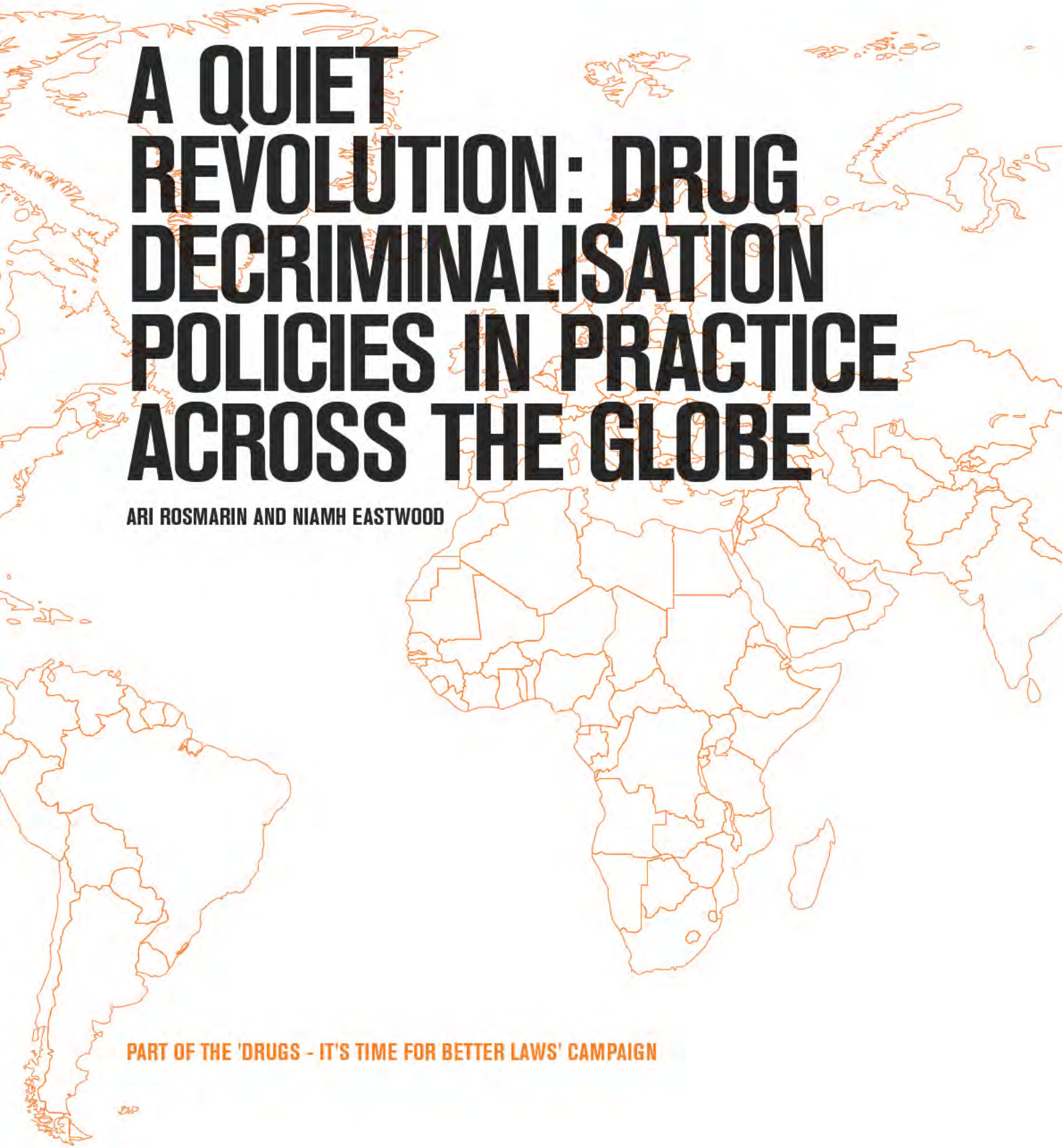
Release
Drugs, The Law & Human Rights

# A QUIET REVOLUTION: DRUG DECRIMINALISATION POLICIES IN PRACTICE ACROSS THE GLOBE

ARI ROSMARIN AND NIAMH EASTWOOD



PART OF THE 'DRUGS - IT'S TIME FOR BETTER LAWS' CAMPAIGN

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# THIS PUBLICATION

'A Quiet Revolution: Drug Decriminalisation Policies in Practice Across the Globe' is the first report to support Release's campaign 'Drugs - It's Time for Better Laws'. This campaign was launched in June 2011 and saw the organisation write to David Cameron, the British Prime Minister, calling for a review of our current drug policies and promoting the introduction of decriminalisation of drug possession. The letter was supported by high profile individuals including Sting, Richard Branson, Caroline Lucas MP and Baroness Meacher.

