often disproportionate, including prohibitions to drive one's car for a period of one year, mandatory checks in police stations twice a week, or the prohibition to leave one's place of residence at certain hours of the day. In addition, whereas criminal proceedings offer guarantees to the person for a fair trial and an appeals system, appeals mechanisms are not available for administrative sanctions.

Italy has experienced decriminalisation with and without threshold quantities. After a referendum in 1993, the threshold quantities defining possession for personal use were abolished. A threshold model was adopted again in 2006. The shifts to the use of threshold quantities were done out of ideological reasons – the flexibility allowed in a system without threshold quantities was considered as

³³ <http://www.politykanarkotykowa.pl/>

³⁴ Zuffa, G. (August 2011), *TNI Series on Legislative Reform of Drug Policies Nr. 15 – How to determine personal use in drug legislation: The "threshold controversy" in the light of the Italian experience* (Transnational Institute), <http://www.druglawreform.info/images/stories/documents/dlr15.pdf>

being in contradiction with the government's 'stop and punish' model. Italy is now faced with a threshold model that does not allow any flexibility. As a result, possession of amounts even slightly above the threshold is assumed to be for dealing purposes, and these offences are now punished with very high penalties going from six to twenty years' imprisonment. In addition, although some countries are making clear distinctions between threshold quantities substance by substance, with bigger quantities allowed, and lower penalties being applied, for cannabis possession with intent to supply, this is not the case in Italy. In fact, the main innovation in the 2006 drug legislation has been the abolition of any distinction between illicit substances, as cannabis has been upgraded in Schedule I, where both hard and soft drugs are now classified. This upgrading has led to a substantial increase in penalties for cannabis dealing. The current drug legislation does allow for referrals to drug dependence treatment as an alternative to criminal sanctions, but this measure cannot be used for recidivists. In a broader perspective, the system of therapeutic alternatives to incarceration appears to be strictly connected to the 'medicalisation' of drug use, which fits within the concepts of 'addiction' and 'junkies' that were developed in the 1980s and 1990s. Today, we are faced with a very different situation in terms of how we define 'users', 'social dealers' and 'commercial dealers', and how we respond to each behaviour. Nowadays, there is a clear need to go back to the fundamentals of drug policy.

The other issue related to the Italian model of threshold quantities is that it assumes that a person caught with quantities higher than the threshold is automatically guilty of drug dealing, which can be punished by up to twenty years' imprisonment (the same penalty as that imposed on murderers). On the contrary, under a discretionary model, following the principle of the "burden of proof", it is up to the prosecutor or the judge to give evidence of drug dealing (e.g. large amounts of money, list of buyers, etc.).

The Italian experience demonstrates that both a fully discretionary system and an inflexible threshold quantities model are inadequate. To respond to these difficulties, a governmental Committee was established in the 1990s to draft a reform proposal. The proposed draft established as a crime the "possession of drugs to make a profit out of it" (i.e. only dealing itself would be criminalised, but possession for personal use, cultivating for personal consumption and social dealing would not). Unfortunately, this article was not adopted.

Today, it seems clear that drug laws should be considered in a broader context, which includes health, criminal justice, human rights, etc. There is an Italian movement today that is seeking to build a coalition of magistrates, lawyers and NGOs working on drugs and prisons issues. The Higher Council of Magistrates has called for a significant review of Italian drug policies to address prison overcrowding, among other issues.

3. The Czech experience of decriminalisation

Before introducing its decriminalisation model, the Czech Republic conducted a cost-benefits analysis of the criminalisation of people who use drugs. The study

found that each person kept in prison cost the government 30,000 euros per year. It was also estimated that there were tens of thousands of people using drugs in the country. Based on this data, discussions started within the government and the Parliament around the possibility of decriminalising drug use, with the possibility of using threshold quantities. A law was finally introduced which does include threshold quantities to avoid giving too much freedom to the police in determining the intent of possession.

4. Decriminalisation practices across the world

Table on decriminalisation models

The International Drug Policy Consortium (IDPC)³⁵, TNI and Release³⁶ developed a table which aims to define the different decriminalisation approaches that have been developed across the world. For each model of decriminalisation, the table defines the legal framework around the model, the actions of police authorities, the judicial and/or administrative process, the sanctions applicable to the person arrested, and finishes with examples of countries that have developed this model. The table is a work in progress and will be finalised in a joint briefing in the coming months. The draft version of the document is available in Annex 1 at the end of this report.

