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Drugs, The Law & Human Rights



A QUIET REVOLUTION: DRUG DECRIMINALISATION ACROSS THE GLOBE

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THIS PUBLICATION

This is the second edition of 'A Quiet Revolution: Drug Decriminalisation Across the Globe'. The first edition was released in July 2012 and has since been cited by a wide range of organisations and agencies, including: the World Health Organisation, the Office of the United Nations High Commissioner for Human Rights, and the Global Commission on Drug Policy. This edition builds on the 2012 publication, providing updates on the jurisdictions originally covered and highlighting a number of new countries that have adopted a non-criminal justice response to the possession of drugs for personal use.

Many countries continue to incarcerate and criminalise people for possession or use of drugs, with criminalisation alone undermining employment, education and housing opportunities. In addition, many people who use drugs are often subject to human rights abuses by the state in jurisdictions which continue to criminalise them. The continued targeting of this group has not only a negative impact on the individuals in question, but their families and broader society as a whole. The aim of this report is to inform the public and policymakers alike on the impact of decriminalising drug possession offences, showing that decriminalisation does not lead to increased rates of use while equally demonstrating that law enforcement-led approaches have little impact on this metric. Rather, the decision to end the criminalisation of people who use drugs can negate the harms highlighted above when done effectively and produce positive social, health and economic outcomes, not just for the individual, but for society as a whole.

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INTRODUCTION

Over 50 years since the foundation of the current global drug policy regime was laid, prohibitionist drug laws continue to inflict countless harms. An estimated \$100 billion is being pumped annually into law enforcement-led approaches around the world to combat drugs¹, with the results mainly involving the criminalisation and incarceration of low-level, nonviolent drug offenders. Indeed, an estimated 83 per cent of all drug-related offences worldwide are simple possession offences.²

In spite of this undue emphasis on tackling drug use, the number of adults globally who have used drugs increased almost 20 per cent between 2006 and 2013 from 206 million to 246 million,³ underscoring how punitive approaches do not serve as a deterrent. Rather, they help swell prison populations, stoke the spread of blood-borne viruses and other infectious diseases and contribute to the shameful level of drug-related deaths, which in 2013 stood at close to 200,000 globally.⁴

The aforementioned are just a select few of the myriad harms caused by criminalisation. As highlighted in our 2013 report, *The Numbers in Black and White: Ethnic Disparities in the Policing and Prosecution of Drug Offences in England and Wales*,⁵ drug laws are often imposed most harshly against ethnic minority communities despite prevalence rates among these groups being no higher than among the white population. This disproportionality is reflected elsewhere in the world, particularly the United States where it has resulted in the mass incarceration of African Americans. Such a policing approach has had serious implications for community-police relations in many parts of the world.

However, cracks are beginning to emerge in the prohibitionist consensus, both in rhetoric and in practice. Across the globe governments are adopting different policy approaches to address drug use in their communities – some are reducing harsh penalties for drug offences to save costs, while others are increasing their harm reduction and public health measures in an effort to properly address problematic drug use. Rising costs, commitments to personal

autonomy, and mounting evidence of the devastating consequences of criminal justice responses to drugs for individuals – stigmatisation, employment decline, housing issues, and public health harm, among others – have led a number of countries towards an alternative policy option: the decriminalisation of drug possession and use. Under these regimes, the possession of small amounts of illicit drugs for personal use is no longer a criminal offence.⁶

To call decriminalisation a *new* option is misleading. Some countries have had decriminalisation policies in place since the early 1970s, while others never criminalised drug use and possession to begin with.

However, in the past 15 years, a new wave of countries have moved toward the decriminalisation model, suggesting growing recognition of the failures of the criminalisation approach and a strengthening political wind blowing in the direction of an historic paradigm shift.

The models of decriminalisation vary considerably – some countries adopt a *de jure* model (one defined by law), others have de-prioritised the policing of drug possession through *de facto* decriminalisation. Furthermore, there is enormous geographical variance, with countries as disparate as Armenia, Belgium, Czech Republic, Ecuador, Estonia, Mexico, Portugal and parts of the United States all adopting or extending some form of decriminalisation within their jurisdictions in the last 15 years or so.

While the precise number of countries with formal decriminalisation policies is not clear, it is likely slightly above 30,⁷ depending on which definitions are used. Additionally, at the time of writing, Ireland was exploring the decriminalisation of all drugs along the lines of the model implemented in Portugal.

Decriminalisation has received considerable endorsement in recent years. The Global Commission on Drug Policy – a body comprised of former heads of state, human rights and global health experts, business leaders, economists, and UN leaders – has repeatedly called for decriminalisation since the

launch of their first report in 2011.⁸ What's more, **several prominent UN agencies, including UNAIDS,⁹ the World Health Organisation (WHO),¹⁰ the United Nations Development Programme,¹¹ and the Office of the United Nations High Commissioner for Human Rights (OHCHR),¹² have all expressed the need to decriminalise the possession of drugs for personal use.**

The United Nations Office on Drugs and Crime (UNODC) similarly advocated decriminalisation in a 2015 position paper, albeit suppressing its publication immediately prior to release.¹³ It has, however, publicly endorsed decriminalisation in joint publications.¹⁴

Nowhere in the past few years has the fracturing consensus on prohibition's efficacy been more evident than on the international scene. In 2012, heads of state from Colombia, Mexico and Guatemala called on the UN to bring forward its General Assembly Special Session (UNGASS) on drugs scheduled for 2019. These countries, ravaged by the harms of aggressive prohibitionist policies, demanded a debate be held in order to explore alternative approaches, and achieved their goal with the UNGASS set to take place in April 2016.

Critics of a more progressive approach to drugs and drug use continue to claim that adoption of decriminalisation will lead to a 'Pandora's box' of horrors, increasing drug use throughout all levels of society and thus the overall harms of drugs. In light of the differing decriminalisation models in practice today, it is certainly difficult to make sweeping assessments of decriminalisation's impact on various metrics such as criminal justice savings, drug-related deaths, and the spread of infectious diseases. **However, one conclusion that can be drawn is that the doomsday predictions are simply wrong, and removing criminal sanctions for possession and use of drugs does not lead to skyrocketing prevalence rates.** The United Kingdom Home Office concluded as much in a report looking into different countries' approaches to drugs, varying from repressive regimes like Sweden and Japan to decriminalised models such as Portugal and the Czech Republic. The report stated that there was no 'obvious relationship between the toughness of a country's enforcement against drug possession, and levels of drug use in that country'.¹⁵

Decriminalisation is not a panacea for all of the problems associated with problematic drug use; a country's drug-enforcement policies appear to have but a minor effect on the impact

of drugs in a society. But what emerges is that the harms of criminalisation far outweigh those of decriminalisation.

As this report will show, decriminalisation when implemented effectively does appear to direct more people who use drugs problematically into treatment, reduce criminal justice costs, improve public health outcomes, and shield many drug users from the devastating impact of a criminal conviction. Decriminalisation when coupled with investment in harm reduction, and health and social services, can have an extremely positive effect on both individuals who use drugs and society as a whole. Even if a state is unable to invest in these services, decriminalisation removes the harms a criminal conviction can bring, such as reducing people's education, housing and employment opportunities, and in some cases the right to vote.

What follows is a snapshot of decriminalisation policies in practice around the world. The goal of this report is not to put decriminalisation on a pedestal or to give a comprehensive portrait of every policy detail, but rather to summarise some of the available research on decriminalisation and demonstrate that law enforcement-led approaches have little impact on drug prevalence rates. Not all countries that have decriminalised drug use and possession have been included here as some countries espouse a decriminalisation model but in the place of criminal sanctions have adopted deeply harmful systems for addressing drug use. Many Southeast Asian countries, for example, have introduced 'compulsory detention centres', where people are forcibly detained for up to two years. These centres are associated with serious human rights violations, where people are beaten or raped and may be used as forced labour.¹⁶

The jurisdictions that form the case studies for this paper are examples of both those countries that have adopted good models of decriminalisation and those that have adopted what could be described as hollow examples of decriminalisation; that is, the possession thresholds are so low that the system is effectively unenforceable and most people who use drugs are still criminalised. Perversely, those countries that have weak systems of decriminalisation also tend to have harsher sentences for those caught in possession of an amount above the threshold stated. This leads to a far more punitive response to those who use drugs, and is disproportionate when compared with other offences.¹⁷

Decriminalisation has brought a number of positive outcomes across the globe, though efforts should

continually be made to address any failures in its implementation. In order to ensure a truly effective model is put in place, the criteria highlighted at the beginning of this report should be taken into strong consideration.

CONSIDERATIONS FOR IMPLEMENTING AN EFFECTIVE DECRIMINALISATION MODEL

The effectiveness of a decriminalisation model in diverting people away from the criminal justice system is dependent on a number of factors. Research has shown that some jurisdictions have failed woefully in the implementation of such a system and in some cases this has created much greater harms for people who use drugs. In Russia, for example, the extremely low thresholds make the system unworkable, with those caught in possession of very small quantities of drugs for personal use facing prison. This coupled with the lack of health and harm reduction services on offer to people who use drugs in the country creates a particularly dire situation, with human rights abuses widespread.

Other countries implement unnecessary punitive systems within a civil law response – Paraguay serving as one such example in its requirement that people who use drugs be registered with the government following first arrest in order to avoid future criminal prosecution for possession. In other Latin American countries there are high rates of pre-trial detention of people who use drugs, often for months or years, while people wait for judicial determination as to whether they will be subject to criminal proceedings.

It is important that any model that imposes civil instead of criminal responses should be grounded in human rights and dignity for the person. Coercive and punitive regimes founded in the civil law can cause as

much damage as criminalisation. This is why we must ensure that the models implemented are evidence-based and humane.

The following are criteria that policymakers should consider when developing a model of diversion away from the criminal justice system.

THRESHOLDS

The majority of jurisdictions adopt threshold amounts to aid police, prosecutors and the judiciary in determining whether someone in possession of drugs has them for personal use. However, in some countries generic terms such as ‘small amount/quantity’ are used, often resulting in the law being applied in an inconsistent way as demonstrated in the section on Poland. This is an unhelpful approach. Threshold amounts can be useful as a guide for those responsible for determining the personal possession of drugs, but as highlighted below thresholds should not be the sole determinative factor.

There is considerable variance in the threshold quantities that have been adopted for similar substances in different countries. **If a government chooses to adopt a threshold system, the amounts defined in law or prosecutorial guidance must be meaningful – that is to**

say, adapted to reflect market realities and to ensure that the principle of decriminalisation of possession for personal use is properly achieved. The case of cannabis thresholds in the Australian Capital Territory is a good example of policy adjustment to represent the market realities for users of cannabis, where the threshold was increased to 50 grams to include those who bought more than an ounce of cannabis (28.3 grams) for their own personal use.

In some countries it is a criminal offence to be in possession of any amount above the threshold despite the fact that the case is still one of personal possession. This is an arbitrary approach and fails to recognise that in many cases some people will be in possession of larger quantities in order to avoid repeated contact with the black market or because of having a high tolerance/dependency. This is why, to reiterate the above point, thresholds should serve as guidance and not be the sole determinative factor, something which works both ways. For example, no one caught in possession of drugs for personal use should be subject to criminal sanctions in a decriminalised regime if it is proven the drugs were intended for such, even if they possess amounts above the stated thresholds. Similarly, this applies in determining supply offences in cases where someone is caught in possession below the threshold amount but where there is evidence to indicate intention to supply – although arguably, diversion schemes such as the Law Enforcement Assisted Diversion programme should be considered for low-level supply offences where the offender is drug dependent or economically disadvantaged. (See the section on the United States for more details on this.)

In all cases, purity threshold amounts should be avoided as this places an onus on the user to know what is in the drugs they have in their possession, creating a lack of legal certainty. It is also onerous for the authorities to enforce such a system.

While there is no ideal threshold quantity, the appropriate adoption of this model should result in no arrests or criminal prosecutions against those caught in possession of drugs for personal use.

LOW-LEVEL SUPPLY OFFENCES

As stated above, thresholds should only be used as guidance. There is a concern that where thresholds are arbitrarily applied in a strict manner, it results in people caught with quantities above the threshold being subject to supply charges, despite the drugs being for personal use.

Disproportionate sentencing for cases involving possession above the threshold amount or for supply offences can occur as a result of policymakers wanting to appear ‘tough’ on drugs while implementing a decriminalisation policy, which can be viewed as a liberalisation of the law. **It is vital that governments recognise the principle of proportionality in sentencing for drug offences.** Too often those convicted of non-violent drug supply offences receive custodial periods that are much harsher than other violent offences, such as rape or murder.

PENALTIES

There are a number of responses a country can take outside a criminal justice setting which address drug possession:

No response – some countries, for example the Netherlands, have policies whereby those caught in possession for personal use receive no sanction. The benefit of such an approach is the cost savings to the criminal justice system, in addition to the individual caught not having to undergo an unnecessary penalty. For example, large numbers of people in other jurisdictions who are subject to a civil fine for possession will agree to undertake a treatment programme *in lieu* of payment. Many of them do so simply to avoid payment and do not benefit from treatment since they do not use drugs problematically. It should be recognised that only a minority of people who use drugs (estimated at 10 to 15 per cent of all users) suffer from problematic drug-dependence and are in need of treatment.

Further to this, the model adopted by Portugal allows for an incremental response to someone caught in possession of drugs for personal use. On the first occasion, if the person is assessed as not having a problem or dependency on drugs, proceedings will be suspended. The person’s name is simply recorded by the authorities, and after a prescribed period their name is expunged from the records. However, if they are caught again with drugs within that prescribed period they are brought before the dissuasion commission and face a penalty (if they are not drug dependent) or a referral to treatment, although suspension of proceedings is still possible. (Please see the section on Portugal for all relevant references.)

It is arguably a waste of police resources to pursue and arrest those who use drugs, and evidence shows that the decision not to police such offences does not lead to an increase in drug use. (Please see the section on the Netherlands for more detail.)

We would recommend that when implementing a decriminalisation model that users are not sanctioned for possession of drugs for personal use.

Fines or other administrative penalties – many countries issue fines (including on-the-spot fines issued by the police) for possession of drugs for personal use. As highlighted in the point above, the availability of undertaking treatment *in lieu* of payment can be problematic. If a system of fines is to be adopted it must be set at a reasonable level and not result in the imprisonment of large numbers of people for non-payment. In addition, there is a real risk of net-widening – the incidence of when a greater number of people are subject to non-criminal sanctions than would previously have been – in that police may be motivated to intercept more people as the issuing of a fine, especially on-the-spot fines, is seen as a quick and easy response. In Western Australia the decision to require people to attend a police station to pay a fine mitigated the risk of net-widening to some degree as the system became more bureaucratic for police officers.

Other forms of civil penalties, such as seizure of a person's passport or driving licence, should be avoided as these can have an unduly negative impact on a person's life.