The campaign will progress this year with the publication of three reports: the first, this paper on decriminalisation, demonstrates that the law enforcement model adopted has little impact on the levels of drug use within a country and yet the criminalisation of people who use drugs causes significant harms to the individual and society. The second paper will be launched in autumn 2012 and will look at the disproportionate policing and prosecution of drug possession offences in the UK. The final report to be launched in early 2013 will look at the crude economic costs associated with policing and prosecuting the possession of drugs in the UK.

More information about the campaign can be accessed at: www.release.org.uk/decriminalisation

# AUTHORS

## ARI ROSMARIN

Ari Rosmarin was a legal intern at Release during the summer of 2011 and is lead author of this report. He is currently pursuing his J.D. at Brooklyn Law School in New York where he is a Sparer Public Interest Law Fellow and a Notes and Comments Editor for the Brooklyn Journal of Law and Policy. His note, The Phantom Defense: the Unavailability of the Entrapment Defense in New York City 'Plain View' Marijuana Arrests will be published by the Journal in Fall 2012. Prior to law school, he worked as the Senior Advocacy Coordinator at the New York Civil Liberties Union, directing legislative campaigns on drug sentencing reform, immigrants' rights, privacy rights, and post-9/11 government surveillance, among others. He spent the 2004-2005 academic year doing coursework at the LSE and graduated from Columbia University in 2006.

## NIAMH EASTWOOD

Niamh is Executive Director of Release. She is a non-practising barrister who started at Release in 2002 as a legal advisor. Niamh regularly contributes to drug policy journals and publications including Drugs and Alcohol Today (of which she is also a member of the editorial board) and Drink and Drug News, as well as authoring and editing a number of Release's publications including 'Drugs and the Law' and 'Sex Workers and the Law'. Niamh is also responsible for drafting many of the briefings for parliamentarians and policy makers. She has presented at international and national conferences and is regularly invited to comment in the media. Niamh is also a Board member of Youth R.IS.E. (www.youthrise.org), a member of the Expert Steering Group for the Global Drug Survey (www.globaldrugsurvey.com), and is on the International Doctors for Healthy Drug Policies Advisory Board.

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# ABBREVIATIONS

| | |
|---|---|
| CDT | 'dissuasion commission' (Portugal) |
| CEN | Cannabis Expiation Notice (South Australia) |
| CES | Cannabis Education Session (Western Australia) |
| CIN | Cannabis Infringement Notice (Western Australia) |
| CIS | Cannabis Intervention Session (Western Australia) |
| EMCDDA | European Monitoring Centre for Drugs and Drug Addiction |
| EU | European Union |
| INE | National Statistics Institute (Portugal) |
| PVS | Process-Verbal Simplifié (Belgium) |
| SCON | Simple Cannabis Offence Notice (Australian Capital Territory) |
| THC | tetrahydrocannabinol |
| UK | United Kingdom |
| UN | United Nations |
| UNODC | United Nations Office On Drugs and Crime |
| USA | United States of America |

# INTRODUCTION

Over 50 years into the 'War on Drugs,' national and international debate on drug policy continues to rage unabated, with few tangible results to show for the effort. Rates of drug use remain high across the world, incarceration for drug offences is at record levels,[1] and spending to wage the 'war' costs billions of pounds each year.[2] Our current drug policies are a failure.

But, across the globe, and out of the spotlight, governments are adopting a different policy approach to address drug use in their communities. Some are reducing harsh penalties for drug offences to save costs; others are increasing their harm reduction and public health measures to limit the destructive impact of problematic drug use. However, rising costs, commitments to personal autonomy, and mounting evidence of the devastating consequences for individuals associated with the criminal justice response to drugs – stigmatisation, employment decline, public health harm – have led a number of countries towards an alternative policy option: decriminalisation of drug possession and use.[3]

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

**However, in the past 10 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; some countries adopt a de jure model – one defined by law; others have de-prioritised the policing of drug possession through de facto decriminalisation.