A quiet revolution: Decriminalisation models around the world

The report entitled 'A quiet revolution: Drug decriminalisation policies in practice across the globe', was published by Release in 2012.³⁷ The report is an advocacy tool for policy makers which highlights the impact of decriminalisation. In the report, decriminalisation is defined as the removal of criminal sanctions (and, as a consequence, of a criminal record) for the illicit possession of drugs for personal use. There are significant differences between the 21 jurisdictions that have decriminalised the illicit possession of drugs for personal use across the world. Some countries have decriminalised all drugs, while others have only removed criminal penalties for certain drugs (usually cannabis). Some countries have incorporated decriminalisation in their drug laws ('de jure' decriminalisation, as is the case in Portugal), while others have adopted a 'de facto' system where drug possession remains an offence according to the law, but in practice the offence is no longer pursued because of prosecutorial or police guidelines (this is the case in the Netherlands). There are also major differences in the way countries implement their decriminalisation models.

The use of threshold quantities

The report found that threshold quantities were used either as a definitive determinant, or as a factor in deciding whether possession was for personal use

35 www.idpc.net

36 www.release.org.uk

37 Rosmarin, A. & Eastwood, N. (2012), *A quiet revolution: Drug decriminalisation policies in practice across the globe* (London: Release), <http://dl.dropboxusercontent.com/u/64663568/library/release-quiet-revolution-drug-decriminalisation-policies.pdf>

or for intent to supply others. Of the 21 jurisdictions studied in the report, only four of them chose to define possession for personal use broadly, referring to 'reasonable quantities' (e.g. in Uruguay) or as 'small amounts' (e.g. in Poland). In all four countries, the authorities responsible for determining the intent of possession are either judges or prosecutors.

The effectiveness of threshold quantities is difficult to ascertain, mostly because of the significant variation in the levels established from country to country, and even within the same country. For example, the threshold for cannabis possession for personal use is set at 110g in South Australia, whereas the limit is at 10g in Western Australia. The report does highlight that low thresholds leads to more people being criminalised for drug possession. However, higher thresholds do not lead to higher levels of drug use. Experience also shows that threshold quantities are a very arbitrary tool that should only be used as guidance, rather than as an inflexible mechanism in determining intent. Jurisdictions that adopt a decriminalisation model based on threshold quantities also need to ensure that these quantities are set at a level that is high enough and that reflects the realities of local drug markets. This has not been the case in Russia, for example, where possession for personal use has been decriminalised, but where threshold levels are so low that most people caught for drug possession are sent to the criminal justice system. Because of the specificities of local drug markets and patterns of use, it is difficult to provide guidance on the level at which threshold quantities should be established across the world, although available experience shows that the level of purity should not be used to define threshold quantities, as users usually have little knowledge of the level of purity of the drug in their possession.

The determination of the offence

That authority responsible for determining whether drug possession is for personal use or with intent to supply can be the police, the prosecutor or the judiciary. Who is best placed to make the decision very much depends on local factors (e.g. strength of state institutions, corruption, potential for police abuse, etc.).

- Police determination: The main advantage of this system is that the decision is made at an early point in the process which avoids criminal justice overload and lengthy delays which can occur if determination is made by the prosecution or the judiciary. However, this may also lead to net widening (i.e. a greater number of people being subject to non-criminal sanctions than would previously have been caught up in the criminal justice system). In addition, in some countries where personal possession is punished with a fine, failure to pay the fine results in a criminal offence. In some cases where state institutions are weak, leaving the determination at the hands of the police can lead to distortion and corruption.
- Prosecutorial determination: Often, prosecutorial guidance will be provided to the police to assist them in determining whether possession is for personal use (this is the case in the Netherlands and the Czech Republic).
- Judicial determination: in that case, the legal system requires the judge to assess the facts and make a ruling on the intent of possession, as well as on the sanction to be imposed. This model is mostly used in Latin America,

and leads to lengthy periods of pre-trial detention. It has therefore been criticised because of the disconnect between the policy aims and its implementation. In Peru, one third of the nearly 12,000 inmates incarcerated for drugs offences have not yet formally charged or convicted of a crime. Similarly, in Uruguay 11 per cent of the prison population were drug offenders in 2009, but only 65 per cent of them were detailed without conviction, sometimes for months. In this country, many judges do not have sufficient knowledge of patterns of drug use to assess whether a dosage is for personal use or for intent to supply others, which also creates problems in implementing decriminalisation models.