Treatment – in terms of those who are dependent on drugs, we would recommend that the police work with treatment agencies and the relevant health authorities to offer an individualised and voluntary referral route such as that advocated in Portugal. It should also be recognised that a variety of treatment options should be made available, including opioid substitution therapy (OST), and counselling. Drug dependency is a chronic relapsing condition and any system that solely focuses on 'drug-free outcomes' is potentially setting a person up to fail. Also, failure to meet the conditions of treatment should be addressed by involving the person in their treatment programme and should certainly not result in criminal sanctions or a more punitive response.

Administrative detention – such detention, as adopted in some countries in Southeast Asia and in Russia, is not and should never be considered an appropriate response to drug possession under a decriminalisation model or any other model. Such regimes are linked with significant human rights abuses where individuals are detained for significant periods to be 'treated' and are often subject to forced labour, beatings and torture. Harsh detention outside of the criminal justice system can be more destructive

than criminal custodial penalties and does not serve the foundational aims of a decriminalisation policy.

DECISION MAKER

The decision as to whether a person is in possession of drugs for personal use will be determined either by the police, the prosecution or the judiciary. Who is best placed to make this decision is very much dependent on local factors such as the weakness or strength of state institutions, and whether they are vulnerable to corruption or capable of abuse of position.

Police determination – the main benefit is that the decision is made at a very early point in the process – usually when a person has been stopped and searched – and avoids lengthy delays which can occur if the prosecution or judiciary are responsible for determining the offence. Furthermore, if the aim of decriminalisation is to take people out of the criminal justice system then an expedient decision can achieve this aim.

A problem that does arise in relation to police discretion and the implementation of a decriminalised model is the potential for net-widening. For example, the introduction of administrative fines for possession of cannabis in South Australia resulted in more people being sanctioned than under the previous criminal system, and more people being incarcerated due to non-payment of fines. This is a far harsher sanction than they would have received for possession of cannabis under the old criminal justice regime, leading South Australia to revise the policy to address these issues.

Prosecutorial guidance – prosecutorial guidance will often be provided to police to assist in determining whether the person detained is in possession of drugs for personal use as is the case in the Netherlands and the Czech Republic. There is little commentary about the impact of the state prosecutor as the decision maker. Arguably as long as an individual is not detained while the determination is being made, the involvement of prosecutorial authorities should not be problematic; however, the delay for the individual may cause distress.

Judicial determination – where the legal system requires a judge to assess the facts of the case and to make a ruling as to whether a person was in possession of drugs for personal use or for trafficking can often lead to lengthy periods of pre-trial detention. The use of judicial determination tends to be confined to the Latin American region and has been subject to significant criticisms. This is often due to the disconnection between the policy's aims and its implementation,

and the subsequent imprisonment of people found in possession of drugs until a determination can be made. In Peru, one third of the nearly 12,000 inmates incarcerated for drug offences in 2010 had not been formally charged or convicted of a crime, for example. Sometimes they are detained for months or even years.

While initial police determinations about personal possession versus supply can work to protect users and save prosecution costs, it is critical that independent judiciary subject police determinations of supply to rigorous scrutiny. This is to ensure that in the absence of quantity thresholds those caught in possession for personal use are not mistakenly subject to criminal penalties for supply offences. **Judges ought to consider the totality of circumstances as well as embrace principles of lenity in cases such as these.**

Where there are weak institutions and risks of corruption or abuse of power it may be sensible to encourage oversight from judicial authorities. This could include a mechanism for independent review or recourse for those who have not benefitted from the decriminalisation model.

Any effective system of decriminalisation should be complemented with investment in public health and social services, harm reduction interventions, and treatment. Policymakers must view the positive outcomes of the Portuguese decriminalisation experience in light of the significant investment in public health initiatives that the country made in conjunction with decriminalising possession of drugs for personal use, including needle exchanges, opioid substitution therapy, and treatment and prevention strategies. Countries wishing to reduce the harms of problematic drug use and who want to limit long-term health costs by introducing programmes that tackle HIV transmission and other blood-borne viruses should consider coupling the decriminalisation model with such a public health investment.

Ultimately, it is important that any model is subject to assessment and where it is determined that it is not working effectively then it should be revised. The fundamental aim of the system should be to divert people away from a criminal justice system and offer voluntary engagement with health programs when needed, but recognise that it is neither necessary nor effective to impose the harms and costs of criminalisation of drug use and possession in order to reduce drug use and related harms.

DECRIMINALISATION SYSTEMS BY COUNTRY

ARGENTINA

In 2009, Argentina's Supreme Court issued the *Arriola* decision, declaring national legislation¹⁸ that criminalised drug possession for personal use was unconstitutional on the basis that it was a violation of an individual's right to privacy and personal autonomy under Article 19 of the Argentinian Constitution.¹⁹ The court held: '**Criminalising an individual [for drug use] is undeniably inhumane, subjecting the person to a criminal process that will stigmatise him for the rest of his life and subject him, in some cases, to prison time**'.²⁰

While the facts of the *Arriola* decision were concerned with the possession of cannabis the ruling of the court is interpreted as being applicable to the possession of all illicit drugs.²¹ Despite the ruling, though, the Argentinian executive and legislative branches have still to implement legislation that would reflect the decision of the court. Since 2009 there have been various attempts to bring forward statutory legislation to reflect the ruling of the Supreme Court but to date none have made it through Argentina's Congress.²²

The most recent attempt came in 2014 under the former government of Cristina Fernández de Kirchner when a new *Criminal Code* was submitted to Congress. This draft legislation proposed a number of significant reforms to the *Code* including that possession and/or cultivation of drugs for personal use were no longer criminal offences, thus reflecting the *Arriola decision*.²³ However, no debate was held in Congress about this element of the *Code* and the reforms did not pass.

Currently, although many lower courts have begun applying the *Arriola* decision and throwing out cases involving possession of small amounts of

drugs, some police forces have not adjusted their enforcement practices.²⁴ Approximately 70 per cent of all drug arrests involve possession for personal use.²⁵ This tension between the enforcement and judicial branches has created an ambiguity in the implementation of Argentinian law which is manifest in criminal justice statistics; for example, the Buenos Aires police arrested 2,093 people in the first quarter of 2014, 98 per cent of which were ruled on the grounds of illegal possession, and half of which involved minors.²⁶

The 2015 presidential election saw the drug issue gaining new prominence largely as a result of media reports that Argentina has increasingly become a key transit route for cocaine through the region and the fact that the country is the second highest consumer of the drug in Latin America. However, the language of the presidential debate was one of military responses to drug trafficking rather than concern with any reform of the law to reflect the *Arriola* decision.²⁷ The election was won by the Conservative leader Mauricio Macri, who defeated the Peronist candidate and ended 12 years of rule by the Peronist party. Macri has been a vocal opponent to decriminalisation of drug possession,²⁸ therefore making it hard to see that there will be any moves by his government to reconcile the *Arriola* decision with national legislation.

ARMENIA

Throughout its history as part of the Union of Soviet Socialist Republics (USSR) and for nearly two decades after it gained independence in 1990, Armenia enforced a 'zero tolerance' approach to illegal drugs, with harsh criminal sentences for use and possession. However, amendments to the law in 2008 resulted in a significant policy shift. Drug use and possession

statutes were removed from its *Criminal Code* and were replaced with Article 44 of the *Administrative Offences Code*, which punishes possession of 'small quantities' of illicit drugs with administrative penalties.²⁹ The law also decriminalises the non-commercial (social) supply of small amounts of drugs.³⁰

Under the old law a person convicted of drug possession would face a prison sentence of up to two months if it was their first offence. The 2008 law introduced an administrative fine of approximately \$400 in place of this, the fine being waived if the person seeks voluntary drug treatment.³¹ Clearly, the level of fine is out of reach of most people, though, in a country where the average income is just \$340 per month.³² However, research has suggested that the decriminalisation of drug possession has led to a greater number of people who use drugs problematically accessing treatment.³³

The definition of 'small quantities' does not appear to be specifically defined in law, although the *Administrative Offences Code* does distinguish on the basis of 'significant', 'large' and 'extremely large' quantities.³⁴ A recent Penal Reform International report did find that stakeholders in Armenia had expressed concern that the maximum amount of drugs that fell within the definition were quite small, leading to people being convicted of trafficking offences despite them being in possession of drugs for personal use or social supply.³⁵

AUSTRALIA

Australia was an early adopter of decriminalisation having had cannabis decriminalisation policies in place for over 25 years, albeit not on a national level. There are currently three Australian jurisdictions that have laws decriminalising the possession and cultivation of cannabis for personal use. A fourth cannabis civil penalties scheme operated from 2004 to 2011 in Western Australia but was overturned for political reasons.³⁶

Significant research has been completed on the effects of Australian cannabis decriminalisation policies.³⁷ Studies into decriminalisation's impact on the prevalence of cannabis use are mixed – some suggest a statistically significant increase in cannabis consumption; others suggest no significant increase in use. All generally agree, though, that decriminalisation has not resulted in the catastrophic explosion in cannabis use many predicted as a result of decriminalisation.

In addition to the three states that have decriminalised cannabis possession all states operate a range of *de facto* decriminalisation schemes, namely drug diversion schemes for people caught in possession of cannabis or other illicit drugs for personal use, as well as for minor and serious drug-related offenders.³⁸

South Australia

With some modifications over the years, South Australia's *Cannabis Expiation Notice* (CEN) scheme has been in place since 1987. Under this policy, the police issue a CEN to individuals caught in possession of up to 100 grams of cannabis or found to be cultivating no more than one non-hydroponic plant for personal use. This requires the individual to pay a civil fine of up to AU\$300 depending on the amount of cannabis found within 28 days. If the individual pays the fine, no admission of guilt is recorded and there is no prosecution. If the individual fails to pay the fine they will be sent a reminder notice and an additional fee for the notice will be added to the original fine. If they subsequently do not pay the expiation fee and the reminder fee the matter will be referred to court which will administratively issue an enforcement notice. This results in an automatic conviction and enforcement of the outstanding fine.³⁹

Despite the intentions of South Australian officials, the introduction of the CEN scheme initially resulted in more prosecutions of cannabis users than in previous years – 6,000 CENs were issued in the first year of decriminalisation (1987-1988) growing to 17,000 issued in 1993-1994 owing to the relative ease with which they could be distributed by police officers.⁴⁰ The effect of this 'net-widening', combined with early confusion among their recipients regarding payment requirements and methods, was a higher number of cannabis users ending up incarcerated for non-payment of fines.^{41,42} The South Australian Government responded to this trend by changing the payment options to include payments by instalment, substitution of community service for payment, and making the CEN requirements clearer. This has resulted in increased payment and reduced numbers of criminal convictions.⁴³ By 2013, the number of notices issued had fallen to just over 9,000.⁴⁴

The literature on decriminalisation's effect on the prevalence of cannabis use in South Australia is mixed; one study suggests decriminalisation resulted in an increase in the prevalence of cannabis smoking,⁴⁵ but most studies indicate there is no evidence of an increase in cannabis use that is attributable to the CEN scheme.⁴⁶ The National Drug Strategy Household Survey conducted by the Australian Institute of Health and Welfare noted a

decline in rates of cannabis use (past 12 months use) of 17.6 per cent of the state population in 1998 to 10.8 per cent in 2007. Since that survey there has been small increase in prevalence with the most recent 2013 data reporting 11 per cent of respondents had used cannabis in the past year.⁴⁷

The other key concern about the scheme has been its effects on cannabis cultivation to the black market and organised crime. As a consequence, while the 1987 scheme enabled expiation for cultivation of up to 10 plants for personal use, this was reduced to three plants, then two plants, and finally in 2001 to one non-hydroponic plant.⁴⁸

Considering the literature balance and the data from the National Survey, the CEN scheme does not appear to have had a significant impact on cannabis use, but it has resulted in keeping more individuals out of the criminal justice system and has saved the state government hundreds of thousands of dollars in enforcement costs.⁴⁹ **Furthermore, interviews with South Australian law-enforcement leaders more than 10 years after decriminalisation revealed near-unanimous support for continuing the CEN policy.**⁵⁰

Australian Capital Territory (ACT)

Beginning in 1993, police in the ACT had the authority to issue a *Simple Cannabis Offence Notice* (SCON) to an individual found with up to 25 grams of cannabis or cultivating two non-hydroponic plants when for personal use, instead of charging them with a criminal offence.⁵¹ A SCON requires payment of a AU\$100 fine within 60 days. If paid within 60 days, no criminal charge is recorded. Failure to pay the fine may lead to the SCON being withdrawn or a summons to appear in court. Since 2002 a final option has been provided for non-compliant offenders whereby the SCON may be withdrawn and the offender can be referred to a therapeutic drug diversion programme instead (PED).⁵²

Under this scheme, *in lieu* of paying a fine an individual can be assessed and referred to a treatment or education programme up to two times if necessary.⁵³ A recent evaluation showed that there had been some resistance by police to using the scheme due to a perceived non-payment of fines, and a preference to refer minor cannabis offenders to drug diversion schemes instead of SCON.⁵⁴ However, this same evaluation also showed that the SCON scheme was a much better use of resources and recommended changes to increase utilisation. Following this evaluation, payment systems for fines were streamlined and the threshold quantity

for possession was increased, from 25 grams to 50 grams of cannabis for personal use.^{55,56} The threshold was adapted since the original threshold precluded anyone caught with an ounce (28.3 grams) from the SCON scheme, criminalising cannabis users who would commonly buy this quantity.⁵⁷

The prevalence of cannabis use has been on a continued decline in the ACT since 1998. The most recent surveys show statistically insignificant increases in recent cannabis use from 9.1 per cent in 2007 to 10.1 per cent in 2013, though the ACT still has one of the lowest rates of cannabis consumption in Australia.⁵⁸

Northern Territory

Cannabis possession has been decriminalised in the Northern Territory since 1996. Under the Northern Territory scheme, police may give individuals found with up to 50 grams of cannabis an infringement notice requiring them to pay a fine of up to AU\$200. Failure to pay the fine results in the individual owing a debt to the state but does not result in a criminal conviction or record.

The Northern Territory has historically reported high rates of cannabis use well exceeding all other states in Australia. Since 1998 national surveys have collected data on recent use of cannabis from the age of 14 onwards. The most recent 2013 analysis shows that 17.1 per cent of the population of the Northern Territory reported using cannabis in the last 12 months, well above the national average of 10.2 per cent.⁵⁹ However, rates of cannabis consumption in the state have fallen significantly since 1998 – two years after the introduction of decriminalisation – with reported use in that year of 36.5 per cent of the population, meaning that prevalence has more than halved in the last 17 years, supporting the evidence that the ending of criminal sanctions does not lead to an increase in use.

Western Australia

Western Australia repealed its decriminalisation policy in 2011 replacing it with a new law for first time cannabis offences.⁶⁰ It is worth considering how the system operated in practice and the lessons learned from the seven-year period that cannabis possession offences were decriminalised.