The recent trend towards decriminalisation has not been centred on one continent or in richer or poorer nations – countries as disparate as Armenia, Belgium, Chile, the Czech Republic, Estonia, Mexico and Portugal, among others, have all adopted some form of decriminalisation policy in the last decade or so. While the precise number of countries with formal decriminalisation policies is not clear, it is probably between 25 and 30, depending on which definitions are used.

In 2011, the decriminalisation policy model received a major endorsement when the Global Commission on Drug Policy published its report War on Drugs, which discussed the failure of the global war on drugs. This commission is composed of current and former heads of state, human rights and global health experts, economists, United

1. BEWLEY-TAYLOR, D., HALLAM, C., ALLEN, R. THE INCARCERATION OF DRUG OFFENDERS: AN OVERVIEW, THE BECKLEY FOUNDATION, 2009, AVAILABLE AT HTTP://WWW.BECKLEYFOUNDATION.ORG/PDF/BF_REPORT_16.PDF, VISITED 15 MAY 2012.

2. ONE RECENT REPORT BY A HARVARD ECONOMIST FOUND THAT THE UNITED STATES ALONE SPENT APPROXIMATELY 49 BILLION DOLLARS IN 2008 ON DRUG PROHIBITION COSTS. MIRON, A. THE BUDGETARY IMPLICATIONS OF DRUG PROHIBITION, 2010, AVAILABLE AT HTTP://SCHOLAR.HARVARD.EDU/MIRON/JMIRON/FILES/BUDGET_2010_FINAL_0.PDF, ACCESSED 14 MAY 2012. ONE ESTIMATE HAS PLACED GLOBAL ANNUAL SPENDING AT OVER 100 BILLION DOLLARS. KRIER, S., FIELDING, A. THE FISCAL SIGNIFICANCE OF DRUGS, THE BECKLEY FOUNDATION, 2011, AVAILABLE AT HTTP://WWW.BECKLEYFOUNDATION.ORG/2011/08/09/THE-FISCAL-SIGNIFICANCE-OF-DRUGS/, VISITED 15 MAY 2012.

3. DECRIMINALISATION IS DEFINED AS 'THE REMOVAL OF SANCTIONS UNDER THE CRIMINAL LAW, WITH OPTIONAL USE OF ADMINISTRATIVE SANCTIONS (E.G. PROVISION OF CIVIL FINES OR COURT-ORDERED THERAPEUTIC RESPONSES)' – HUGHES CE, STEVENS A. WHAT CAN WE LEARN FROM THE PORTUGUESE DECRIMINALIZATION OF ILLICIT DRUGS? BRITISH JOURNAL OF CRIMINOLOGY 2010;50:999–1022. UNDER DECRIMINALISATION REGIMES, POSSESSION AND USE OF SMALL AMOUNTS OF DRUGS ARE STILL UNLAWFUL, BUT NOT CRIMINAL. FOR THE PURPOSES OF THIS REPORT, WE CONSIDER A DECRIMINALISATION POLICY TO BE ONE THAT REMOVES THE IMPOSITION OF A PERMANENT CRIMINAL RECORD AS A RESULT OF DRUG-POSSESSION OR DRUG-USE OFFENCES – THIS INCLUDES BOTH DE JURE AND DE FACTO APPROACHES TO DECRIMINALISATION.

Nations (UN) leaders and business leaders. The report included a recommendation that countries adopt decriminalisation policies, among other initiatives including investment in harm reduction services.[4] In 2012, Latin American heads of state responded by beginning a series of summits to discuss the feasibility of reforming their drug laws with a focus on decriminalisation and possible regulation of drugs.[5]

The variety of decriminalisation models in practice today makes assessment of the impact of decriminalisation on metrics such as prevalence of drug use, problematic drug use, drug-related disease and death, and criminal justice costs very difficult. Each policy variable can have a significant impact on the measurable outcomes of a policy change towards decriminalisation. Some of these variables are listed next:

- **Threshold quantities:** many, but not all, decriminalisation policies use maximum-quantity thresholds to distinguish between trafficking or sale offences (criminal prosecution) and personal possession offences (administrative penalties or non-prosecution).

  **Using the example of cocaine, Mexico allows possession of up to 0.5 grams of cocaine without prosecution, while Spain allows up to 7.5 grams – a difference of 1400 per cent.**[6]

  So, while some countries claim to have adopted a decriminalisation model, the threshold levels may be so low that the policy has no practical effect.