The sanction

The types and levels of sanctions vary considerably from jurisdiction to jurisdiction. In the Netherlands and Belgium, there is no sanction attached to possession for personal use. In other jurisdictions, such as Spain, people receive on-the-spot fines, or can opt for treatment as an alternative to paying the fine. This may end up being expensive for the State, since only a minority of people who use drugs need of treatment, but some may choose to undergo a programme in any case to avoid paying a fine. In other jurisdictions, administrative sanctions can be more intrusive and harmful than criminal sanctions, as was previously illustrated in the case of Italy. The report does highlight that the level of the sanction does not have a measurable impact on levels of use.

The outcomes of decriminalisation

The report concludes that there was no statistically significant increase in drug use in the countries that removed criminal sanctions against drug use, compared to states that continue to criminalise use and possession. This position is supported by additional research.³⁸ The report also concluded that, when well implemented, decriminalisation usually led to reduced stigma, and increased job, employment and housing opportunities. Those countries that had the best outcomes in terms of reduced drug-related harms, long-term health cost savings, etc. were those that had invested significantly in public health and treatment interventions, in parallel to introducing decriminalisation.

This report does not aim to provide detailed information on how policy makers can elaborate a decriminalisation model. Rather, it is an advocacy tool that can be used as a starting point for discussions.

5. Discussion

The reasons behind a decriminalisation model

The decriminalisation of drug possession for personal use is based on a change in paradigm, where drug use is considered as a health issue, rather than a criminal one. This dates back from the 1980s in the Netherlands, where drug consumption rooms were established to reduce the harms caused by drug use, and where the illicit possession of drugs for personal use was no longer criminalised to ensure access to health services without fear of arrest. In some countries, economic reasons were among the primary reasons for decriminalising

³⁸ This includes: European Monitoring Centre on Drugs and Drug Addiction (2009), *2009 annual report on the state of the drugs problem in Europe* (Lisbon), <http://www.emcdda.europa.eu/publications/annual-report/2009>

drug possession for personal use (e.g. in some US states). In others, such as in Portugal, decriminalisation was based on a political assessment of the situation and concerns among the population about the health and social harms caused by drug injection. In other contexts, however, public opinion has been a significant barrier to decriminalisation. This is the case, for instance, in Norway where a recent poll showed that 95 per cent of the population were against decriminalisation. In this country, policies against drug use are very restrictive, but in reality people who are arrested in possession of drugs for personal use are usually referred to drug dependence treatment programmes. However, this practice varies a lot depending on the police officers involved. It is positive to see that in countries where there has been a political shift from left wing to right wing, the decriminalisation model was not reversed by the new government. This was the case in the Netherlands and Portugal, among other countries.

Decriminalisation: A half-way solution?

Despite the positive impacts that some decriminalisation models have had on the reduction of health and social harms, some criticisms were raised about this policy option. Firstly, the approach seems to entail that all drug use is considered to be an illness, which is not always the case (i.e. when drug use is only recreational and occasional). As such, decriminalisation can sometimes lead to a medicalisation of drug use. Secondly, decriminalisation does not address the 'backdoor' issue – production and dealing remain criminalised. This means that people who use drugs remain in close contact with the illicit drug market. In addition, in some cases, decriminalisation or a softened approach towards drug use has even gone hand-in-hand with a tougher approach towards producers and dealers. This creates inconsistencies in drug policy approaches. This is why new policy developments on cannabis are interesting, since they seek to address all aspects of the illicit drug market. Nevertheless, decriminalisation remains a positive step towards addressing the health and social consequences of drug use and dependence.

Session V: Global initiatives and the agenda of the 56th Session of the Commission on Narcotic Drugs

As has become practice in these informal dialogues, in the last session we have discussed the main issues and dilemmas that will appear on the official international drug policy agenda in the near future. The annual session of the UN Commission on Narcotic Drugs (CND) will be held from 11 to 15 March 2013.³⁹ This session looked at the preparations for the CND in considerable detail, covering CND resolutions, WHO scheduling recommendations, side events and civil society initiatives. Another important topic for reflection was the preparations for the high-level CND meeting in 2014 on the five-year review of the 2009 Political Declaration, and the decision of the General Assembly to convene a Special Session on global drug policy early 2016, similar to the 1998 drugs UNGASS. The UNGASS proposal has been promoted by a number of Latin American countries that have expressed doubts about the effectiveness and the negative consequences of the current drug control model. Will European countries actively support this call for an honest evaluation and consideration of alternative policy options? And what are the opportunities the post-2015 UN development agenda can offer? The agenda will be based on Sustainable Development Goals (SDG's), follow up of the Millennium Development Goals. The process to develop these SDG's has just started.⁴⁰