In 2004 the Western Australian government introduced a new system whereby police were able to issue a *Cannabis Infringement Notice* (CIN) to an individual when they had reason to believe the person had committed a minor cannabis offence. If an individual was found in possession of up to 30 grams

of cannabis, or of paraphernalia or two non-hydroponic plants, a CIN was issued and the individual had the options of choosing to pay a fine of up to AU\$200, attending a *Cannabis Education Session* (CES) with an approved treatment provider, or facing prosecution in court. There was no limit to the number of CINs an individual could receive. However, if an individual received more than two CINs within a three-year period, they were no longer eligible to pay a fine and had to either attend a CES or go to court.⁶¹ Individuals who failed to pay their fine incurred a debt to the state but not a criminal record as a result.

The government of Western Australia was relatively successful in encouraging individuals to pay the CIN fines by using the threat of driver's license suspensions to compel payment, resulting in over 75 per cent compliance.⁶² The state government was also able to avoid the net-widening problem that South Australia faced by processing CINs at the police station, rather than issuing them in the field.

Following the election of the centre-right Liberal party in 2008, the government eliminated the CIN scheme in Western Australia, with the new law coming into effect in August 2011. Seemingly ignoring evidence of the success of the CIN policy, the government replaced the scheme with a therapeutic diversion programme – namely, a *Cannabis Intervention Requirement* (CIR) for which it is compulsory to attend a brief intervention with a counsellor within 28 days of detection. The CIR is only allowed for individuals possessing up to 10 grams cannabis, rather than 30 grams as per the CIN scheme. Moreover, adults are only eligible to receive a CIR once, and youth twice. Any subsequent offences will result in prosecution. **One of the arguments put forward by the state government for the reversal of the decriminalisation law was a perceived increase in cannabis use within the state.⁶³ However, data reveals there had actually been a decrease in levels of cannabis use within Western Australia during the period of decriminalisation.⁶⁴**

For example, in 1998 the rates of recent use of cannabis were 22.3 per cent of the population; by 2004, the year of entry of the CIN scheme, the rates had fallen to 13.7 per cent and by 2007 that rate had further fallen to 10.8 per cent. By 2013, and despite having one of the toughest laws in the country,⁶⁵ cannabis prevalence had crept up and was on par with the national average with reported rates of 11.3 per cent.⁶⁶ Extensive evaluations also showed that while the scheme was in operation it did not result in increased cannabis use among regular cannabis users, nor school students, nor did it result in a 'softening' of

attitudes to cannabis. It also coincided with improved understanding of the harms of cannabis.⁶⁷

Opponents of cannabis decriminalisation often argue that decriminalisation would make cannabis more widely available and lead to increased use of other drugs. Yet, one study demonstrated that after the CIN scheme was implemented, only 5 per cent of Western Australia residents reported an increase in their use of non-cannabis drugs, 9 per cent reported a decrease in their use of other drugs and 82 per cent reported no change in their use of non-cannabis drugs.⁶⁸ The 2011 law has resulted in a greater number of people being prosecuted for cannabis possession.

Drug diversion schemes

Since 1999 all six Australian states and two territories have introduced local diversion programmes for those caught in possession of drugs for personal use, or for drug and drug-related crimes. Indeed, in 2007 there were a total of 51 such programmes across Australia.⁶⁹ The principle of these programmes is to divert those caught in possession for personal use from the criminal justice system into assessment, education, and/or treatment. Most programmes only allow one or two opportunities to receive a diversion rather than a charge, as well as other eligibility requirements (such as to admit the offence). Failure to comply with the requirements of the programme can result in proceedings being reinstated in many cases. While this is described as *de facto* rather than *de jure* decriminalisation it is worth looking at the impact of diverting people away from the criminal justice system. This is particularly relevant given that there are many more people who avoid charge through this system than through the *de jure* decriminalisation schemes.

The model for diversion varies between jurisdictions with a range of interventions including warning schemes, a requirement to attend education or counselling sessions *in lieu* of prosecution, or attendance at drug treatment for a prescribed period. All jurisdictions also provide diversion schemes for those who have committed serious drug crimes (such as trafficking) or minor drug-related crimes. These schemes usually involve drug testing and treatment, as well as sometimes employment and housing assistance.⁷⁰

A 2008 national review of eight jurisdictions' diversion schemes demonstrated that a majority of drug offenders did not reoffend following diversion, and that in five jurisdictions out of eight, the majority of reoffenders were only charged with one new offending incident.⁷¹ A more recent evaluation examining

cannabis diversion programmes for use/possession offences specifically showed that, compared to people who received a charge, those who were diverted were no more likely to use cannabis or commit serious offences such as violence or drug trafficking. Rather diversion was found to be a much cheaper option for the state.⁷² Diversion was also associated with less adverse employment outcomes such as the loss of a job, and improved relationships with significant others. The outcomes were thus similar to that seen through the CEN schemes. The main difference appears that such schemes cost more than the expiation scheme, both because the latter makes less demands on the treatment system and brings in revenue.

Diversion schemes for possession of other illicit drugs and drug-related offences have also been shown to motivate reductions in the frequency of drug use and/or harmful use.⁷³ Other positive outcomes include a reduced burden on the criminal system and better outcomes for those accessing diversion programmes in terms of physical and mental health. The cost-benefit of the programmes have additionally proven effective, with every AU\$1 spent leading to savings of AU\$2.98 in relation to police, hospital, prison and probation costs.⁷⁴

Similarly to what was observed with the cannabis decriminalisation initiatives there are some problems with diversion schemes in that they can produce a 'net-widening' effect when diversion is faster for the police to implement, and there is a belief that diversion will necessarily benefit offenders.⁷⁵ A further challenge is that by design such schemes divert some offenders, not all of them, with specific groups of offenders being more and less likely to be given access. There are also philosophical dilemmas about the extent to which it is just to require people who use drugs to undergo a therapeutic intervention to avoid a criminal sanction.

Australia: Conclusions

The decriminalisation models across Australia vary and have resulted in different outcomes and frequent policy changes. While additional research is needed to fully assess the impacts of Australia's various decriminalisation policies, one general conclusion that emerges is that the country's decriminalisation policies have had little to no impact on people's decision to use cannabis or other drugs. In our review of the analytical literature about the impact of decriminalisation on cannabis use in Australia, we found one study reporting a significant increase in cannabis use in states where it has been decriminalised,⁷⁶ one study demonstrating a decrease in cannabis use after decriminalisation,⁷⁷

and five studies showing that decriminalisation had no significant impact on the prevalence of cannabis use.⁷⁸ Collectively, this would suggest that at the very least reform of the law and the ending of criminal sanctions for cannabis use has no or little impact on prevalence.

One important consequence of the Australian system of *de jure* and *de facto* decriminalisation is that Australia has very low rates of imprisonment for drug offences, with less than 1 per cent of offenders imprisoned for use/possession.⁷⁹ In addition, research has shown that the jurisdictions that have implemented cannabis decriminalisation have not only succeeded in keeping individuals out of the criminal justice system, but that they have avoided the kinds of social harms that are associated with criminal sanctions. **One study compared the outcomes of individuals given a CEN in South Australia and individuals given a criminal sentence in Western Australia (pre-2004 decriminalisation) and found that the individuals given criminal penalties were more likely to suffer negative employment, relationship, and accommodation consequences as a result of their cannabis charge, and were more likely to come into further contact with the criminal justice system than the South Australia (non-criminalised) individuals.**⁸⁰ Additionally, a more recent national review of eight jurisdictions' diversion schemes demonstrated that a majority of drug offenders did not reoffend following diversion, but also that in five jurisdictions out of eight, the majority of reoffenders were only charged with one new offending incident.⁸¹ On a broader societal level, research also suggests that moving from criminalisation to decriminalisation can save jurisdictions' scarce fiscal resources⁸² and may even have the potential to reduce rates of recidivism.⁸³

BELGIUM

Belgium passed laws in 2003 creating a legal distinction between possession of cannabis for personal use and other types of drug offences, which created a civil penalty system.⁸⁴ The laws were amended and supplemented by a Minister of Justice and Prosecutor-General directive issued in 2005, instructing that adults found with under 3 grams or just one plant of cannabis for personal use would be issued a *simple record* (*Process-Verbal Simplifié – PVS*). While the cannabis is not confiscated, the police officer does send the individual's relevant details to the police station. However, these are not kept in any database.⁸⁵

If aggravating factors are present – for example, cannabis possession in a penitentiary, or possession in or near places where minors gather – more serious penalties can be enforced, including 3 months to a year in prison and/or a fine of €1,000 – €100,000.⁸⁶ All illicit substances other than cannabis are criminalised.

In October 2014, Belgium’s governing coalition issued a declaration stating that ‘all drug use is illegal. Use and possession of cannabis *in public* [emphasis added] will not be tolerated’. While the mayor of Antwerp has cracked down heavily on drugs in that particular city, other mayors continue to adhere to the official decriminalisation policy as the political declaration has no formal impact on the law.⁸⁷

Based on the most recently available data from 2008, the lifetime prevalence of cannabis use in Belgium among adults aged 15-64 was 14.3 per cent, well below the EU average of 23.3 per cent.⁸⁸ **Furthermore, lifetime prevalence of cannabis use among 15-16 year olds in Belgium fell from 31 to 24 per cent between 2003 and 2011,⁸⁹ underscoring that the decriminalisation of cannabis has not had the effect of increasing use among youth.**

CHILE

Since 2005, individuals in Chile found with illicit drugs intended for ‘exclusive personal use and consumption in the near future’ in private have been exempt from criminal prosecution.⁹⁰ As there are no thresholds in place, the judge must determine whether the drugs were intended for private use when the evidence does not provide for a rational inference that it was for such purposes, while the legal burden falls on the arrestee to prove possession was for personal use and not for distribution or sharing. If the individual is arrested for use or possession in public the judge may administer fines, forced treatment, community service requirements, and/or suspension of his or her driver’s licence. This also applies for consumption in the private sphere if within a group and it is determined that ‘they have assembled for that purpose’.⁹¹

Although the majority of possession cases terminate in a suspended sentence or administrative sanctions, a high number of arrests are still carried out for low-level offences with some resulting in imprisonment. In 2014, for example, 63.6 per cent of the 51,357 arrests carried out for drug-related offences were for drug possession or consumption, with the remainder being for trafficking.⁹²

In recent years, the impetus to fully decriminalise drugs in Chile has grown, in particular with regards

to cannabis. The Chamber of Deputies (Lower House) passed a bill in July 2015 that would decriminalise possession for private consumption of up to 10 grams of cannabis and the private cultivation of up to 6 plants. Prior to the Senate voting on it, however, the government recommended the thresholds be lowered to just 2 grams and 1 plant.⁹³ The bill is still to go before the Senate.

Further to this, in June 2015 the Supreme Court declared ‘the need for reforms of the law that punishes the illicit trafficking of narcotics and psychotropic substances’, in a ruling concerning the cultivation of cannabis plants. The defendant in this case had originally been sentenced to 41 days in prison, which was overturned when the Supreme Court deemed that the plants were intended for personal use.⁹⁴

Though efforts to decriminalise cannabis and make broader reforms to the country’s drug laws could ultimately move slowly, progress has been made with regards to medicinal cannabis. President Michelle Bachelet signed a decree in October 2015 allowing pharmacies to sell cannabis-derived substances for medicinal use.⁹⁵

According to Chile’s National Drug and Alcohol Use Prevention and Rehabilitation Service (SENDA), the lifetime prevalence of both cocaine and cannabis use among 12-64 year olds have followed virtually identical paths; both rose between 1994 and 2008, falling sharply in 2010 and then have seen a slight uptick since. Lifetime cannabis use stood at 31.5 per cent in 2014, while lifetime cocaine use was 5.9 per cent.⁹⁶ These fluctuations – the rising prevalence rates prior to decriminalisation, the drop post-2005 and the rise again five years later – suggest little impact of the law on use levels among the population.

COLOMBIA

Drug possession for personal use was decriminalised in Colombia in 1994 when the Constitutional Court ruled that penalties for possession of a ‘personal dose’ violated Articles 16 and 49 of the 1991 Constitution. These respectively guarantee the rights to ‘free personal development’ and the freedom of decision-making to affect one’s own health as long as it does not impact the rights of third parties.⁹⁷ Following the court ruling, possession of quantities under certain maximum thresholds – 20 grams for cannabis, 5 grams for hash, and 1 gram for cocaine – was not prohibited until 2009, when then-Colombian President Álvaro Uribe’s government succeeded in passing a constitutional amendment to Article 49, restoring a

prohibition model. Uribe had been campaigning for this since his election in 2002.

The sanctions for possession for personal use following 2009 were largely limited to administrative sentences, including referrals to various treatment and prevention services, though there was a degree of legal uncertainty among judicial and police authorities who lacked clear guidance on how to proceed with possession offences. Following passage of *Law 1453* in June 2011, people faced imprisonment of between 64 and 108 months and a fine of 2 to 150 months' minimum wages when caught with less than 1,000 grams of cannabis, 100 grams of cocaine or 20 grams of opium derivatives.⁹⁸

However, an August 2011 ruling by the Colombian Supreme Court determined that the concept of 'personal dose' as established in 1994 still held primacy. The Constitutional Court followed up this ruling in June 2012 by reinstating the decriminalisation of possession for personal use, setting the thresholds for a 'personal dose' back to those established in 1994.⁹⁹ The following month *Law 1566* was signed, guaranteeing to people who use drugs the right to access health and social services, and thus reaffirming drug use to be a public health issue rather than a criminal one.¹⁰⁰

Hearing the case in 2014 of an individual caught with 2.2 grams of cocaine and 51.8 grams of cannabis, Colombia's Supreme Court ruled that those caught with amounts slightly above the limits defined for a personal dose should not be penalised providing it is for personal use.¹⁰¹ While this ruling was issued, the thresholds instated in 2012 remain the same, leaving it to judges to use their discretion following the Supreme Court's directive.