- **Types of administrative penalties:** different jurisdictions have different sanctions in place that an individual may receive for an administrative or civil drug-use or possession offence. These include: fines, community-service orders, warnings, education classes, suspension of a driver's or professional licence, travel bans, property confiscation, associational bans, mandatory reporting, termination of public benefits, administrative arrest, or no penalty at all.

- **Roles of the judiciary and police:** some jurisdictions, such as the Czech Republic and the Australian states with civil penalty schemes, allow the police to issue fines in the field for small drug offences, in a similar way to issuing a fine for a traffic violation. Other jurisdictions, such as Brazil and Uruguay, require individuals arrested for drug offences to appear before a judge in court, to determine the charge and receive an appropriate sentence, if any.

- **The role of medical professionals and harm reduction programmes:** the relationship between a country's public health and law-enforcement systems can significantly change an individual's experience following arrest for a drug offence. In Portugal, every arrestee meets with a panel of experts, including medical professionals and social workers, to assess whether and what kind of treatment referral is necessary. In Poland, prosecutors are responsible for making final decisions as to whether an individual should be referred to treatment in lieu of a sanction. Each jurisdiction also varies greatly in the resources allocated to

4. GLOBAL COMMISSION ON DRUG POLICY. WAR ON DRUGS. REPORT OF THE GLOBAL COMMISSION ON DRUG POLICY. RIO DE JANEIRO: GLOBAL COMMISSION ON DRUG POLICY, 2011 (HTTP://WWW.GLOBALCOMMISSIONONDRUGS.ORG/, ACCESSED 10 MAY 2012).

5. SMITH P. CENTRAL AMERICAN PRESIDENTS HOLD DRUG LEGALIZATION SUMMIT. THE GUATEMALA TIMES 25 MARCH 2012 (HTTP://WWW.GUATEMALA-TIMES.COM/NEWS/GUATEMALA/3018-CENTRAL-AMERICAN-PRESIDENTS-HOLD-DRUG-LEGALIZATION-SUMMIT.HTML, ACCESSED 11 MAY 2012).

6. EUROPEAN MONITORING CENTRE FOR DRUGS AND DRUG ADDICTION (EMCDDA). THRESHOLD QUANTITIES FOR DRUG OFFENCES. LISBON: EMCDDA, 2010 (HTTP://WWW.EMCDDA.EUROPA.EU/HTML.CFM/INDEX99321EN.HTML, ACCESSED 1 MAY 2012).

and availability of harm reduction and treatment programmes. There is growing evidence that the current economic climate is having a negative impact on the availability of such programmes.[7]

7. STOICESCU C, COOK C. HARM REDUCTION IN EUROPE: MAPPING COVERAGE AND CIVIL SOCIETY ADVOCACY. LONDON: EUROPEAN HARM REDUCTION NETWORK, 2010.

- **Records and statistics-measurement capacity:** a country's capacity to accurately measure the number of offenders, treatment referrals, prevalence of use, drug-related disease transmissions and deaths, among other factors, before and after implementing a decriminalisation policy, can dictate whether or not it is possible to assess the impact of decriminalisation on those factors. If data gathering is inaccurate or inconsistent, the integrity of any assessment of the impact of a decriminalisation policy decreases and evaluation becomes difficult.

- **Implementation challenges:** despite the existence of a statutory, judicial or regulatory decriminalisation policy, a jurisdiction's inability or unwillingness to implement that policy in practice can make assessment of a policy's merits challenging. In Peru, for example, researchers report that police regularly arrest and detain individuals for decriminalised drug offences for long periods without charge. In practice, for those in detention, such a system does not resemble decriminalisation, despite the fact that Peruvian law instructs there should be no penalty for certain minor possession offences. Furthermore, in some jurisdictions the impact of decriminalisation has had a 'net-widening' effect. This means that while the intention of the policy is to decriminalise certain behaviour, in practice more people get caught up in the system. For example, in South Australia, the introductions of cannabis expiation notices to deal with some cannabis offences resulted in a significant increase in the number of people policed for such activities. In New York, possession of one ounce of marijuana is not a crime unless the drug is 'burning or in open view'. Yet police officers often trick young people, especially those who are black or Latino, into revealing the marijuana; thus the offence is committed as the drug is in 'open view.' This has led to a significant increase in arrests, with 50,300 people arrested for simple marijuana possession in 2010 alone compared to a total of 33,700 for the period 1981 to 1995.[8]

8. LEVINE H, SIEGEL L. $75 MILLION A YEAR. NEW YORK: DRUG POLICY ALLIANCE, 2011 (HTTP://WWW.DRUGPOLICY.ORG/DOCUPLOADS/_75_MILLION_A_YEAR.PDF, ACCESSED 11 MAY 2012) – THE MARIJUANA REFORM ACT, WHICH EFFECTIVELY DECRIMINALISED POSSESSION, WAS ENACTED IN 1977.

