



## REVIEWING INTERNATIONAL DRUG POLICY OPTIONS

2010

### DRUG POLICY INNOVATION: GUIDELINES AND PROMISING TRENDS

The aim of drug policy is to protect the well-being of humanity. Its challenge is to guarantee certain controls over potentially harmful substances, while avoiding the negative consequences of overly restrictive measures and fully respecting the civil and human rights of drug users, farmers and traders. A series of principles can guide the policies in the right direction:

1. ***Evidence-based.*** Changes should be based on evaluation of policies and experience in practice, instead of being based on ideological principles. A body of knowledge is available already indicating policy directions which work and those which do not work.
2. ***Differentiation.*** It is necessary to differentiate between substances and patterns of use. The health risks of cannabis consumption are not the same as those related to injecting heroin or smoking crack cocaine. There is also a significant distinction between natural plants and their concentrated derivatives; coca in its natural form can be beneficial for health, while the consumption of its alkaloid cocaine in concentrated form can lead to problems. And there is a substantial difference between recreational uses and more problematic patterns of drug use. The great majority of people who use drugs do so without causing harms to themselves or others.
3. ***Harm reduction.*** A world without drugs will never exist. The ideology of 'zero tolerance' needs to be replaced by the principle of harm reduction, which offers a more pragmatic approach that favours policies capable of reducing drug-related harms as far as possible, for the consumer and for society in general. Conceptually, the harm reduction principle can be applied to the supply side as well, for example reducing drug-related violence, reducing the impact of illicit economies on armed conflicts and reducing environmental damage associated with cultivation and processing.
4. ***Flexibility and cultural sensitivity.*** Socio-cultural differences need to be taken into account. The norms that are established at the global level should leave sufficient room for manoeuvre, enabling countries to adjust them to basic principles of national law and to protect the rights of indigenous people to continue their traditional practices and customs.
5. ***Human rights and proportionality.*** Drug control should fully respect human rights, which means foremost that any sanctions should be in proportion to the crime. Punishing users for the mere fact of consumption, forced eradication against farmers

who have no other form of income, heavy prison sentences against small traders or issuing the death penalty for drug offences, are all examples of disproportionality.

6. ***Development-oriented.*** Eradicate poverty and hunger, the number one Millennium Goal, has a clear priority. Drug control efforts should never lead to more poverty and hunger as now often happens with the opium bans and forced eradication. The creation of alternative livelihoods should come first.
7. ***Civil society participation.*** When formulating policies on drugs, there should be full participation by all the main players: farmers, users, health care practitioners and specialised NGOs. This is the only way to ensure that policies will work, are rooted in practice and can have influence on the often difficult choices people face.

## FUTURE DIRECTIONS FOR DRUG POLICY REFORM

There are many experiences of drug policy innovation around the world that represent steps away from a repressive zero-tolerance model towards a more humane and evidence-based drug policy. The evidence suggests that policy changes which lessen the criminalisation of drug users, combined with shifting resources from law enforcement and incarceration to prevention, treatment and harm reduction is more effective than the penal approach in reducing drug-related problems.

### *Decriminalization of drug use*

1. Criminalizing users pushes them away from health services out of fear of arrest, drives them into the shadows, and locks them up in prisons, which serve as schools for crime. Many countries have therefore introduced some form of decriminalization. Drug users are absolved from arrest and prosecution for drug use and preparatory acts like the acquisition, possession or cultivation of drugs for personal use. In some countries any type of sanction is removed; other cases involve the removal of criminal sanctions only, coupled with either maintaining administrative penalties or referral to treatment or education. These approaches do not lead to an increased level of drug use and diminishes the pressure on law enforcement agencies and judicial and penitentiary systems.
2. A threshold at which possession is judged to be for personal use rather than supply needs to be established. The decisive determinant should be the intent associated with the possession rather than the exact amount. Only few countries use quantity as the sole criterion to determine whether the drugs being possessed are intended for personal use or are intended to be traded to others. Most jurisdictions have introduced other criteria as well and leave considerable discretion to the police, prosecution and/or judge to distinguish between users and traders.

### Alternatives to incarceration

3. Putting dependent drug users in prison for street dealing or acquisitive crimes carried out to support their habit is limiting the chances of successful recovery and increasing the chances of recidivism. There are many jurisdictions that have introduced diversion schemes offering treatment instead of imprisonment for drug-related offences. In order to be effective, treatment should be combined with rehabilitation, social and healthcare provision. Services offered should not be compulsory or involve the deprivation of liberty of an individual; offenders still have a choice between accepting treatment and assistance, or facing imprisonment or other administrative sanctions. Such diversion schemes have shown to drastically reduce crimes like burglary and petty theft.
4. In countries where drug-related violence is a major problem, experimental schemes of selective prosecution have proven successful in reducing drug-related homicide. For example members of criminal groups involved in drug trafficking were offered non-prosecution in return for refraining from violence. They were informed that if any member was found to be implicated in violent offences, the group would be prosecuted for drug offences. This dramatically reduced the level of drug-related violence, something arrests and incarceration had not been able to accomplish.