1. **General introduction about the CND agenda and civil society participation**

The Vienna NGO Committee on Drugs

Although NGO involvement may be frustrating at the CND, NGOs play a crucial role to push for meaningful debate at the forum. In the past ten years, much progress has been made, much of it having been coordinated by the Vienna NGO Committee on Drugs (VNGOC).⁴¹ The VNGOC constitutes a vital link between NGOs and the key intergovernmental and international agencies involved in drug policy, strategy and control. It has a broad membership and this can sometimes impact on its efficiency, but it is an instrumental body to facilitate the involvement of civil society organisations in UN debates on drugs. The VNGOC usually drafts a Guide for NGOs⁴² prior to the CND, organises daily briefings at the NGO Lounge, reviews CND resolutions, is in regular contact with the Civil Society Unit of the United Nations Office on Drugs and Crime (UNODC), offers administrative services (i.e. it makes the NGO lounge available for meetings and printing, it provides copies of relevant CND documents, etc.), and liaises with the Chair of the CND on issues related to civil society engagement at the event. Last year, there were some issues related to NGO statements considered by the Chair to be offensive; the statements had to be withdrawn or re-written. This move from the Chair was very much criticised by the NGOs who attended the CND in 2012. This year, in order to avoid similar issues, the VNGOC met early on with the Peruvian Chair. At the margins of the CND, the VNGOC always organises its annual meeting, where all VNGOC members gather to discuss the work of the organisation. In coming months, the VNGOC will become more active in New York.

39 For more information, see: <https://www.unodc.org/unodc/en/commissions/CND/session/56.html>

40 For more information, see: <http://sustainabledevelopment.un.org/index.php?menu=1300>

41 For more information, see: <http://www.vngoc.org>

42 Vienna NGO Committee on Drugs (2013), *The Commission on Narcotic Drugs (CND) - A briefing for NGOs and CSOs*, <http://www.vngoc.org/images/uploads/file/CND%202013/Guide%20to%20CND%202013.pdf>

Possibilities for NGO engagement at the CND

Every year, NGOs, UN bodies and governments organise series of side events. This year, 34 side events are being organised.

During the main CND sessions, NGOs can attend as observers of the negotiations on resolutions at the Committee of the Whole, and they can make statements during the roundtable debates and the plenary. There is one slot allocated to NGOs at each of the three round tables organised at the event. However, NGOs are only allowed to speak if they are given permission by the Chair, and if there is sufficient time to do so. The rules are that any NGO with ECOSOC accreditation can make a statement during the thematic debate and the plenary. However, the statement needs to be sent to the CND Secretariat ahead of time for interpretation purposes.

Informal dialogues between NGOs and the President of the INCB, the Executive Director of UNODC and the Chair of the CND are also organised at the margins of the CND. Last year a first informal civil society hearing was held at the CND, thanks to intense pressure from some NGOs. This year will feature another hearing focusing on the 2009 Political Declaration and Plan of Action and the 2016 UNGASS, and how civil society will be involved in the review process. The report of the informal civil society hearing will be included in the list of documentation of this year's CND.⁴³

2. Expected resolutions

The deadline for governments to submit draft resolutions to be discussed at the CND this year is Monday 18th February 2013. Once submitted, all resolutions are made available on the UNODC website.⁴⁴ This year, the Committee of the Whole is chaired by Egypt. At the time of the Informal Drug Policy Dialogue, nine resolutions had already been submitted.⁴⁵

- A draft resolution sponsored by Russia on the principle of shared responsibility⁴⁶
- A draft resolution based on the call from Latin American leaders to review the current drug control system, introduced by the Chair of the CND.⁴⁷ Based on this call, the resolution provides that a high level meeting will be organised around the 2014 CND with four roundtables, and also provides for the organisation of the 2016 UNGASS
- A draft resolution on alternative development introduced by Peru and

43 The report of the informal civil society hearing is now available here: E/CN.7/2013/NGO.1: Summary of discussions at the second informal Civil Society Hearing hosted by the Vienna NGO Committee on Drugs, <http://www.unodc.org/unodc/en/commissions/CND/session/56.html>