- **Social, cultural, economic and religious characteristics:** a community's – or individual's – relationship to drug use is impacted by much more than a country's drug laws. Public health capacity, religiosity, cultural history, wealth, employment and other social features significantly impact drug prevalence and dependence in a given society. Research has shown that the levels of inequality in a society can impact directly on levels of drug use. For example, the Netherlands and Sweden are countries with very different drug policies but both have a high level of social cohesion and both countries have very low rates of problematic drug use.[9] In light of these factors, it is important to recognise that drug-decriminalisation policies cannot be evaluated in a vacuum.

9. WILKINSON R, PICKETT K. THE SPIRIT LEVEL: WHY EQUALITY IS BETTER FOR EVERYONE. LONDON: PENGUIN BOOKS, 2010: P.71.

Despite this trend towards decriminalisation, critics of the approach continue to claim that adoption of the policy will lead to a 'Pandora's box' of horrors. Regularly confusing or intentionally conflating legalisation – the complete removal of all sanctions – with decriminalisation, opponents of a shift away from an aggressive criminalisation model describe a decriminalised society with dramatically increased drug use[10] and increases in overall harm.[11] In practice, the reality has proven to be not so simple.

After evaluating many of the decriminalisation policies in practice around the world, there are few broad, unifying conclusions that can be drawn, except that the doomsday predictions are wrong.

**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.**

Decriminalisation does appear to direct more drug users into treatment, reduce criminal justice costs, and shield many drug users from the devastating impact of a criminal conviction. A decriminalisation approach coupled with investment in harm reduction and treatment services can have a positive impact on both individual drug users and society as a whole.

A criminal conviction for drug possession or use can negatively impact an individual's future employment, education and ability to travel.

In the United Kingdom (UK), for example, there is a range of jobs where a criminal record check is necessary, including working with vulnerable people and children. While it may be appropriate to require disclosure of certain convictions that raise concern in particular professional fields, a conviction for drug possession is unlikely to be relevant. Further, UK law requires all convictions to be disclosed when applying for certain positions, regardless of the length of time that has passed since the offence was committed. Not only does this act as a barrier to employment for the individual, but for those who have a history of problematic drug use, it can also prevent integration back into society. A UK study carried out in 2008 by the UK Drug Policy Commission found that almost two-thirds of employers believed those with a history of drug use to be untrustworthy, and expressed concerns about safety in the workplace if they were to hire them.[12]

In the United States of America (USA), the impacts of criminalising those who use drugs can deprive them of 'liberty, welfare, education and the right to vote in many states.'[13] Many young people in the USA who are convicted of an offence for drug possession while at university or college can have their federal educational funding removed.[14] Every year around the world, hundreds of thousands, if not millions, of young people are convicted for simple possession offences. These offences can result in significant limitations on their future opportunities and can result in an inability to pursue their education.

10. SEE, E.G., HITCHENS P. ARGUMENTS AGAINST LEGALISING DRUGS. DAILY MAIL ONLINE 9 NOVEMBER 2009 (HTTP://HITCHENSBLOG.MAILONSUNDAY.CO.UK/2009/11/ARGUMENTS-AGAINST-LEGALISING-DRUGS.HTML, ACCESSED 11 MAY 2012) – CLAIMING THAT 'IN EVERY COUNTRY WHERE THE LAWS HAVE BEEN RELAXED, DRUG USE HAS INCREASED'; PHILLIPS M. GEORGE MICHAEL GOES TO JUNKIE HEAVEN. DAILY MAIL ONLINE 20 SEPTEMBER 2010 (HTTP://WWW.MELANIEPHILLIPS.COM/GEORGE-MICHAEL-GOES-TO-JUNKIE-HEAVEN, ACCESSED 11 MAY 2012) – CLAIMING REPORTS THAT PORTUGAL'S DECRIMINALISATION POLICY HAS LED TO A FALL IN DRUG USE AMONG YOUNG PEOPLE AS 'STATISTICAL JIGGERY-POKERY'.