Despite thresholds being in place for some substances, people who use drugs can still be criminalised for simple possession and continue to receive penalties due to 'serious problems with judicial safeguards in the investigative and trial phases.'¹⁰² People who use drugs have reported corrupt officers detaining them for longer periods than necessary in order to extort them, and even if not detained, individuals can have their substances confiscated by police who are trying to meet institutional quotas.¹⁰³ Indeed, from 2000 to 2016 the number of people imprisoned for drug crimes increased astronomically from a little over 6,000 people to over 24,000.^{104, 105}

COSTA RICA

Drug possession for personal use has been

decriminalised in Costa Rica since the enactment of *Law 7093* in 1988 which set out administrative fines for these offences. Further reform in 2001 with the passage of *Law 8204* saw the removal of administrative fines for possession offences, and instead brought in voluntary treatment (although mandatory treatment is still applied to those aged under 18). **This legal foundation has been underpinned by a judicial culture that treats drug use as a public health problem and seeks to avoid the criminalisation of drug users.** Following an increase of arrests for drug possession, the Public Prosecutor's Office issued two circulars in 2010 and 2011 instructing all court prosecutors to abandon cases of possession for personal use.¹⁰⁶

While Costa Rica does not have threshold amounts to determine what constitutes personal use, one court overturned the convictions of defendants who were carrying up to 200 grams of cannabis or cocaine. The court determined that the drugs were for personal use as there was no evidence of trafficking.¹⁰⁷ In another case a man of German nationality was arrested for trafficking 487 grams of cocaine. He alleged that it was for his own personal use and the prosecution failed to prove that he intended to traffic the drugs, thus he was found not guilty.¹⁰⁸

In August 2013 Costa Rica amended *Law 8204* to reflect the role that economic deprivation and multiple dependents play in encouraging women to undertake minor drug trafficking roles. The reform reduced sentences for drug trafficking among women who have attempted to bring drugs into prison and who fulfil one of the following criteria: living in situations of poverty, head of a household in a situation of vulnerability, responsibility for minors, elderly or disabled persons, or herself an elderly person. The sentences were reduced from 8-20 years, to 3-8 years. The reform also gives judges the power to consider alternatives to sentencing such as house arrest or probation.¹⁰⁹

CROATIA

Drug control in Croatia is covered by two acts; the *Law on Combating Drug Abuse (LCDA)* 2001 and the *Criminal Code* 1997.

New amendments to the *Criminal Code* came into force on 1 January, 2013, stipulating that the possession of 'small quantities' of drugs for personal use is no longer a criminal offence, punishable instead by a fine of €650-2,600 and classed as a misdemeanour under the LCDA.¹¹⁰ It is for the state prosecutor or the court to decide what is to be classed

as a 'small quantity' (they have discretion on each case). A measure of compulsory treatment may also be imposed in a medical or social care institution for a period of 3-12 months and if the offender successfully completes the rehabilitation process, the fine does not need to be paid.¹¹¹ The use of drugs in public is punishable by a fine of €100.¹¹² The penalties for personal possession do not vary by drug, quantity, dependency or recidivism.¹¹³

CZECH REPUBLIC

The Czech Republic has a history of treating problematic drug use as a health issue. Since the early 1960s treatment approaches, considered to be particularly humane when compared to other Soviet Bloc countries, have been implemented by health professionals.¹¹⁴ It is arguably this background that set the tone for the Czech Republic's first national drug legislation as it emerged from the Soviet Union in 1989.

In 1990 the possession of drugs for personal use was removed from the penal code, with little in the way of media coverage of the country's reforms. However, as drug consumption in many Eastern European countries began increasing, including in the Czech Republic where there were emerging visible drug markets,¹¹⁵ the public and the media began to take interest, displaying what commentators referred to as a 'moral panic' about drugs.¹¹⁶

Two political parties, the Christian Democrats and Communists, called for the criminalisation of drug possession in response to the media hyperbole. However, the Parliament at the time, who largely came from the Civic Democrats and the Social Democrats, got ahead of the debate by bringing forward an amendment to the penal code that would criminalise drug possession of amounts considered 'greater than small'.¹¹⁷

In 1998 the penal code was amended along these lines and made possession for personal use a civil offence if in 'small amounts'.¹¹⁸ Possession of drugs for another person's use remained a criminal offence, as did smuggling, and selling or offering drugs to another person. The 'propagation of drug use' – i.e. the incitement of others to use drugs – was also criminalised.¹¹⁹

In response to the new legislation the National Drug Commission instigated a cost-benefit analysis of the new laws. After a two-year evaluation was concluded in 2002, research found that:

- penalisation of drug use had not affected the availability of illicit drugs;
- there was an increase in the levels of drug use within the country;
- the law did not reduce initiation of drug use and in fact found higher initiation rates among young people during the period of evaluation;
- and, the social costs of illicit drug use increased significantly.¹²⁰

As a result of this analysis and further expert efforts to rationalise drug policy, Czech legislators revised the drug laws once again in 2010 when a new penal code entered into force. This time the reform included the introduction of threshold amounts defining what constitutes a 'greater than small' amount.¹²¹ At the same time, the law imposed lower penalties for some cannabis offences and established the new offence of the 'cultivation of psychoactive plants', which could also attract civil penalties if the plants grown were of a small number ('small amount') and for personal use. Building on existing drugs policy, the new Czech policy thus distinguished between types of drugs for the first time, and created an incentive to self-supply rather than to enter the illegal market.¹²²

The threshold quantities were published in a governmental decree which the new penal code pointed specifically to in defining the 'small amount' for personal use where civil, instead of criminal, proceedings would apply. For example, in relation to methamphetamine, known locally as 'pervitin' and one of the main drugs used problematically in the country, the threshold amount was 2 grams. For herbal cannabis it was 15 grams and for hashish it was 5 grams.¹²³ The threshold limit for cultivating cannabis for personal use was 5 plants.¹²⁴

However, a Supreme Court decision¹²⁵ in 2013 ruled that the government did not have the authority of Parliament to determine what constitutes a criminal offence in this case to set threshold amounts without accounting for specific circumstances surrounding the drug offence.¹²⁶ Thus, in practice the enforcement of 'small amount' possession for personal use went back to the previous situation, meaning that people caught in possession of drugs for their own use do not know if they will be subject to criminal or civil proceedings.¹²⁷ The Supreme Court did provide some new 'tentative threshold quantities', though, where it decreased the thresholds for personal use of methamphetamine from 2 grams to 1.5 grams, and herbal cannabis from 15 grams to 10 grams. However,

police and state attorneys are not bound by these new amounts when enforcing the law.

Possession offences (a 'small amount' for one's own use) incur potential fines of up to the equivalent of \$600 processed through municipal administrative procedures, but no criminal record is created for the individual.¹²⁸

Despite the Czech Republic ranking at or near the top of European countries in terms of prevalence of cannabis use in all age groups,¹²⁹ **decriminalisation legislation and investment in public health by implementing health and harm reduction services, has had widespread impacts on reducing harms suffered by people who use drugs.¹³⁰ HIV rates among injecting drug users remains below 1 per cent in the Czech Republic,¹³¹ and these outcomes can be attributed to the Czech Republic's drug policy being shaped by a commitment to scientific evidence, rather than ideological agendas.**

Between 2008, prior to implementation of the Czech Republic's new decriminalisation laws, and 2013, both the lifetime and recent prevalence of drug use fell, according to representative population surveys. Last month prevalence of cannabis use across all age groups dropped from 5.3 per cent to 2.1 per cent, a nearly 50 per cent drop in regular users. A similar reduction in cannabis use among 15-34 year olds has been reported with last year prevalence of use falling from 28.2 per cent to 21.6 per cent. Last year use of methamphetamine among 15-34 year olds is also down, from 3.2 per cent (2008) to 0.7 per cent (2013), with lifetime prevalence also falling from 7.8 per cent to 2 per cent between 2008 and 2013.¹³² The National Monitoring Centre for Drugs and Addiction's 2013 report records that 'long-term trends suggest a decline in the level of current cannabis use among the general population, particularly as far as younger age groups are concerned', and that overall, 'the population of drug users is aging'.^{133,134} This once again supports the principle that the drug laws have very little impact on rates of use and, at the very least, decriminalisation of drug possession offences does not lead to an increased consumption of drugs.

ECUADOR

Ecuador's moves toward drug policy reform began in 2008 when the country was faced with severe overcrowding in its penitentiary system; in August of that year the prison population stood at somewhere between 167 per cent and 212 per cent its official capacity, with many there on drug charges.¹³⁵ In an

effort to alleviate this, the Constitutional Assembly approved a government proposal to pardon people for drug trafficking offences if they had been convicted, served at least 10 per cent of their sentence (or over 1 year), if it was their first offence, and if the amount of narcotics involved was less than 2 kilograms.¹³⁶ At the end of that year, some 1,500 people were released from prison as a result.¹³⁷

In the same year, Ecuador approved a new constitution, within which drug addiction is referred to as a 'public health problem,' and one that in no case should be criminalised.¹³⁸ However, it was not until 2013 that guidance was issued as to what constitutes possession for personal use, with the National Council for Control of Narcotic and Psychotropic Substances (CONSEP) issuing a decree setting the thresholds at 10 grams for cannabis, 1 gram for cocaine hydrochloride, or 0.1 grams of heroin, among others.¹³⁹ People caught with less than these amounts were exempt from criminal prosecution.

The following year, the *Organic Comprehensive Criminal Code* (COIP) was written into law, repealing the harsh sanctions for drug offences laid out under *Law 108* (1990), and introducing proportionality for these crimes. For example, *Law 108* previously held that drug offences, no matter their nature, could carry a 12-16 year sentence, whereas the 2014 COIP differentiates between different levels of trafficking offences – with separate penalties for each – and possession for personal use (which should incur no penalty).¹⁴⁰ Three months after the COIP's introduction, some 2,000 people were released from prison owing to retroactive application of the new criminal code.¹⁴¹ However, some commentators noted that the thresholds for personal possession and those for small-scale trafficking overlap – the latter starting from 0 grams – meaning training for judges and police officers would be needed to protect against the unnecessary criminalisation of people who use drugs.¹⁴²

Despite these progressive moves, CONSEP introduced new thresholds for small-scale trafficking in 2015 – e.g. 0-20 grams of cannabis under the new directive compared to 0-300 grams previously – following fears from the government that drug use was increasing after the COIP was passed. These fears, according to the head of the public defender's office, were unfounded, adding that the new thresholds were a regression back to the days where users could receive harsh prison sentences for simple possession.¹⁴³

Indeed, while the thresholds still exist for personal possession, in light of the aforementioned overlap between these and small-scale trafficking thresholds,

combined with an apparent government objective to crackdown on small-scale trafficking, there appears a real risk that Ecuador's decriminalisation law could become redundant.

ESTONIA

In 2002, amendments made to the *Act on Narcotic Drugs and Psychotropic Substances and Precursors Thereof* ensured that possession of small quantities of all illicit drugs for personal use were no longer a criminal offence.¹⁴⁴ The 'small quantity' standard is one determined by judicial precedent or expert opinion in court in a particular case, but is generally considered to be 10 times a single dose for an average drug user.¹⁴⁵ Police do still arrest individuals found with illicit drugs, and under the law, courts or 'extra-judicial bodies' may issue a sentence. This can include a fine of up to the equivalent of €1,200 (300 'fine units') or a sentence of administrative, non-prison detention for up to 30 days, and there is no variance in the penalty for repeat offenders.¹⁴⁶ According to colleagues in Estonia, from March 1, 2016, the value of the 'fine unit' is set to double meaning the maximum possible fine handed down could increase to €2,400.

As drug use is a misdemeanour, the penalty of a fine or detention can be replaced with participation in a 'social programme', something which is reportedly being utilised more in practice compared to administrative detention.

Past year use of cocaine or cannabis among people aged 15-34 is 1.3 per cent and 13.6 per cent respectively. The former sits just below the EU average by 0.6 per cent, the latter just above by 1.9 per cent based on the most recent data available.¹⁴⁷

GERMANY

German law has contained decriminalisation elements since the early 1990s. At a federal level, amendments to the *Narcotics Act* in 1992 gave prosecutors the discretion to decide not to prosecute an individual for cannabis possession if the prosecutor considers the offence to be 'minor' and determines there is 'no public interest' in criminal prosecution.¹⁴⁸ The determination of whether the offence is minor largely depends on whether an individual possesses a 'small amount' of prohibited substances. The definition of 'small amount' varies between länder (German states) for different substances.^{149,150}

In 1994, the German Federal Constitutional Court ruled that criminal penalties for the possession or importation of small amounts of cannabis were unconstitutional,¹⁵¹ though different länder have

interpreted this ruling in different ways, with some interpreting it to extend to non-cannabis drugs as well. Since the ruling, the länder and even some municipalities have set their own threshold definitions of a 'small amount' of illicit drugs, below which individuals are not prosecuted for possession. With regard to cannabis, these limits vary from 6 grams to 15 grams,¹⁵² while for cocaine the range is 1-3 grams. Some länder do not have threshold limits but instead look to judicial precedent to establish limits on these and a wide range of other drugs.¹⁵³

While the law only grants prosecutors the authority to not prosecute an individual possessing a small amount of illicit drugs, in practice police in some länder often refrain from proactively arresting such individuals or reactively responding to complaints about such minor drug possession, particularly in cases involving cannabis or ecstasy.¹⁵⁴ In Germany, people who use drugs problematically who have received a custodial sentence of two years or less are eligible for diversion to treatment instead of imprisonment. Incarceration may be cancelled entirely if an individual demonstrates continued participation in a treatment programme for the duration specified by the administering authority. Failure to participate successfully can result in the execution of the original custodial sentence.¹⁵⁵ Reports indicate, however, that in practice many problematic users face coerced therapy followed by a custodial sentence.¹⁵⁶

There has been some political discussion at the national level on harmonising the thresholds across all 16 German länder in recognition of people being treated differently in neighbouring länder for possession of small amounts of drugs. For example, in Berlin the threshold amount for cannabis is up to 15 grams, while in neighbouring Brandenburg the threshold quantity is 6 grams. However, to date no concrete legislative reforms have been put forward.¹⁵⁷

Like many other Western European countries Germany has been experiencing a decrease in drug use, especially in relation to cannabis since the early 2000s. One study showed that last year prevalence among under 17s had fallen from 10.1 per cent in 2004 to 4.6 per cent in 2011.¹⁵⁸ Germany has lower rates of drug use, including problematic drug use, than many other European countries.¹⁵⁹

ITALY

Drug use and possession was first decriminalised in Italy in 1975, though Italian drug laws and policies have fluctuated considerably since between harsh and lenient penalties.¹⁶⁰ Amid these varying policies

one conclusion can be drawn – no matter how liberal or punitive they have been, they have had little effect on the prevalence of drug use throughout Italy.