44 To access this year's CND resolutions, please click here: <http://www.unodc.org/unodc/en/commissions/CND/session/56-draft-resolutions.html>

45 By the CND, 17 resolutions were submitted for negotiations. For a full list of the resolutions, see: <http://www.unodc.org/unodc/en/commissions/CND/session/56-draft-resolutions.html>

46 Final version available at: [E/CN.7/2013/L.8/Rev.1](http://www.unodc.org/unodc/en/commissions/CND/session/56-draft-resolutions.html)

47 Final version available at: [E/CN.7/2013/L.13/Rev.1](http://www.unodc.org/unodc/en/commissions/CND/session/56-draft-resolutions.html)

Thailand⁴⁸

- A draft resolution on precursors submitted by Denmark⁴⁹
- A draft resolution on new psychoactive substances submitted by the UK⁵⁰
- A draft resolution around West Africa and drug trafficking, drafted by France and sponsored by the EU⁵¹
- A draft resolution on forensic drug profiling, drafted by Finland and sponsored by the EU⁵²
- A draft resolution on the use of the international electronic import and export authorisation system for drugs, drafted by Germany and sponsored by the EU⁵³
- A draft resolution on HIV prevention among people who inject drugs, drafted by the Czech Republic and sponsored by the EU.⁵⁴

The draft resolution on HIV prevention among people who use drugs was drafted by the Czech Republic. There were discussions at first on whether the resolution should refer to the WHO guidelines on hepatitis C, but it was finally decided that the text would only focus on HIV. There were also discussions on whether the document should refer to the Sustainable Development Goals (SDGs); the Czech government even considered adding a separate resolution on the issue. The Czech government also wished to request UNODC to promote the SDGs in New York, but it eventually decided not to go ahead with this because of concerns that this would be blocked by some government delegations and that it would dilute the overall text of the resolution.

Generally, UNODC has tended to focus its activities on demand and supply reduction and on crime issues, and has mostly disregarded HIV-related matters. However, UNODC has recently become more open to working with NGOs in the field of HIV. Aldo Lale-Demos, the new Director of the UNODC Division of Operations, has been reaching out to NGOs to discuss themes around HIV/AIDS. A meeting was organised in February between UNODC and NGOs working on drugs and HIV, and another meeting will take place at CND to follow up on agreed actions. The SDGs may be an item that UNODC should be working on in the lead up to the 2014 high level review of the 2009 Political Declaration and Action Plan, and to the 2016 UNGASS.

3. Side events at CND and other relevant meetings

IDPC is very active at the CND every year. The general role of IDPC during the CND is to support NGOs from and beyond its network to engage with government

48 Final version available at: [E/CN.7/2013/L.16/Rev.1](https://www.unodc.org/documents/prevention/E/CN.7/2013/L.16/Rev.1)

49 Final version available at: [E/CN.7/2013/L.14/Rev.1](https://www.unodc.org/documents/prevention/E/CN.7/2013/L.14/Rev.1)

50 Final version available at: [E/CN.7/2013/L.2/Rev.1](https://www.unodc.org/documents/prevention/E/CN.7/2013/L.2/Rev.1)

51 Final version available at: [E/CN.7/2013/L.5/Rev.1](https://www.unodc.org/documents/prevention/E/CN.7/2013/L.5/Rev.1)

52 Final version available at: [E/CN.7/2013/L.3/Rev.1](https://www.unodc.org/documents/prevention/E/CN.7/2013/L.3/Rev.1)

53 Final version available at: [E/CN.7/2013/L.6/Rev.1](https://www.unodc.org/documents/prevention/E/CN.7/2013/L.6/Rev.1)

54 Final version available at: [E/CN.7/2013/L.4/Rev.1](https://www.unodc.org/documents/prevention/E/CN.7/2013/L.4/Rev.1)

delegations and UN officials. IDPC also blogs live from the CND, this year both in English and Spanish, to increase transparency on the debates at the CND.⁵⁵ After the CND has taken place, IDPC drafts a CND proceedings document, which highlights the key issues related to the CND and the main debates that have taken place. During the CND itself, IDPC organises series of events and meetings, including:

- A strategy meeting, a CND orientation meeting and a welcome reception on the Sunday prior to the CND
- A side event organised jointly with TNI on the Tuesday at lunchtime on cannabis policy reforms and the UN 1961 Single Convention on Narcotic Drugs, which will feature James Mills discussing how cannabis was scheduled in the conventions, followed by discussions on the new Uruguay cannabis reform and future policy reforms
- Two side events on the Wednesday morning included in the official CND programme, and organised jointly with government delegations - one focusing on modernising drug law enforcement, and the other on the African Union drug policy
- A side event on the Wednesday at lunchtime organised in collaboration with TNI and the Washington Office on Latin America, focusing on drug policy developments in Latin America, including the review process in the Organisation of American States, calls for drug policy reforms from the region, and the alternative development guidelines recently adopted in Lima, Peru
- A side event on the Thursday at lunchtime organised with Release on decriminalisation models, presenting the Release report on the topic, the IDPC table on decriminalisation (see Annex 1) and the policy examples of Portugal and the Czech Republic.

After the CND, there will be a series of events of interest, which include:

- A meeting in April 2013 in Uruguay with the government, TNI, WOLA and other NGOs to discuss the progress made in reforming cannabis policy
- An expert seminar in June 2013 in Lisbon, organised by IDPC and TNI, to discuss the future of the EU drug policy and the drafting of the Action Plan for 2013-2016
- An expert seminar in October 2013, organised by TNI, on global developments in cannabis drug policy.

4. WHO scheduling recommendations on the agenda of the CND

The 35th meeting of the WHO Expert Committee on Drugs (the Committee) was held in early February 2013. Although the Committee should be convened every two years, it had not met for a long time for lack of funding. The Committee conducts its work in two steps - a pre-review of the medical use of a substance, and then a critical review of available evidence within the Committee. According to the UN drug conventions, the Committee can make a recommendation on a

⁵⁵ The CND Blog is a joint initiative between IDPC and Youth RISE. The Blog in English is available here: <http://www.cndblog.org>; and the Blog in Spanish is available here: <http://www.cndblogspanish.org/>

substance if it considers that it should be de-scheduled or re-scheduled. On the contrary, if it considers that a substance should not be scheduled or re-scheduled, it does not have to make a recommendation on it. The process has become increasingly more transparent, with the reports being reviewed, peer-reviewed and then posted on the WHO website.⁵⁶ Communications with the CND are also posted on the WHO website.

At the 35th meeting of the Committee, the pre-review process focused on nine substances, while the critical review only considered two of those – GHB and ketamine. The Committee recommended that GHB be re-scheduled from Schedule IV to Schedule II of the 1971 Convention. As for ketamine, the Committee recommended that this substance be kept outside of the scheduling system because of the low health risks associated with its consumption, as well as its medical use as an anaesthetic in many low-income countries, especially in Chinese, Indian and African rural areas.

The recommendations of the Committee were included in a letter directed at the UN Secretary General, including a clear recommendation to keep ketamine out of the control system (although, as it was previously explained, this was not necessary based on the rules around WHO recommendations). The letter included an additional recommendation on the implementation of guidelines to enhance access to pain medication. The letter also mentioned that several substances – cocaine, opium and morphine – had never been reviewed by WHO or any other entity since 1912; the Committee therefore concluded that these should soon undergo a review process. Similarly, cannabis and the coca leaf have not been reviewed since 1965, while more and more criticisms have arisen on the lack of scientific basis for their scheduling in the UN conventions. It is planned that the 36th meeting of the Committee will discuss cannabis, among other substances. Another proposal made by the Committee was a review of alcohol, but this has been postponed.

Recently, there has been a trend in which the CND and the INCB are overstepping their mandate regarding drug scheduling. According to the UN conventions, the INCB can only discuss drugs that are included in the UN drug control treaties, although in practice it tends to discuss other substances as well. As for the CND, it is now seeking to adopt resolutions for countries to schedule specific substances at national level. It should be made clear that, under the drug control treaties, that WHO is the only UN body entitled to conduct the scientific analysis of substances and recommend that they be scheduled, de-scheduled or re-scheduled. The CND has the power to accept or reject the WHO recommendation, but does not have the power to recommend the scheduling of a substance directly. As for the INCB, it is only allowed to discuss a substance once it is included in the conventions.