11. SEE, E.G., BLAIR I. RICHARD BRANSON AND IAN BLAIR DEBATE DRUG DECRIMINALISATION. THE GUARDIAN 16 MARCH 2012 (HTTP://WWW.GUARDIAN.CO.UK/COMMENTISFREE/2012/MAR/16/CONVERSATION-DRUGS-DECRIMINALISATION-RICHARD-BRANSON, ACCESSED 11 MAY 2012) – 'IF WE LET GO INTO A WORLD OF LEGALISED DRUGS, WE HAVE NO IDEA WHAT THAT IS GOING TO DO TO FUTURE GENERATIONS. . . . EVERYTHING WE'VE SEEN ABOUT DECRIMINALISATION JUST FREES UP THE DRUG BARONS, BECAUSE THEY ARE IN A POSITION TO CONTINUE A SUBSTANTIAL MARKET WITHOUT LAW-ENFORCEMENT'; GYNGELL K. A RESPONSE TO PROF. STEVENS ON DRUG DECRIMINALISATION. LONDON: CENTRE FOR POLICY STUDIES, 2011, (HTTP://WWW.CPS.ORG.UK/BLOG/Q/DATE/2011/05/16/A-RESPONSE-TO-PROF-STEVENS-ON-DRUG-DECRIMINALISATION/, ACCESSED 11 MAY 2012) – SUGGESTING THAT DECRIMINALISATION POLICIES MIGHT LEAD TO INCREASED DRUG USE AND HARM.

12. UK DRUG POLICY COMMISSION. WORKING TOWARDS RECOVERY: GETTING PROBLEM DRUG USERS INTO JOBS. LONDON: UK DRUG POLICY COMMISSION, 2008 (HTTP://WWW.UKDPC.ORG.UK/RESOURCES/WORKING_TOWARDS_RECOVERY.PDF, ACCESSED 11 MAY 2012).

13. STEVENS A. DRUGS, CRIME AND PUBLIC HEALTH: THE POLITICAL ECONOMY OF DRUG POLICY. ABINGDON: ROUTLEDGE, 2010: P.116.

14. SEE 20 USC § 1091(R)(1) (2006) – FOR A SINGLE OFFENSE, AID IS SUSPENDED FOR ONE YEAR; FOR A SECOND OFFENSE, AID IS SUSPENDED FOR TWO YEARS; FOR A THIRD OFFENSE, AID IS SUSPENDED INDEFINITELY; 20 USC § 1091(R)(2) (2006) – UNDER THE LAW, A STUDENT WHOSE ELIGIBILITY FOR FEDERAL AID HAS BEEN SUSPENDED CAN REGAIN THE AID BEFORE THE FULL SUSPENSION PERIOD IF THE STUDENT COMPLETES A DRUG REHABILITATION PROGRAM AND PASSES TWO UNANNOUNCED DRUG TESTS (HTTP://WWW.LAW.CORNELL.EDU/USCODE/TEXT/20/1091, ACCESSED 20 MAY 2012).

Even more insidious is the impact such criminalisation can have on the electoral system. Since many US states have laws prohibiting those convicted of criminal offences from voting and the vast majority of those who are criminalised for drug offences in the USA are African-American,[15] this level of disenfranchisement can have a significant impact on the outcome of both local and national elections.[16]

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. This report seeks to summarise some of the available research on decriminalisation and to briefly profile some of the countries that have put decriminalisation into practice. The intention is to demonstrate that the law enforcement model adopted has little impact on drug-prevalence rates within a given society. Not all jurisdictions have been included. Some countries, like Vietnam, espouse a decriminalisation model but in the place of criminal sanctions have adopted deeply harmful systems for addressing drug use. Many South East Asian countries have introduced 'compulsory detention centres,' where people are forcibly detained for up to 2 years – these centres are associated with serious human rights violations, where people are beaten or raped and may be used as forced labour.[17]

Many commentators in the UK argue that cannabis possession has effectively been decriminalised, with the introduction of non-criminal sanctions in 2004 for possession offences. However, the impact of these sanctions has essentially been a net-widening effect, with only a slight decrease in the number of people being subject to criminal sanctions for cannabis possession in 2010 compared to 2003.[18] This policy is therefore not discussed further in this report.

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 are 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.[19] This paper will conclude with a brief outline of what constitutes an effective model of decriminalisation.