The first U-turn on the 1975 law came in 1990 when Italy instituted an administrative sanctions regime for possession offences involving a small quantity of drugs. A 'daily average dose' guide was produced to assist sentencing and established potential fines or three month custodial sentences for repeat or drug-dependent offenders. Yet, the introduction of harsher sanctions did not appear to affect the prevalence of drug use and in the early 1990s Italy's rate of problematic users became the highest in the EU.¹⁶¹ Following a 1991 Constitutional Court decision and a 1993 referendum, the law eventually changed to eliminate custodial measures for people who use drugs or repeat offenders and eliminated the 'daily average dose' concept. This gave judges more flexibility in considering whether an individual possessed drugs for personal use or sale even if the quantity surpassed the maximum quantity threshold established by law.¹⁶²

This 'judicial discretion' regime existed until 2006 when Italy's Parliament passed new drugs legislation known as the *Fini-Giovanardi*.¹⁶³ These laws had the impact of:

- reinstating a stricter 'maximum quantity allowed' threshold for personal use possession offences (set at 500 milligrams of cannabis' psychoactive ingredient, 250 milligrams of heroin, 750 milligrams of ecstasy and 750 milligrams of cocaine);
- establishing tougher administrative sanctions for personal use offences, including curfews, mandatory reporting to police, and driving prohibitions for longer periods of time;
- eliminating the alternative sentence of therapy *in lieu* of administrative sanctions for personal use;
- extending the sentences that drug-dependent individuals must receive in order to be eligible for alternative therapeutic programmes in place of imprisonment, from four years to six years. This applies if the individual is already imprisoned and has six years or less remaining on their sentence.¹⁶⁴

Following implementation of the 2006 law, the number of sanctions administered for personal use more than doubled, from 7,229 in 2006 to 16,154 in 2010,¹⁶⁵ while the proportion of individuals incarcerated for drug offences as part of the general prison population

also increased from 28 per cent in 2006 to just under 31 per cent in 2013.¹⁶⁶ Additionally, the number of drug-dependent offenders in treatment significantly decreased, from 3,852 at the start of 2006 to 2,816 at the start of 2012.¹⁶⁷ It is possible that this reduction is linked to both the increased stigmatisation of those who use drugs as a result of criminalisation, and the devolution of services from the central administration to Italy's 20 regions. The latter has resulted in the provision of health services in many parts of the country not being fully implemented due to the transition.

In June 2011, Italy's highest court, the Court of Cassation, held that individuals could legally grow small amounts of cannabis on their home balconies or terraces.¹⁶⁸ Then, following challenges to the *Fini-Giovanardi's* legitimacy in 2013, the Constitutional Court ruled it unconstitutional in 2014 due to not having followed proper Parliamentary procedure in its passage.¹⁶⁹

This striking down of the *Fini-Giovanardi* broadly reinstated the 1990 law, as amended by the 1993 referendum, and with it the distinction between 'hard' and 'soft' drugs – cannabis offences no longer carried the same sentences as those for heroin or cocaine, for example. Furthermore, the small amount for personal use set out in the 2006 law no longer exists, bringing back the regime of judicial discretion, and an April 2014 decree introduced by the Minister of Health which was signed into law later that spring reinstated some administrative sanctions. The penalty periods for these administrative sanctions were reduced, though (2 months to 1 year for 'hard drugs,' 1 to 3 months for 'soft' drugs) and community service was introduced as a possible penalty under *Law 36/2014*.¹⁷⁰

Upon reversal of the *Fini-Giovanardi* law, it was projected that up to 10,000 people could be released from prison due to the significant reduction in penalties for cannabis offences,¹⁷¹ and the number of drug-related arrests for minor offences has dropped dramatically, according to analysts.

Despite the punitive nature of the *Fini-Giovanardi* law, it appeared to have little impact on high drug use prevalence rates in Italy; in 2012 lifetime cannabis use among 15-64 year olds stood at 21.7 per cent, one of the higher rates in Europe.¹⁷²

In March 2016, Italy's Constitutional Court is expected to rule on a case raised in Brescia's Court of Appeal concerning the right to cultivate cannabis for personal use.

JAMAICA

As early as 1977, Jamaica has contemplated decriminalising cannabis possession for personal use – a Joint Select Committee set up in that year concluded that there was a strong case for removing criminal sanctions for the possession of up to 2 ounces (56.7 grams) of cannabis, a recommendation that was reiterated in 2001 by the government-appointed National Commission on Ganja.¹⁷³

In spite of these recommendations, it was not until February 2015 that Jamaica's Parliament finally passed the *Dangerous Drugs (Amendment) Act*, which came into force in April of the same year.¹⁷⁴ The amendments stipulate that anyone caught with 56.7 grams of cannabis or less will not receive a criminal record, though can be fined J\$500 (just under £3) which is payable within 30 days. Smoking cannabis in a public place incurs the same penalty and failure to pay any fine will result in a criminal record and a possible sentence of community service.¹⁷⁵

Both those under the age of 18, along with adults appearing dependent on cannabis, will be referred to counselling for drug misuse if caught in possession.¹⁷⁶

Possession of cannabis for religious purposes in adherence with the Rastafarian faith, for medicinal purposes if prescribed by a doctor, or for scientific research in an approved institution, is exempt from any of the above mentioned penalties. Furthermore, private households may lawfully cultivate up to five cannabis plants.¹⁷⁷

Additionally a Cannabis Licensing Authority has been created and is due to begin operating in April 2016.¹⁷⁸ Its mandate is to regulate the cultivation of cannabis for medical, therapeutic and scientific purposes through the issuance of licenses and growing permits. By doing this it hopes to bring lands used for cultivation from the illicit trade into a formalised and controlled framework.

The former justice minister, Senator Mark Golding, who was influential in seeing decriminalisation come into force, highlighted in October 2015 that as a result of the law change arrests for cannabis-related offences had decreased by approximately 1,000 per month. This not only helps relieve any stress on the criminal justice system – authorities predict that 15,000 fewer cases will go before the courts each year now – but also removes any potentially damaging contact with the criminal justice system for a high number of people, particularly youth.¹⁷⁹

MEXICO

Mexico has gained considerable notoriety over the past decade for becoming the frontline of the so-called War on Drugs. Since a decision in 2006 by then-President Felipe Calderón to militarise the country's fight against drug trafficking homicides skyrocketed, with the annual rate of murders per 100,000 inhabitants almost tripling compared to pre-2006 levels. Of the more than 160,000 homicides committed from 2007-2014, 34-55 per cent of them are estimated to be related to organised crime.¹⁸⁰

In 2009, amendments were made to the country's *General Health Law* in an effort to focus law-enforcement priorities on combating traffickers and small-scale drug dealing. These changes additionally decriminalised the possession of small amounts of illicit drugs, with the Attorney General instructed not to prosecute individuals found in possession of less than 5 grams of cannabis, 0.5 grams of cocaine, 50 milligrams of heroin, or one ecstasy tablet, among other minimum quantities.¹⁸¹

If caught with drugs under the threshold amount, individuals are supposed to receive only an encouragement to seek treatment; if caught three times with drugs under the threshold amount, treatment becomes mandatory.¹⁸² If the arresting authorities, in consultation with medical officials, determine that an individual uses drugs problematically, they can refer that individual to treatment on the first offence. And, if individuals refuse or fail to participate successfully in treatment, they are subject to criminal prosecution, as are those found in possession of drugs above the legal thresholds.

The law's extremely low thresholds for possession offences leaves a large number of people vulnerable to prosecution for small-scale trafficking if caught with anything above these, despite them potentially having no intention beyond personal use. Indeed, people caught in possession of drugs under the thresholds have similarly been detained, possibly owing to a combination of poor knowledge of the law among those who are caught, and police corruption.

From 2011 to 2013, the number of people imprisoned in federal penitentiaries for drug crimes grew by 19 per cent compared to just a 7 per cent overall rise in federal prison population during the same period.¹⁸³ Furthermore, between 2009 and May 2013 140,860 people were arrested in Mexico for drug use, according to data from the Attorney General's Office, and cases of possession and use still represent the majority – 65 per cent – of drug-related cases at the

federal level,¹⁸⁴ though the annual figure has been declining in recent years.

Despite the fall at the federal level, statistics provided by 17 of Mexico's 31 states plus the capital show the opposite at the local level; the number of open cases for drug-related crimes more than doubled from 2012 to 2014 from 9,518 to 22,234.¹⁸⁵

Mexico has taken recent steps toward potentially liberalising its drug laws further. Following the submission of a case by the Mexican Society for Responsible and Tolerant Consumption (SMART) – a project of Mexico United Against Crime (MUCD) and the Strategic Centre of Social Impact (CEIS) – against the Federal Commission for the Protection Against Sanitary Risks (COFEPRIS), the Supreme Court in November 2015 granted an *amparo* (writ) to four members of SMART allowing them to cultivate cannabis for personal use.¹⁸⁶ In its ruling, the Court stated that outlawing cannabis for personal use violated the plaintiffs' right to 'free development of personality,' thus declaring the current model of cannabis prohibition unconstitutional.¹⁸⁷

While the ruling only grants rights to the four plaintiffs, it is expected to open the door to further legal challenges to the country's cannabis laws.

THE NETHERLANDS

The Netherlands has long been regarded as a global pioneer in drug policy, often relating to the amendments it made to its drug laws in 1976 that created a legal division between 'hard' and 'soft' drugs.¹⁸⁸ The aim of this policy was to separate the cannabis market from other drug markets in order to limit young people's exposure to harder drugs.¹⁸⁹

Technically, the 1976 legislation continued to criminalise drug possession and supply, but guidelines for prosecution introduced at the same time by the Ministry of Justice laid the foundation for the *de facto* decriminalisation framework¹⁹⁰ by determining that cannabis supply and possession should be of the lowest priority to law enforcement and prosecutors.¹⁹¹ This system led to the subsequent creation of the Netherlands' famous 'coffee shops', which are legally permitted to sell cannabis in limited amounts.¹⁹²

Under the aforementioned guidelines, prosecutors are currently instructed not to prosecute possession offences of up to 5 grams of cannabis for personal use (the amount was 30 grams before 1996).¹⁹³ In respect of 'hard' drugs police will dismiss the matter if a person is found in possession of less than 0.5 grams

and will confiscate the drug.¹⁹⁴ Individuals found with amounts at or below these thresholds should face no penalties – civil or criminal.

In 2012 the Dutch government initiated measures to reclassify cannabis containing more than 15 per cent of THC¹⁹⁵ as a 'hard drug' meaning that the police may arrest and prosecute anyone caught in possession of over 0.5 grams.¹⁹⁶ Considering that the percentage of an active ingredient will only be detectable through forensic analysis it will be interesting to see if and how this proposal moves forward, particularly as it has been opposed by every government office that would be involved in enforcing the limit, including the police, prosecution and forensic services. The current government still intends to implement the measure, but its future is increasingly uncertain, and research from the Trimbos Institute has argued convincingly that the potency threshold is arbitrary, stating that there is no evidence it would reduce health harms.¹⁹⁷

Numerous studies have been undertaken to evaluate the effects of the Netherlands' cannabis policies on the prevalence of drug use. **One study demonstrated that the removal of prohibitions on cannabis has not led to an explosion of drug use and that particular policies do not have much of an impact on rates of drug use.**¹⁹⁸ **Another concluded that there is no evidence that the decriminalisation component of the 1976 policy increased levels of cannabis use.**¹⁹⁹

While reported prevalence of lifetime cannabis use in the Netherlands did increase significantly from 1984 to 1996, experts have pointed to the expansion of the commercial promotion of cannabis use by coffee shops as a cause of the increase, not the decriminalisation policy enacted years before.²⁰⁰

With regard to other drugs, policies in the Netherlands have resulted in a smaller proportion of 'hard-drug' users there than in most of the rest of Western Europe and the United States.²⁰¹ Between 1979 and 1994, the prevalence of 'hard-drug' use in the Netherlands decreased from 15 per cent to 2.5 per cent, indicating no compelling correlation between decriminalisation and increased prevalence of drug use.²⁰² Recent evaluations of Dutch drug policies show low numbers of deaths from heroin and methadone use compared to the rest of the globe and one of the lowest rates of injecting drug use in Europe.²⁰³ Furthermore, a 1995 Government report confirmed that **the tolerated cannabis market had been effective in its aim to separate the drug markets and that this was evidenced by the low numbers of young people transitioning into problematic use** compared to the rest of Europe.²⁰⁴

Despite the decades of *de facto* decriminalisation in the Netherlands, according to the EMCDDA the prevalence of cannabis use is only slightly above the EU average and on a par with countries like the United Kingdom. Importantly, the harms created by problematic use have been avoided – in addition to the aforementioned low rate of injecting drug use, the Netherlands continues to have low rates of drug-related deaths.²⁰⁵ Moreover, the Netherlands' progressive drugs policies have limited the numbers of people arrested for possession of small amounts of cannabis,²⁰⁶ prevented the growth of 'no-go' zones dominated by drug markets, and combatted the over-policing of minority communities.²⁰⁷

Nevertheless, even in the Netherlands, which is often seen as the most liberal country where cannabis is concerned, the number of offences related to cannabis possession remains significant. In 2012, there were 4,594 recorded offences under the *Opium Act*, 71 per cent of which concerned possession of 5 grams of cannabis or less – the threshold quantity for cannabis to be purchased in coffee shops. That amounts to nine offences per day. However, the risk of being caught in the Netherlands is relatively low, since detection of possession is generally the result of non-targeted detection rather than targeted control.²⁰⁸ Many of these offences are related to border control policing, involving the trafficking of small amounts of cannabis bought by people in coffee shops to take across the border.

While it appears there is no intention to change the rules around decriminalisation of drug possession in the Netherlands, the political climate has resulted in changes to the coffee shop model. In recent years, the previous Conservative government restricted access by introducing a 'weed pass' system that allowed only legal residents of the Netherlands to buy cannabis and turned coffee shops into closed clubs with a maximum of 2,000 resident members. The new system went into effect in southern cities in May 2012,²⁰⁹ but was largely rejected by northern cities.

This disparity in drug policies between the north and the south of the Netherlands had interesting effects on local drug markets. While the 'weed pass' aimed to reduce public disorder associated with foreign tourists buying cannabis, the policy only shifted the type of disorder by encouraging the growth of street suppliers on drug-supply scooters. Citizens reported experiencing aggression from these black market drug runners, which also involved minors. The policy facilitated the emergence of a larger illegal drug market in the south, while the north maintained legislative control over drug distribution. Southern

coffee shop owners protested that the 'weed pass' not only encouraged illegal dealing but also damaged the local economy.²¹⁰

Eventually, the nationwide introduction of the 'weed pass' failed due to political opposition, but the residence criterion (tourist ban) remains. The Justice Minister still insists on maintaining the residence criterion, although a provisional opt-out was included in the measure for municipalities to decide whether they would enforce the rule. A survey found that 85 per cent of the municipalities did not enforce the residence criterion,²¹¹ and those that did are mainly located in the south.²¹²

The current debate in the Netherlands is about whether or not to regulate cultivation and supply of cannabis to coffee shops. The problems with the current model are rooted in the paradox that at the front-door, the sale and possession of small quantities are not prosecuted, while at the back-door supply (cultivation and trade) is still fully criminalised.