5. NGOs' involvement at the CND: Useful or misdirected resources?

Final discussions on the CND focused on the usefulness of NGO participation at the CND meeting, and the relevance of funding this engagement by OSF. Historically, it was OSF that established the first lunchtime side event at CND ten years ago. At the time, there was very little space for civil society engagement at the meeting. This has changed over the years and NGOs are gaining visibility at

⁵⁶ See: <http://www.who.int/medicines/en/>

the CND. However, OSF is currently questioning how much of its funding should be spent on supporting NGOs attending the CND, in terms of cost-effectiveness. OSF will be collecting information from NGOs about whether their participation is useful and why. Several participants, including both NGOs and government officials, highlighted the importance of NGOs at UN meetings to raise key issues for the debates. Regarding the CND itself, it is not merely a conference of government officials, but also a way to engage directly with government delegations through informal meetings and side events to feed into the debates and reinforce the voice of NGOs in UN debates.

**Marie Nougier, Rapporteur
May 2013**

With financial support from



**Drug Prevention and
Information
Programme of the
European Union**



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ANNEX 1

DRAFT - Decriminalisation of possession of drugs for personal use

This table outlines different modules currently in use for ‘decriminalising’ the possession of drugs for personal use, in terms of legal frameworks, policing practices, judicial processes, administrative sanctions or diversion schemes.

	‘DE JURE’ DECRIMINALISATION				‘DE FACTO’ DECRIMINALISATION		
	No offence	Administrative offence			No sanction	Diversion - alternative sanctions	
	A) Possession for personal use is not a punishable offence	B) Police discretion	C) Administrative decision	D) Criminal justice decision	E) ‘De facto’ decriminalisation	F) Police Diversion	G) Criminal justice diversion
Legal framework	Simple possession of controlled drugs is not a punishable offence; the law clearly distinguished between personal use and intent of supply to others	Possession not a criminal act but it is an administrative offence	Possession not a criminal act but it is an administrative offence	Possession not a criminal act but it is an administrative offence	Possession is a criminal offence, but police and/or prosecution are given instructions not to intervene based on discretionary powers	Possession is a criminal offence but policy/legislation provides for alternative sanctions to prison	Possession is a criminal offence but policy/legislation provides for alternative sanctions to prison
Police authority	Police does not have the authority to detain persons as long as there is no indication of intent to supply	Police can determine the nature of the offence - if deemed to be possession only, on the spot sanction can be applied, if not	Police can detain persons in possession of drugs and refer them to an administrative body; entrance into the criminal justice system	Police can detain persons in possession of drugs but has no authority to determine the nature of the offence - the matter is then	Police does not have the authority to detain persons as long as there is no indication of intent to supply	Police can determine the nature of the offence and decide about the sanction, or refer to a senior official or specialist assessment at the	Police can arrest persons in possession of drugs but has no authority to determine the nature of the offence

	'DE JURE' DECRIMINALISATION			'DE FACTO' DECRIMINALISATION			
	No offence	Administrative offence		No sanction	Diversion - alternative sanctions		
		referral to criminal justice system	only occurs on the basis of suspicion of supply	either referred to state prosecutors or to the judiciary for determination		police station	

	'DE JURE' DECRIMINALISATION				'DE FACTO' DECRIMINALISATION		
	No offence	Administrative offence			No sanction	Diversion - alternative sanctions	
	A) Possession for personal use is not a punishable offence	B) Police discretion	C) Administrative decision	D) Criminal justice decision	E) 'De facto' decriminalisation	F) Police Diversion	G) Criminal justice diversion
Judicial or administrative process	No further action in absence of indication of intent to supply	No further action in absence of indication of intent to supply	Civil or administrative body determines the appropriate health or social intervention	Judicial authorities (including state prosecutors) determine if the act falls within the legal parameters set for personal use	No further action in absence of indication of intent to supply	No further action in absence of indication of intent to supply	Judicial authorities have the discretion to refer individual to treatment or other non-criminal sanctions
Applicable sanctions for possession of drugs for personal use	None	Confiscation; warning or fine	Confiscation; warning or fine; referral to treatment; other administrative sanctions	Confiscation; warning or fine; referral to treatment; other administrative sanctions	Confiscation	Confiscation; warning or fine; referral to treatment; other administrative sanctions	Confiscation; warning or fine; obligatory treatment or community services as an alternative to criminal sanctions
Country examples	Uruguay	Spain Some Australian states (cannabis only)	Portugal Czech Republic	Germany Peru Estonia Argentina (proposed)	Netherlands	Not aware of a country that takes this approach - there are local examples such as Seattle in the USA	Some USA states