### Proportionality of sentences

5. In many countries, partly under pressure from the 1988 Trafficking Convention, sentencing levels for drug trafficking offences became completely disproportional and can be regarded as violations of human rights. The introduction of mandatory minimum sentences and longer prison sentences have doubled or tripled incarceration rates in many countries over the past two decades. Meanwhile studies have shown that such sentences have little or no effect on whether a user will reoffend when compared with alternative community sanctions or shorter prison terms. Harsh sentencing regimes also have not made a measurable impact on the availability or price of drugs, while the social impact in terms of disrupting family lives has been dramatic. Mandatory minimums and 'three strikes you're out' schemes should be abolished, as of course should be abolished the death penalty for drug offences.
6. Countries like the UK, Ecuador, Argentina and New Zealand are in the process of reviewing their sentencing guidelines for drug offences, and proposals are tabled to significantly lower sentencing levels for low and mid-level traders. Ecuador already issued a pardon for some 3,000 people that had spent more than a year in prison for offences involving less than two kilogrammes of any type of drug, some with convictions of more than 10 years. In the Netherlands between 2003 and 2005 the authorities decided that cocaine couriers arriving in the country should simply be sent back to their place of origin and the drugs confiscated rather than being incarcerated. Implementing stricter airport controls that reduced the chance of successful delivery proved more effective than prosecution and incarceration of the couriers.

### Harm reduction

7. Basic harm reduction services like needle exchange and substitution treatment in the context of HIV/AIDS prevention are beyond doubt and endorsed and promoted by UN agencies. The challenge here is to scale up and reach universal access. Effective implementation, however, is only possible within a legal environment in which drug users are not prosecuted. Hence access to healthcare services does not require applicants to first stop their drug use, and allows them to enter programmes without fear of arrest.
8. Countries like Switzerland, Portugal, Spain, Germany, The Netherlands, Norway, Canada and Australia have introduced more advanced harm reduction practices with very promising results. These include heroin prescription (instead of methadone maintenance) and drug consumption rooms for the most problematic users, where users can consume drugs in a supervised environment. Evidence has shown that these approaches reduce drug-related deaths, drug-related crime and bring the most problematic users into contact with treatment options that they would otherwise stay away from. The experimentation and development of effective harm reduction programmes for stimulants such as crack cocaine and methamphetamines is urgently needed.
9. Applying the harm reduction principle to supply-side drug policies is still in its pioneer stage. The acceptance, however, of the fact that drug use will continue at a certain level, means that also cultivation, processing and trafficking will continue to exist leading to the logical policy consequence of designing measures that reduce as much as possible the harms associated with the drugs market as a whole. Similar to the introduction of harm reduction on demand side, supply-side policies should no longer only aim to reduce supply (through alternative development, eradication, interdiction, dismantling of trafficking groups, etcetera), but also aim to reduce the harms associated with the continued supply, such as environmental degradation, drug-related violence and corruption.

### Reclassification of drugs

10. A more rational classification of psychoactive substances according to their associated health risks, coupled with a better understanding of drug submarkets and the difference between recreational use and more problematic patterns of abuse, should become a cornerstone for future drug policy. Two attempts have been undertaken by scientific panels in the UK and The Netherlands to develop a rational scale to assess the harmfulness of drugs, looking at the toxicity (acute or chronic physical harm), the potential for dependency and social harm at individual, family and society levels. All psychoactive substances irrespective of their current legal status need to be included in such a comparative assessment, including alcohol, tobacco and pharmaceutical drugs.
11. Cannabis is the most obvious substance that requires a more sensible legal approach. Not a single expert in the field would now argue that cannabis belongs in the same category as heroin where it was placed in the 1961 Single Convention. Worldwide it is by far the most used 'illicit drug' and criminal sanctions seem to have hardly any impact on rates of cannabis use. Quite a few countries, therefore, in practice already

treat cannabis differently, with lower sentences, decriminalization or lower priority for law enforcement.

12. A few States have gone further introducing models akin to a regulated market. The Dutch coffee shop system, the medical marijuana model applied in California, or the establishment of cooperatives in Spain as an attempt to organise a legally regulated supply for decriminalized recreational use, are the three best examples of legally imperfect attempts to introduce regulation. It is time, however, for some countries to gather the courage to introduce a fully legally regulated market for cannabis, which has the advantage that it takes the market fully away from criminal hands. Moreover, those responsible for regulation can ensure quality production and that cannabis is properly labelled according to its strength and the ratio of THC to CBD.
13. With regard to other plants there are convincing arguments to allow mild stimulants in their natural form, like coca, khat, ephedra and kratom, on the market without too strict controls. Trying to ban and suppress them leads in practice to an illegal market dominated by the more concentrated and more harmful derivatives. The attempt by Bolivia to change the status of the coca leaf under the 1961 Convention deserves support. The proposal to lift the national ban on kratom in Thailand makes sense for the same reasons. The legal status of the use of psychoactive plants, such as peyote, psilocybin and the ayahuasca brew for spiritual practices also needs further clarification.

Taken together these points exemplify a paradigm shift and indicate a promising direction of ongoing drug policy improvement along the lines of the guiding principles listed above. This trend is creating legal contradictions to the obligations set in the UN treaties. The resultant tensions and discord will only increase until the zero-tolerance model of the three conventions is readdressed. More room for maneuver is required for these promising legislative reforms to further develop. As UNODC wrote in its discussion paper for the UNGASS review: *“There is a spirit of reform in the air, to make the conventions fit for purpose and adapt them to the reality on the ground that is considerably different to the time they were drafted”*.

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