15. KING R. DISPARITY BY GEOGRAPHY: THE WAR ON DRUGS IN AMERICAS CITIES. THE SENTENCING PROJECT. 2008: P.10 (HTTP://WWW.SENTENCINGPROJECT.ORG/DOC/PUBLICATIONS/DP_DRUGARRESTREPORT.PDF ACCESSED 2 JULY 2012) - BY 2003, AFRICAN AMERICANS WERE ARRESTED FOR DRUG OFFENSES AT A RATE THAT WAS 238% HIGHER THAN WHITES.

16. STEVENS A. DRUGS, CRIME AND PUBLIC HEALTH: THE POLITICAL ECONOMY OF DRUG POLICY. ROUTLEGDE, 2010: P116 - OVER 5 MILLION AFRRICAN AMERICANS HAVE LOST THE RIGHT TO VOTE, OVER A THIRD ARE CLASSED AS DRUG OFFENDERS.

17. WORLD HEALTH ORGANISATION. ASSESSMENT OF COMPULSORY TREATMENT OF PEOPLE WHO USE DRUGS IN CAMBODIA, CHINA, MALAYSIA AND VIETNAM: AN APPLICATION OF SELECTED HUMAN RIGHTS PRINCIPLES. WESTERN PACIFIC REGION: WORLD HEALTH ORGANISATION, 2009 (HTTP://WWW.WPRO.WHO.INT/PUBLICATIONS/DOCS/FINALFORWEB_MAR17_COMPULSORY_TREATMENT.PDF, ACCESSED 20 MAY 2012).

18. MINISTRY OF JUSTICE, CRIMINAL JUSTICE STATISTICS ENGLAND AND WALES, 2010, CONVICTION TABLES, TAB. A.10 (HTTP://WWW.JUSTICE.GOV.UK/STATISTICS/CRIMINAL-JUSTICE/CRIMINAL-JUSTICE-STATISTICS, ACCESSED 14 MAY 2012). A PROBLEM WITH THESE STATISTICS IS THAT CANNABIS CONVICTIONS AND CAUTIONS APPEAR TO BE RECORDED BOTH UNDER CANNABIS SPECIFICALLY AND CLASS B OFFENCES. THE NUMBER CONVICTED AND CAUTIONED FOR CANNABIS POSSESSION IN 2003 WAS 62,842 AND IN 2010 IT WAS 44,058 FOR CANNABIS POSSESSION AND 8454 FOR CLASS B POSSESSION. A FURTHER 79,000 PEOPLE RECEIVED CANNABIS WARNINGS AND 13,916 RECEIVED PENALTY NOTICES FOR DISORDER.

19. HARRIS G. CONVICTION BY NUMBERS: THRESHOLD QUANTITIES FOR DRUG POLICY. SERIES ON LEGISLATIVE REFORM OF DRUG POLICIES NO. 14. AMSTERDAM: TRANSNATIONAL INSTITUTE & INTERNATIONAL DRUG POLICY CONSORTIUM, 2011: P.6. FOR EXAMPLE IN RUSSIA, 6 GRAMS OF CANNABIS AND 0.5 GRAMS OF COCAINE AND HEROIN ARE CONSIDERED SMALL QUANTITIES BUT ANYTHING ABOVE THIS THRESHOLD IS CONSIDERED A 'LARGE' AMOUNT AND IS PUNISHABLE WITH UP TO 2 YEARS OF FORCED LABOUR OR UP TO 3 YEARS' IMPRISONMENT. (HTTP://WWW.TNI.ORG/SITES/WWW.TNI.ORG/FILES/DOWNLOAD/DLR14.PDF, ACCESSED 13 JUNE 2012).

# DECRIMINALISATION SYSTEMS BY COUNTRY

## ARGENTINA

In 2009, Argentina's Supreme Court issued its Arriola decision, declaring Argentinian legislation[20] that criminalised drug possession for personal consumption was unconstitutional.[21] The Court held: 'Criminalizing an individual [for drug use] is undeniably inhumane, subjecting the person to a criminal process that will stigmatize him for the rest of his life and subject him, in some cases, to prison time'.[22]

Despite the Arriola Court's ruling that the arrest of five people for possession of three joints of marijuana each was an unconstitutional violation of their right to privacy and personal autonomy under Article 19 of the Argentinian Constitution, it has taken some time for the Argentinian executive and legislative branches to respond to the Court's decision and there has not yet been a change to the law. On 29 March 2012, a new bill which would decriminalize the possession of drugs for personal consumption was presented to Argentina's Congress.[23] The bill does not propose threshold amounts but rather leaves it to the judiciary to decide, based on the facts, whether the drugs seized are for personal use. The proposed legislation would also allow the cultivation of cannabis for personal use. However, Senator Aníbal Fernández, who presented the bill, stated that 'when the amount exceeds the personal consumption we will impose penalties equal to manslaughter,' leaving open the possibility of serious disproportionality in the sentencing of those considered to be supplying drugs.