In November 2015, the Dutch platform of municipalities called on the government to allow regulated cannabis production by introducing licences for growers to take cannabis out of the hands of organised crime. They concluded that 'the toleration policy is no longer suitable in the current circumstances. The toleration policy was successful for some time but is now an obstacle to effectively tackling the problems. The changing circumstances, in particular the fact that organised crime has a firm hold of the production and trade of cannabis, makes a toleration policy untenable.'²¹³ Furthermore, they said that '[t]he discussion on cannabis policy has reached an impasse, between proponents and opponents of regulation. We cannot allow the various levels of administration to become bogged down in discussions, while organised crime profits and public health remains insufficiently protected.'²¹⁴

A survey in June 2015 showed support for regulated cannabis production reaching 70 per cent among the Dutch population, with strong majority support across voters for all main parties.²¹⁵ Judges are also increasingly showing discomfort with current policies in their sentencing – for example, a case involving two cannabis growers who cultivated overtly, reported their income to the tax authorities and paid their electricity bills saw the court find them guilty but no punishment was applied.²¹⁶ The court ultimately criticised the policy that criminalises cannabis production while allowing its sale. This case has been referred to the Supreme Court for a final ruling that is expected in the fall of 2016. The ruling is potentially

ground breaking as it might open up the legal supply of cannabis to the coffee shops.

PARAGUAY

Paraguay permits the possession of illicit drugs for personal consumption under *Law 1340* passed in 1988 which states that an individual found with less than 10 grams of cannabis, or 2 grams of cocaine or heroin will generally not be punished criminally or administratively. However, in order to qualify for this exemption people must be registered as a person who uses drugs, something which occurs upon first being caught in possession of drugs. Furthermore, if a court determines that an individual is drug dependent then a judge is authorised, following an assessment by medical authorities, to mandate custodial drug treatment for a period of his or her determination.²¹⁷

The country has not collected statistics on drug use among the general population since 2003, though according to estimates collated in the 2011 World Drug Report by the United Nations Office on Drugs and Crime, Paraguay had the third lowest annual prevalence of cannabis use in South America and tied for lowest annual prevalence of cocaine use among 15-64 year olds in the region.²¹⁸

In 2013, of those imprisoned while awaiting trial, nearly 18 per cent of the female prison population and 6.4 per cent of the male were there for drug possession offences.²¹⁹ This points to problems with *Law 1340* – while thresholds may be in place, they remain low and the administrative steps needed to be taken in order to qualify as exempt from prosecution could be prohibitive for a number of people, particularly the economically disadvantaged.

PERU

Peru's 1991 *Criminal Code* removed criminal sanctions for drug possession for personal use, with the judge having to determine if they were intended solely for a person's own consumption. Modifications to the country's *Criminal Code* in 2003, though, established thresholds, meaning individuals found with up to 5 grams of cocaine paste, 2 grams of cocaine hydrochloride, 1 gram of opium latex or 200 milligrams of its derivatives, or 8 grams of cannabis are not punishable under Peruvian law provided the drugs are for immediate personal use.²²⁰ Furthermore, traditional consumption of the coca leaf has never been criminalised in Peru, a country which is historically a major source of coca.²²¹

Despite this statutory decriminalisation, research reveals a disconnection between policy and the reality

of policing practice, with officers regularly holding individuals in custody who are found in possession of drugs until determination of a non-trafficking status can be made. This often results in long periods of detention without charge²²² and reveals not only that criminal justice structures and operations within a state may have a significant impact on the successful implementation of decriminalisation, but also leaves room for police corruption and abuse of people who use drugs. From 2010-2012, the number of people arrested for drug use/possession in Peru rose from 42.6 per cent to 59.3 per cent of the total number of police arrests for drug crimes.²²³

Low-level drug crimes are also a driver of high incarceration rates in Peru – the number of people imprisoned for these offences grew 46 per cent from 2008-2013, meaning drug crimes constituted 24 per cent of the total prison population.²²⁴ In 2010, one third of these people – approximately 4,000 – had not been formally charged or convicted of any crime.²²⁵

According to Peru's National Commission for Development and Life Without Drugs (DEVIDA), lifetime prevalence of cannabis or cocaine (hydrochloride and base) use among 12-64 year olds stood at 5.8 per cent and 3.9 per cent respectively in 2002.²²⁶ In 2010, these percentages were 3.8 per cent and 3.2 per cent respectively, with the age range being 12-65 years,²²⁷ suggesting the change in law had no impact on prevalence rates, and certainly did not lead to an increase in use levels.

POLAND

Poland took its first steps towards decriminalisation in May 2011 when President Bronisław Komorowski signed an amendment to the country's drug laws – Article 62a of these laws provides prosecutors with the discretion not to prosecute drug possession offences when the offender possesses a 'small quantity' for personal use.²²⁸ The change to the law also places an obligation on prosecutors and judges to collect information on a person's drug use to determine if their use is problematic or if they are dependent. In such cases proceedings can be suspended in favour of a referral to treatment, or referral to prevention or education programmes. After completion of treatment or the relevant programmes judges can decide to conditionally discontinue the case.²²⁹

The law, which formally took effect at the end of 2011, does not set out thresholds for determining what constitutes a 'small quantity'.²³⁰ The failure to set out threshold amounts has arguably impacted on the efficacy of this legal reform, with prosecutions for

possession of drugs remaining persistently high. In the first six months of 2012, a total of 14,858 people were convicted for drug possession, and only 2,595 of these cases were discontinued. In the first six months of 2011, when the law had not taken effect, 16,035 people were convicted of the offence of possession, while only 930 people had their proceedings discontinued.²³¹ By 2013 possession offences still accounted for 77.8 per cent of all drug-related preliminary proceedings instituted under Polish law,²³² demonstrating that the law has had a negligible effect and has not achieved the goal of diverting people away from the criminal justice system.

The problem with the system, specifically the lack of threshold amounts to determine a 'small quantity', was identified by the Polish Drug Policy Network. In 2013 they developed a draft amendment which would have introduced a reference table with specified amounts. The amendment was brought before Parliament but was voted down by the Legislative Committee in February 2014.²³³

The inconsistent application of the law was highlighted by Michael Kabacinski MP when the amendment was being debated. He said:

*"In practice, there are cases where 0.5 grams, a very small amount, is often regarded as significant and the user will be punished. But there are also cases when a person has more than 2 grams, which is definitely more than 0.5 grams, and his/her case becomes the subject of Article 62a of the Drug Act allowing discontinuance of criminal proceedings. It is a kind of inconsistency. In our opinion, there is an element of unconstitutionality, as there is no equality before the law. One person is considered to be the holder of an illegal substance and criminal proceedings are initiated, while the proceedings in the case of the other are dismissed."*²³⁴

This inequitable approach in the application of the law will continue to lead to high numbers of arrests for possession offences, a number that is estimated to be 30,000, mostly young, people annually.²³⁵

PORTUGAL

When Portugal decriminalised drug use and possession in 2001, newspapers and governments across the globe labelled it a bold step forward for evidence-based drug policies, a dangerous retreat in the 'War on Drugs', and everything in between. As shown in this report, Portugal was not the first country to decriminalise illicit drugs, but it did so

in response to a perceived national drug problem. Together with its decriminalisation legislation, lawmakers also re-focused Portugal's drug policies on a public health model with significant financial investment from the state. The country passed new harm-reduction measures in 2001 to better coordinate and bolster drop-in centres, shelters, mobile health units, low threshold opioid substitution programmes, syringe-exchange schemes, and other initiatives for dependent drug users, including the provision of outreach workers.²³⁶

There remains much to be learned about the effects of Portugal's 2001 policy change on drug use and harms, **but the evidence appears clear that decriminalisation has not been the disaster that critics forecast. Rather, the decriminalisation model and the associated public health policies were followed by dramatic reductions in drug-related harms and Portugal has experienced a perceived decline in drug use among some of the most vulnerable populations, including problematic users.**

Under the decriminalisation law, if the police find an individual in possession of up to 10 days' worth of an average daily dose of drugs for personal use,²³⁷ an officer issues that individual a citation referring them to a meeting with a 'dissuasion commission' (CDT) – a three-person panel made up of medical experts, social workers and legal professionals.²³⁸ Designed to be non-adversarial, the panels do not meet in courtrooms and focus on a health-centred approach to gauge an individual's treatment needs, if appropriate. The panels have a wide range of sanctions at their disposal to respond to each individual's offence – these include facilitating treatment for those who are drug-dependent, requiring regular reporting to the panel, mandating community service, suspending a driver's licence or other licences, or, as a last resort, issuing fines. For non-dependent, first-time offenders, the panels will almost always suspend the proceedings and impose no sanction.²³⁹ If an individual is found with more than up to 10 days' worth of personal supply, he or she is referred to a criminal court where criminal charges for trafficking or criminal consumption are possible.²⁴⁰

Between 2002 and 2013, CDTs have facilitated approximately 6,000²⁴¹ to 8,000²⁴² administrative processes annually against individuals in possession of illicit drugs. Most of these cases have resulted in suspensions of proceedings for non-dependent users. **In 2013, CDTs provisionally suspended 83 per cent of cases, issued punitive sanctions in 12 per cent (two thirds of this group did not receive**

a pecuniary disposal) and the remaining 5 per cent were found innocent.²⁴³ Approximately 82 per cent of cases involved cannabis alone, 6 per cent involved heroin, 6 per cent involved cocaine and the remaining cases involved multiple drugs.²⁴⁴

Reports on the impact of the Portuguese model have ranged from a 'resounding success'²⁴⁵ to 'disastrous failure'.²⁴⁶ Some decriminalisation proponents have claimed that Portugal's decriminalisation policy has led to a significant decrease in drug use and critics have claimed a significant increase; the truth lies somewhere in the middle. A study of the evidence and the competing positions was published in a 2012 article that identified the tensions in terms of the quality of available data in Portugal and the narrow reporting, or 'cherry picking', by some analysts of the Portuguese experience.²⁴⁷

The impact of decriminalisation on any of the trends is debatable, not least because of the significant investment in harm reduction, treatment and prevention that has been made since 2001, but analysis appears to suggest Portugal experienced a small increase in lifetime drug use among adults following decriminalisation, on a par with its regional neighbours.²⁴⁸ Yet, Portugal's level of drug use still remains generally below the European average.²⁴⁹ A national survey indicated a decrease in lifetime prevalence rates among 15 to 64 year olds between 2007 and 2012, with prevalence falling from 12 per cent to 9 per cent. There were also reported reductions in recent use (3.7 per cent to 2.7 per cent) and a reduction in continuity rates²⁵⁰ of use (31 per cent to 28 per cent) during the same period.²⁵¹

Studies have also suggested that there has been a steady decline in the number of problematic drug users.²⁵² The estimated numbers of injecting drug users in Portugal also decreased by over 40 per cent during that period.²⁵³

The 2011 European School Survey Project on Alcohol and other Drugs (ESPAD) report shows there have been recent increases in illicit drug use among school students in Portugal, with critics arguing it is a direct result of decriminalisation²⁵⁴. However, it is important to contextualise these increases within similar Europe-wide drug use trends among young people. For example, last month use of cannabis among Portuguese students' rose from 4 per cent in 1995 to 7 per cent in 2003 before falling slightly to 6 per cent in 2007, a pattern reflected in the rates for the European average with an increase from 5 per cent in 1995 to 9 per cent in 2003 before falling to 7 per cent in 2007.²⁵⁵ Until 2007, six years after the introduction of drug

decriminalisation, drug taking among young people in Portugal followed the same statistical trends as most of Europe.

Between 2007 and 2011 while the European average stabilised for last month use of cannabis, remaining at 7 per cent, in Portugal prevalence rose from 6 per cent in 2007 to 9 per cent in 2011. During the same period lifetime prevalence of other drugs rose from 6 per cent to 8 per cent in the same period.²⁵⁶

However, there are also some noteworthy points in relation to younger students with drug use prevalence in 2011 lower among 13 to 15 year olds than in 2001.²⁵⁷ The usual age of initiation of drug use has also increased slightly across a number of drugs including heroin and cocaine, where the median age of initiation rose from 18 years old in 2001 to 20 years old in 2012.²⁵⁸

And while lifetime prevalence of use of any drug among young people has increased to 19 per cent in 2011 from 14 per cent in 2007, this is dwarfed by comparison with the United Kingdom's experience where 29 per cent of students have taken an illicit drug. This is despite the UK deploying a criminal justice response.

No major legal changes were made to drug laws or their implementation between 2007 and 2011 making it difficult to link this increase to a particular regime of drug policy enforcement. One potential explanation for Portuguese students' increased drug use could be the social impact of the global economic crisis which hit Portugal particularly hard, leading to unemployment rising from 8 per cent in 2007 to 14.2 per cent in 2014.²⁵⁹ The United Nations Office on Drugs and Crime's own research has found that a 'lack of household stability triggered by low and irregular income and unemployment may increase the stress on the family and its vulnerability to drug abuse'.²⁶⁰

Some of the most significant changes in Portugal have taken place in the public health arena – since decriminalisation, Portugal has experienced tremendous increases in the number of drug-dependent individuals accessing treatment²⁶¹ and has seen significant reductions in the transmission of HIV and tuberculosis.²⁶² The number of drug users newly diagnosed with HIV decreased from 907 new cases in 2000²⁶³ to 78 in 2013.²⁶⁴ Similarly the number of AIDS diagnoses decreased from 506²⁶⁵ to 74²⁶⁶ new cases over the same period. Experts on the ground attribute this to the significant expansion of harm-reduction services in conjunction with Portugal's decriminalisation policy.²⁶⁷

There have been conflicting reports on the level of drug-related deaths since the introduction of decriminalisation in 2001, with some commentators stating that there has been an increase and others claiming a decrease. This is largely as a result of the different methods of post-mortem reporting resulting in weaknesses in the data. The European Monitoring Centre for Drugs and Drug Addiction records the number of annual drug overdose deaths falling from 318 in 2000²⁶⁸ to 22 in 2013.²⁶⁹ In 2013 Portugal had a drug death rate of 2.1 cases per million population,²⁷⁰ significantly lower than the EU average of 16 per million.²⁷¹ The drop in the rate of deaths attributable to drug use is clearly a great success, although it is important to note Portugal's investment in harm reduction and treatment services will have had a significant effect.

The impact the reforms have had on the criminal justice system are also of note. Unsurprisingly decriminalisation in Portugal reduced the number of criminal drug offences from approximately 14,000 per year in 2000 to an average of 5,000 to 5,500 per year after decriminalisation.²⁷²

This has led to a significant reduction in the proportion of individuals with drug-related offences in Portuguese prisons – in 1999, 44 per cent of prisoners²⁷³ were incarcerated for drug-related offences and by 2013, that figure had reduced to 24 per cent,²⁷⁴ resulting in a major reduction in prison overcrowding in Portuguese penitentiaries.²⁷⁵ Since decriminalisation, Portuguese law-enforcement statistics have also revealed an increase in operational capacity, resulting in more domestic drug trafficking seizures and an increase in international anti-trafficking collaborations that have provided for greater targeting of drug traffickers by sea.²⁷⁶ At a local level police officers who were initially resistant of the law reform now view decriminalisation as a positive change. Initially officers were worried that they would lose the ability to elicit information from those arrested for possession about other players in the trade, though this has not been the case with people more likely to cooperate with the police due to less fear of prosecution. Some police officers have even reported improved community relations as a result of the reforms.²⁷⁷

In terms of social costs research has found that the implementation of decriminalisation and the investment in public health responses has had a significant effect. In the first five years of decriminalisation there was a reduction of 12 per cent in the social cost of drugs attributable to indirect health costs. This was largely driven by the reduction in drug-related deaths. **Over the 10 year period**

of implementation there was an even greater reduction of 18 per cent in social costs as a result of both indirect health costs and costs associated with the legal system, the latter being directly attributable to decriminalisation. The costs saved to the legal system related to direct costs saved due to the reduced number of criminal proceedings and the indirect costs saved due to an avoidance of lost income and lost production as a result of people not being sent to prison for possession of drugs.²⁷⁸

THE RUSSIAN FEDERATION

Russia has one of the most punitive environments in the world for people who use drugs.²⁷⁹ The government has banned methadone maintenance treatment²⁸⁰ and the provision of needle and syringe programmes is difficult unless it can be shown that the purpose of distribution is to prevent HIV transmission.²⁸¹ This invariably leaves the country's four million drug users without basic HIV prevention services, and they are also often excluded from HIV treatment.²⁸²

Human rights abuses against those who use drugs have been well documented, with methods of addiction 'treatment' including beatings, starvation, long-term handcuffing to bed frames, electric shock and burying patients in the ground.²⁸³ Police brutality and intimidation against those who use drugs has also been well recorded, with the United Nations highlighting its concerns about such practices.²⁸⁴

These policies combined have contributed to an HIV epidemic that continues to spread; an estimated one in 100 Russian adults are infected with the disease.²⁸⁵ Between 2010 and 2015 the official number of Russians with HIV surged from 500,000 to 930,000, of whom approximately 60 per cent are injecting drug users.²⁸⁶ Vadim Pokrovsky, head of the country's state AIDS centre, has estimated that an additional two million people are likely to be infected in the next five years.²⁸⁷

The inclusion of Russia in this report is because it has a decriminalisation policy in place but it is essentially a hollow approach, unworkable in practice, with thresholds so low that the impact is negligible. It is not to be considered an example of a drug policy that reduces harms and respects human rights. Indeed, it is fair to say that Russia's current approach to drug use is an unmitigated public health and human rights disaster. However, the history of how the threshold amounts were revised between 2004 and 2006 do demonstrate how important a component they can be in terms of their impact on rates of imprisonment.

In the early 2000s Russia moved towards decriminalisation for the possession of small quantities of drugs. *Article 228* of Russia's *Criminal Code* provides that possession of a 'large amount' of illegal drugs is punishable by criminal sanctions. Those caught in possession of less than a 'large amount', however, potentially face only administrative sanctions. Since 2004 the threshold that determines a 'large' quantity of drugs has oscillated from a very low limit to slightly higher limits and then back to a very low level. This has made decriminalisation in Russia an inconsistent and effectively unrealised policy, in that it does not divert people who use drugs away from the criminal justice system.²⁸⁸

Prior to 2004, Russian law did not define the threshold that constituted a criminal amount or 'large amount' of drugs. However, courts and prosecutors relied on a summary table drawn up by Eduard Babaian, a former member of the International Narcotics Control Board and the founding father of Russia's practice of narcology. This table defined 0.1 grams of cannabis and 0.005 grams of heroin as exceptionally large amounts.²⁸⁹ This meant that the application of administrative as opposed to criminal punishment was practically unavailable.

In 2004, *RF Government Decree No. 231* was introduced and increased the threshold amounts for what constituted a 'large quantity' to 20 grams for cannabis, 1 gram for heroin and 1.5 grams for cocaine.²⁹⁰ Those caught with less than these amounts should, in theory, have been subjected to administrative sanctions, and the increased thresholds resulted in the release or sentence reduction of 40,000 people who were previously convicted. In 2004–2005, an estimated 60,000 people avoided criminal prosecution as a result of the change.²⁹¹

Yet, following political pressures on the Russian Government after the 2004 law revision, the law was changed again in 2006 to decrease the thresholds. The new 'large amount' thresholds – 6 grams of cannabis, 0.5 grams of heroin and 0.5 grams of cocaine²⁹² – are still higher than the pre-2004 thresholds but have

significantly increased the number of individuals convicted under the drug possession laws.²⁹³

If found in possession of an amount below the 'large amount' threshold, individuals face fines of up to 5,000 Roubles (approximately \$65) or 15 days of administrative detention.²⁹⁴ It is worth noting that according to the European Court of Human Rights, any detention, including administrative detention, of an individual by the state for such acts is equal to criminal liability.²⁹⁵

It is also worth noting that those who are caught in possession of drugs above the 'large amount' threshold face up to three years in prison, and those caught in possession of an 'exceptionally large amount' can be imprisoned for anywhere between three and 10 years. For heroin an 'exceptionally large amount' is 2.5 grams.^{296, 297} It is estimated that more than 90,000 people are prosecuted annually for drug use and that over 50 per cent receive custodial sentences.²⁹⁸

SPAIN (by Amber Marks*)

Possession of drugs for personal use has never been a criminal offence in Spain. The only attempt by the legislature to criminalise drug possession for personal use was in 1971 which failed on account of the Supreme Court's interpretation of the new generic drug offence (now *Article 368* of the *Criminal Code*). The Court excluded possession for personal use from the ambit of the new offence, and justified its decision with reference to the grammatical dictates of the offence – its specified objective which is restricted to the protection of public health and does not extend to protecting an individual's health, and what the court perceived to be the societal acceptance of a drug consumer as an infirm person in possession of a drug for the sole purpose of satisfying their own vice who ought not, therefore, be punished by the criminal law, but instead rehabilitated.²⁹⁹ The Supreme Court's interpretation was confirmed and adopted in a legislative revision to the *Criminal Code* in 1983.³⁰⁰

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Although there are no statutorily prescribed limits, the case-law of the Supreme Court makes frequent reference to a report authored by the *Instituto Nacional de Toxicología* (2001) suggesting that the average personal dosage is an amount equivalent to that which would last five days – thus, 100 grams of cannabis, 25 grams of cannabis resin, 2.4 grams of ecstasy, 3 grams of heroin, or 7.5 grams of cocaine. If a person is found to possess amounts above these then they are likely to be treated as suspected drug suppliers but if it is within this range and the person is in a public place then they are likely to face an administrative penalty issued by the police.³⁰¹

The cultivation of cannabis for personal use is not a criminal offence in Spain. The Supreme Court recently reaffirmed that cultivation of cannabis for personal use is outside the ambit of *Article 368* of the *Criminal Code* whenever and wherever the cultivation does not promote, encourage or facilitate consumption by third parties.³⁰²

During the 1990s the Supreme Court expanded the scope of the personal use exemption from criminal liability to include collective acquisition for shared consumption among drug users, deploying similar reasoning to that used for excluding personal possession from the ambit of the criminal law. The objective of the generic criminal offence is the protection of public health; where drugs are supplied among a close group of friends and established drug users but are not distributed to third parties, public health is not endangered and no criminal offence is committed.³⁰³ This doctrine of Spain's Supreme Court is variously referred to as that of shared consumption, collective purchase and closed circle use.

The cannabis club movement that emerged in Spain over recent years has sought to comply with the Supreme Court doctrine of closed circle use and to operate within the confines of a prohibition model. Over the course of the last two decades a combination of grassroots activism, self-regulation, municipal authorisations and court decisions has effectively achieved a situation in which the non-commercial cultivation and non-commercial supply of cannabis is a widespread socially entrenched activity and not a criminal offence in Spain. This has been achieved in a piecemeal fashion with the impetus coming from civil society and has hitherto progressed in the absence of any legislation. It is widely referred to as the Spanish Cannabis Social Club Model.

Cannabis associations are democratically-structured and not-for-profit private-member associations of adult cannabis consumers, the social club premises

of which provide a space for the acquisition and consumption of cannabis sourced by the association board members for the use of members.³⁰⁴ The first cannabis association was formed in 1991 and the first club appears to have opened in 2001. There was a dramatic proliferation of cannabis associations and clubs between 2007 and 2011.³⁰⁵ Official records suggest that there are now at least 500 cannabis associations operating in Spain, each with hundreds, if not thousands of members. The majority are in Catalonia, followed by the Basque country, but they are in existence throughout the country, including in the autonomous communities of Madrid, Valencia, the Canaries, Andalusia, the Balearics, Navarra, Castile and León, and Galicia.³⁰⁶

The overwhelming majority of prosecutions in regional courts of persons operating cannabis clubs has resulted in acquittals or in a stay of proceedings occasioned by judicial findings that the conduct proven is not in breach of the criminal law of Spain. Such rulings are not infrequently accompanied by judicial statements about the inequity of the prosecutions and the urgent need for regulation to ensure law enforcement and prosecutions target only criminal supply, and not cannabis clubs which are not acting in breach of the criminal law.³⁰⁷ **In 2014 the Parliament, Government and municipal authorities of Catalonia acknowledged the cannabis social club model as one that minimises harm and promises advances in public health.**³⁰⁸

Data regarding the effect of cannabis social clubs on cannabis use is limited. However, in Catalonia, the region with the highest concentration of cannabis clubs, consumption has fallen slightly among both regular and irregular users.³⁰⁹ For example, reported rates of last year cannabis use among 15 to 64 year olds was at 14.1 per cent in 2007, 12.4 per cent in 2009, and 11.3 per cent in 2011, and similar trends have been reported across last month use and daily consumption.³¹⁰ This could be attributed to the impact of the clubs, but primarily it demonstrates that social and legal tolerance of cannabis use does not entail any significant statistical increase in drug use. Researchers have estimated that the state could benefit by approximately €411 million per year in direct tax revenue from the employment and sales tax generated by cannabis social clubs, as well as savings of €250 million per year in unemployment benefit.³¹¹ These figures do not include the additional savings in law enforcement and judicial costs. On account of the legal uncertainty in which cannabis associations operate, crop theft remains difficult to report to the police.³¹²

The future of the cannabis club model in Spain is uncertain, however, after the Anti-Drugs Prosecutor of the *Partido Popular* disagreed with the jurisprudence of the lower courts on the lawfulness of the cannabis club model and announced an offensive against the clubs. In 2015 the prosecution successfully appealed three acquittals by regional courts to the national Supreme Court. Although the Supreme Court stated it was possible for a cannabis club to operate outside the scope of the criminal law, it was unwilling to specify in what circumstances on account of this being the job of legislation and not of jurisprudence. Instead, it stated that the outcome of each case would depend upon its particular facts. The defendants were convicted in all three cases under its consideration and the Supreme Court decisions are now being appealed for being in breach of fundamental rights.³¹³

The regional regulation approved by the parliament of Navarra (which was instigated by a popular legislative initiative) has been challenged by the central government (*Partido Popular*) and suspended until a decision is reached by the Constitutional Court. The Basque government has approved the *Ley Vasca de Adicciones* and this includes a regulatory framework for cannabis clubs and is expected to come into force in 2016.

A popular citizens' legislative initiative, *La Rosa Verda*, seeks to provide a statutory framework of regulation for cannabis clubs in Catalonia and is likely (on account of having recently submitted the requisite 50,000 signatures) to be debated in the Parliament of Catalonia in 2016. It is publicly supported by all political parties with the exception of the *Partido Popular* which has only a very small number of seats in the Catalan legislature. Unlike the case in Navarra, the parliamentary legal service of Catalonia advised Parliament that it does have the legislative competence to approve the proposal as drafted. If approved it should provide the cannabis clubs with a significant measure of legal security.

Administrative penalties were introduced for possession of drugs in public in 1992.³¹⁴ Administrative penalties can include a fine (up to a maximum of €30,000), suspension of driver's licence or firearms licence, or other minor penalties. In a country with a long tradition of cannabis consumption, the law was seen as an unacceptable infringement by cannabis consumers on personal freedom and was catalyst of the birth of Spain's cannabis activism, including the cannabis club movement.³¹⁵ According to data collected by the EMCDDA, more persons are subjected to administrative penalties for drug possession in Spain than in any other country in

Europe (397,713 in 2013).³¹⁶ Administrative penalties were first introduced for the cultivation of cannabis in 2015 in the revised version of the 1992 law; the sanctions are only applicable where the plant is visible to the public.³¹⁷

SWITZERLAND

Until the 1990s Swiss authorities took a tough criminal justice response to drug use, with possession of all drugs criminalised, drug users heavily policed and a lack of harm reduction services including a ban on needle and syringe programmes.³¹⁸ In some parts of the country visible injecting scenes developed and in Zurich this led police and public health officials to establish a tolerated drugs scene at Platzspitz Park – commonly referred to as 'needle park' – but local opposition led to the experiment ending.³¹⁹ At the same time a growing HIV crisis, strongly linked to a proliferation of injecting drug use, was occurring with Switzerland having the highest rates of HIV incidence in Europe.³²⁰

The HIV crisis was the catalyst for reform of Swiss drug policy.³²¹ Rather than taking a hard line policed approach to control the harms of heroin injecting, Swiss drug policy was instead driven by public health concerns and saw the implementation of low-threshold methadone programs, needle exchanges and safe injection rooms, the first of which opened in 1986.³²² Since 1994, this approach to drug policy has been articulated by the 'four pillars' – prevention, treatment, harm reduction, and law enforcement and control.³²³ The federal government also gave the green light for heroin assisted treatment (HAT), the prescribing of diamorphine as a substitute for street heroin. The impact of the new approach yielded significant positive results with deaths from AIDs among people who use drugs falling dramatically by the late 1990s.³²⁴ With more people engaged in services the visible drugs scene also dissipated and the new approach seemed popular with the general public. Even today HAT remains popular among the general public with 68 per cent voting to retain the policy in a 2008 referendum.³²⁵

In addition to the widespread propagation of harm reduction services in the 1990s, a political debate on how to address the possession of cannabis emerged. In 2008 the referendum that was put to the public on HAT also included an initiative that would have decriminalised the possession of cannabis and the cultivation of the plant for personal use.³²⁶ While the majority of the public overwhelmingly supported the change in federal law concerning the HAT program, 63 per cent rejected the proposals relating

to cannabis.³²⁷ Commentators have suggested that this was a result of the public conflating legalisation and decriminalisation.³²⁸

The *Federal Law on Narcotic Drugs* was later amended by the Swiss Parliament, and on 1 July, 2011, a number of changes took effect, including reflecting the outcome of the 2008 referendum in respect of HAT which is now classified as a 'regular medical treatment'.

Despite the failure of the referendum in 2008 to secure legal reforms in respect of cannabis the debate continued. Inconsistent policing practices in different Cantons and police resources being diverted away from other crimes, with 30,000 cases of cannabis possession being brought before the courts, finally led to Parliamentarians amending the laws.³²⁹

The Swiss Parliament simplified the penal procedure in respect of cannabis possession for personal use in order to tackle these policing inconsistencies, these amendments coming into force in October 2013. While the consumption of illicit drugs, including cannabis, is still a punishable offence under the Federal Law on Narcotic Drugs, a threshold has been set at 10 grams of cannabis whereby an adult caught in possession of this amount or less will not be subject to prosecution.³³⁰ Instead, they receive an administrative fine of CHF 100 (roughly \$100).³³¹ The Narcotics Law of 1975 had, in fact, deemed possession of a 'minor amount' of drugs to be exempt from punishment³³²; however, in practice the police had no discretionary power rendering this law effectively redundant.

In order to enhance youth protection, it is worth noting that the 2013 amendment does not apply to under 18s who remain subject to the youth criminal procedure code. It is too early to know the effect of the amendment on prevalence and on other health and social outcomes.

UNITED STATES OF AMERICA (introduction by Stephen Gutwillig*)

More than 1.5 million drug arrests are made every year in the United States – the overwhelming majority for possession only.³³³ Thirty-four states still consider simple possession of small amounts of drugs other than cannabis a felony, while 16 states, as well as Washington, D.C. and the federal government treat

personal possession as a misdemeanour.³³⁴ Thirteen of these states have never made simple possession a felony, but three states recently reclassified possession from felony to misdemeanour.

While decriminalisation at the federal level is not openly discussed by lawmakers, substantial momentum to lower or even eliminate criminal penalties for low-level drug possession has emerged across the country at the state level.

As discussed below, in 2014 California became the first state to reduce simple drug possession from a felony to a misdemeanour with the adoption of Proposition 47, overwhelmingly passed by voter initiative. Since its passage, more than 13,000 people have been released and resentenced – saving the state an estimated \$156 million in incarceration costs averted, which is being reinvested in drug treatment and mental health services, programmes for at-risk students in K-12 schools, and victim services.³³⁵ The law is furthermore significantly easing notorious (and unconstitutional) jail overcrowding in California counties. In 2015, Connecticut and Utah became the most recent states to reduce penalties for drug possession to a misdemeanour.

Public sentiment in favour of reducing criminal penalties is growing in other parts of the country, too. In the nation's capital, a 2013 poll found that more than half (54 per cent) of respondents supported decriminalising possession of small amounts of drugs other than marijuana.³³⁶ A 2016 poll of presidential primary voters in New Hampshire found that 66 per cent support decriminalising drug possession outright.³³⁷ In the conservative state of South Carolina, a surprising 59 per cent of 2016 presidential primary voters supported decriminalisation.³³⁸ A 2014 national Pew poll found that roughly two-thirds believe that people should no longer be prosecuted for possession of cocaine or heroin.³³⁹

In addition, 32 states and the District of Columbia have adopted 911 Good Samaritan immunity laws, which essentially decriminalise simple possession and other minor drug offences at the scene of an overdose.

Seattle recently instituted a pilot program known as 'Law Enforcement Assisted Diversion,' or LEAD, that

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aims to bypass the criminal justice system entirely. Instead of arresting and booking people for certain drug law violations, including drug possession and low-level sales, police in Seattle immediately direct them to drug treatment or other supportive services.³⁴⁰

An ongoing evaluation by the University of Washington has found that LEAD participants were up to 60 per cent less likely to reoffend than non-LEAD participants,³⁴¹ and that LEAD has resulted in 'statistically significant reductions in average yearly criminal justice and legal system utilisation and associated costs' among participants.³⁴² The program has already been replicated in Santa Fe, New Mexico, and Albany, New York, and is under consideration in Atlanta, Buffalo, Houston, Ithaca (NY), Los Angeles, New York City, Philadelphia, Portland (ME) and San Francisco.

Finally, legislation was introduced in the state of Maryland in 2016 to decriminalise low-level drug possession, part of a ground breaking package of health-centred responses to drug use. The other bills in the package included the establishment of safe consumption sites (drug consumption rooms), which do not currently exist in the U.S., requiring acute care hospitals to offer addiction treatment on demand, and the establishment of a poly-morphone assisted treatment pilot project, which would treat a certain demographic of opioid users through initiatives such as heroin assisted treatment, as has been practised successfully in a number of European countries.³⁴³

California

In the 10 years following cannabis decriminalisation in California in 1976 – where possession for personal use of up to 28.5 grams became a misdemeanour punishable by a fine of up to \$100 – the state made an estimated \$1 billion in savings to the criminal justice system and policing.³⁴⁴ Under this law, those caught in possession were potentially subject to diversion into education, treatment or rehabilitation programmes.

Though economic savings were made following the 1976 decriminalisation law, by 2010 California was still spending close to \$500 million annually on enforcing cannabis possession laws. What's more, almost 60,000 people were being arrested annually for this offence.³⁴⁵

The state moved to lower the penalties associated with cannabis possession in 2011 through enacting *Senate Bill No. 1449* which made possession of up to 28.5 grams of cannabis an infraction instead of a misdemeanour.³⁴⁶ Following the downgrading, misdemeanour arrests for cannabis fell dramatically

from close to 55,000 in 2010³⁴⁷ to 6,411 in 2014.³⁴⁸

Although cannabis is currently the only decriminalised illicit drug in any state in the USA, California is among jurisdictions that have made strides towards reducing the punitive sanctions associated with minor drug offences more generally. In 2000, voters in California approved Proposition 36, changing state law to sentence offenders convicted of nonviolent, first- or second-time simple drug possession to community drug treatment and probation, *in lieu* of a custodial sentence.³⁴⁹ After implementation began in 2001, hundreds of thousands of individuals were referred to treatment and avoided entering the criminal justice system, with savings to the state of \$5,836 for each offender that successfully completed treatment.³⁵⁰

It must be noted, however, that Proposition 36 did not create a system of formal decriminalisation as individuals had to plead guilty or be convicted of an offence in order to qualify for diversion. Additionally, the treatment programme had to be successfully completed for an individual to have the arrest and criminal conviction wiped from their record. Indeed, five years after implementation – after which time the state began defunding the initiative – only 34 per cent of people who entered treatment through the programme completed it successfully³⁵¹ and half of people who entered the programme were re-arrested for drug offences within 30 months.^{352,353} For those who did complete treatment successfully, subsequent drug use dropped by 71 per cent and employment rates nearly doubled.³⁵⁴

In November 2014, almost 60 per cent of voters approved Proposition 47, which downgraded six nonviolent crimes – including simple drug possession for all substances – from a felony to a misdemeanour. Under the measure, people caught in possession of drugs other than cannabis could still face up to a year in county jail. A person does not qualify for receiving a misdemeanour conviction if they have a prior conviction for a violent felony, for example.^{355,356} People can apply for prior felonies to be reduced to misdemeanours, if they are classed as one of the six offences under the new law.

In the 12 months after Proposition 47 was voted in, California's state prison population fell 3.8 per cent and thousands of jail inmates were released. Reductions in the state prison population are expected to save the state over \$100 million annually,³⁵⁷ and the public defender's office has identified some 200,000 people who will be eligible to apply for crimes on their records under Proposition 47 to be reclassified from felonies to misdemeanours.³⁵⁸

Washington D.C.

The United States' capital was notorious for its disproportionate policing of cannabis, with data from 2010 showing that black people comprised 90.9 per cent of all cannabis possession arrests, despite only accounting for 51.6 per cent of the D.C. population. This is despite use rates among black and white populations being roughly similar across the nation.³⁵⁹ Furthermore, possession offences accounted for 94.8 per cent of all cannabis-related arrests in that year, and the capital had the highest cannabis possession arrests rate in the country.³⁶⁰

D.C. lawmakers moved to address this by passing the *Marijuana Possession Decriminalization Amendment Act* in March 2014, which took effect four months later. Under the act, possession of 1 ounce (28.3 grams) or less of cannabis was no longer a criminal offence, but rather a civil one punishable by a fine of \$25 along with possible confiscation of the cannabis and related paraphernalia if visible when the officer stopped the individual. 'Gifting' up to 28.3 grams of cannabis – i.e. without any financial transaction – was similarly a non-criminal offence, though public consumption remained criminal.³⁶¹ Individuals had 14 days to pay the fine, and failure to do so resulted in a doubling of the penalty.³⁶²

Cannabis decriminalisation only lasted seven months in practice; in November 2014, 69.4 per cent of voters approved *Ballot Initiative 71* to legalise possession of cannabis for personal use, which was enacted in February the following year. *Initiative 71* allows for individuals over the age of 21 to possess up to 2 ounces (56.7 grams) of cannabis and cultivate up to six cannabis plants in their homes. None of these actions carry any penalty, nor does 'gifting' up to 28.3 grams of cannabis to another person.³⁶³ Consumption in a public place remains a criminal offence, though as of early 2016, the city's council was beginning to explore the regulation of spaces outside of the home where adults could use cannabis.³⁶⁴

As a result of legalising possession, arrests for cannabis possession plummeted 98 per cent from 2014 to 2015, falling from 1,840 to just 32.³⁶⁵

Unlike other legalisation initiatives in the US, regulating the supply and taxation of cannabis in D.C. was not included in *Initiative 71* as D.C. law prohibits citizen initiatives from interfering with the City Council's tax, spending and budget authority.

URUGUAY

Possession of drugs for personal use has never been criminalised in Uruguay,³⁶⁶ with the decriminalisation principle having formally entered Uruguayan law in 1974 and then updated in 1998 to clarify ambiguities. Under the law, anyone found in possession of a 'reasonable quantity exclusively destined for personal consumption,' as determined by a judge, is exempt from punishment, both criminal and administrative.³⁶⁷ If a judge, considering a number of factors, including quantity, makes a determination that the drugs in possession were intended for sale, production or distribution, he or she must explain the reasoning for such a determination in any sentence issued.³⁶⁸

Although drug use and possession is statutorily decriminalised in Uruguay, researchers point out that police-enforcement practices and judicial processes have resulted in the incarceration of many people who use drugs. A number of individuals are placed in pre-trial detention, with the *de facto* presumption of a cultivation or trafficking offence but no formal charges.³⁶⁹ Between 2009 and 2013, the number of people incarcerated for drug crimes rose 39 per cent, outstripping the overall rise in prison population by 24 per cent.³⁷⁰ Worse still, the number of pre-trial detainees stood at 69.4 per cent of the prison population in October 2015,³⁷¹ underscoring weaknesses in the country's criminal justice system which may work counterproductively with the legislative goal of decriminalisation.

In December 2013, the country became the first in the world to pass legislation establishing the legal framework for state regulation of cannabis for recreational use.³⁷² The regulatory framework was revealed in May 2014 and stipulates the following:³⁷³

- there will be three ways to access legal cannabis: growing up to six plants for home consumption, joining a cannabis growing cooperative of between 15 and 45 members, and buying the drug in licensed pharmacies for either recreational or medicinal use. All of these must be licensed by the Institute for the Regulation and Control of Cannabis (IRCCA), which will only recognise Uruguayan citizens and permanent residents over the age of 18;
- the THC content of commercially grown cannabis will be capped at 15 per cent;
- total production for cannabis clubs and home cultivation must not exceed 480 grams per individual per year.

Uruguay has been cautious about rushing the implementation of its regulatory framework. Domestic cultivation and cannabis clubs have both been approved by the government, with 4,400 growers and 17 clubs registered at the time of writing, though the country is yet to begin commercial sales. In October 2015, two private companies were finally selected to cultivate cannabis to be sold in pharmacies on state-owned land,³⁷⁴ making it likely that sales will begin at some point in the second half of 2016.

CONCLUSION

The proliferation of decriminalisation policies around the world demonstrates that decriminalisation is a viable and successful policy option for many countries. **Decriminalisation has not been the disaster many predicted and continue to predict.** As evidenced in this report, a country's drug-enforcement policies appear to have little correlation with levels of drug use and misuse in that jurisdiction. Countries with some of the harshest criminalisation systems have some of the highest prevalence rates of drug use in the world, and countries with decriminalisation systems have some of the lowest prevalence rates, and vice versa. But this does not end the discussion. More research is needed; governments and academics must invest more in researching the optimum models of decriminalisation to determine which are the most effective in reducing drug harms and achieving just and healthy policy outcomes. More and better data will bolster the existing research and provide a sound foundation on which to build and design drug policies for the future.

Recognising that drug laws have little impact on drug use, policymakers must be willing to consider the broader – and more difficult – social factors that influence individuals' relationships with drugs. Though more research is needed, socio-economic characteristics such as wealth disparity and levels of social support appear to correlate more closely with problems linked to drug use in a society than do drugs laws or policies. Preliminary research suggests that countries with higher levels of wealth inequality tend to have higher levels of problematic drug use.³⁷⁵ It would behove advocates and policymakers interested in designing effective drug policies that reduce costs and harms to recognise that problem drug use is often a symptom of broader social and economic factors and not necessarily a cause of them. And that for the vast majority of people who use drugs with no problem to themselves the greatest harm they face is criminalisation and the risks of an unregulated market.

Around the globe, increasing numbers of countries are assessing their current drug policies and considering the alternatives. Central America and Latin America have been at the centre of calls for reform in recent years, though they are by no means alone. This trend towards a more pragmatic and evidenced-based approach will have a significant impact on millions of people's lives, ending the continued and needless criminalisation of many within our society, most notably the young and vulnerable.

Over 50 years since the current prohibitionist drug policy framework was set, we must not forget that some countries now have over 40 years of experience with drug decriminalisation policies. These countries have as much to say to the world about drug policy management, as do those with aggressive criminal prohibition regimes. And the time has come to begin listening to them.

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Release is the UK national centre of expertise on drugs and drug laws, providing free and confidential specialist services to professionals, the public, and people who use drugs. Release also campaigns for the reform of UK drug policy, particularly the removal of criminal sanctions for possession offences, in order to bring about a fairer and more compassionate legal framework to managing drug use in our society.

This is the second edition of 'A Quiet Revolution: Drug Decriminalisation Policies Across the Globe'. The first edition was released in July 2012 and has since been cited by a wide range of organisations and agencies, including: the World Health Organisation, the Office of the United Nations High Commissioner for Human Rights, and the Global Commission on Drug Policy. This edition builds on the 2012 publication, providing updates on the jurisdictions originally covered and highlighting a number of new countries that have adopted a non-criminal justice response to the possession of drugs for personal use.

Many countries continue to incarcerate and criminalise people for possession or use of drugs, with criminalisation alone undermining employment, education and housing opportunities. In addition, many people who use drugs are often subject to human rights abuses by the state in jurisdictions which continue to criminalise them. The continued targeting of this group has not only a negative impact on the individuals in question, but their families and broader society as a whole. The aim of this report is to inform the public and policymakers alike on the impact of decriminalising drug possession offences, showing that decriminalisation does not lead to increased rates of use while equally demonstrating that law enforcement-led approaches have little impact on this metric. Rather, the decision to end the criminalisation of people who use drugs can negate the harms highlighted above when done effectively and produce positive social, health and economic outcomes, not just for the individual, but for society as a whole.

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