Currently, although many lower courts have begun applying the Arriola decision and throwing out cases involving 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.

Because the debate over legislative or regulatory changes to Argentina's drug policies is ongoing, there are not yet any effective metrics to assess the impact of the Court's decriminalisation ruling.

20. THE EXISTING 1989 ARGENTINIAN DRUG LAWS ALLOW FOR CUSTODIAL SENTENCES FOR PERSONAL USE AND POSSESSION BETWEEN 1 MONTH AND 2 YEARS OR THE EQUIVALENT SENTENCE IN EDUCATION OR TREATMENT. SEE LAW 23.737, ARTICLE 14, SUBSECTION 2.

21. FERNÁNDEZ A. ARGENTINA: REFORM ON THE WAY? TRANSNATIONAL INSTITUTE SERIES ON LEGISLATIVE REFORM OF DRUG POLICIES NO 6. WASHINGTON, DC: TRANSNATIONAL INSTITUTE, 2010: P.1. (HTTP://WWW.TNI.ORG/SITES/WWW.TNI.ORG/FILES/DOWNLOAD/DLR6.PDF, ACCESSED 14 MAY 2012).

22. COZAC D. RULINGS IN ARGENTINIAN AND COLOMBIAN COURTS DECRIMINALIZE POSSESSION OF SMALL AMOUNTS OF NARCOTICS. HIV/AIDS POLICY & LAW REVIEW 2009;14(2).

23. GLYNN A. SENATOR PRESENTS BILL TO DECRIMINALISE DRUGS. THE ARGENTINA INDEPENDENT 30 MARCH 2012 (HTTP://WWW.ARGENTINAINDEPENDENT.COM/CURRENTAFFAIRS/NEWSFROMARGENTINA/SENATOR-PRESENTS-BILL-TO-DECRIMINALISE-DRUGS/, ACCESSED 14 MAY 2012).

24. FERNÁNDEZ A. ARGENTINA: REFORM ON THE WAY? TRANSNATIONAL INSTITUTE SERIES ON LEGISLATIVE REFORM OF DRUG POLICIES NO 6. WASHINGTON, DC: TRANSNATIONAL INSTITUTE, 2010: P.8.

25. POLITI D. KIRCHNER FOR REEFERS? INTERNATIONAL HERALD TRIBUNE 9 FEBRUARY 2012 (HTTP://LATITUDE.BLOGS.NYTIMES.COM/2012/02/09/DECRIMINALIZING-DRUG-USE-IN-ARGENTINA-IS-A-CORRECTION-TO-BAD-POLICY/, ACCESSED 14 MAY 2012).

## 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 have resulted in a significant policy shift. In May 2008, Armenia removed its drug use and possession statutes from its Criminal Code and replaced them with Article 44 of the Administrative Code, which provides that possession of small quantities of illegal drugs without intent to sell faces only administrative liability.[26] However, the level of fines set by the Armenian Government can result in a back door criminalisation of drug users, with those caught in possession of drugs for the first time facing fines set at 100 to 200 times the minimum wage, which many cannot pay.

Under the law, individuals who seek assistance or treatment in relation to drug use at medical facilities are exempt from administrative liability. Research has suggested that the decriminalisation of drug possession has led to a greater number of people who use drugs problematically accessing treatment.[27]

26. NATIONAL PROGRAMME ON COMBATING DRUG ADDICTION AND ILLICIT TRAFFIC IN NARCOTIC DRUGS IN THE REPUBLIC OF ARMENIA IN 2009-2012 [DRAFT]: P.12.

27. ABRAHAMYAN G. DECRIMINALIZATION OF DRUG ABUSE ENCOURAGES MORE ADDICTS TO SEEK TREATMENT. ARMENIA NOW 24 JUNE 2011 (HTTP://WWW.ARMENIANOW.COM/NEWS/30615/ARMENIA_DRUG_TRAFFICKING_BORDER, ACCESSED 14 MAY 2012).

## AUSTRALIA

Australia was an early adopter of decriminalisation and some Australian states have had cannabis decriminalisation policies in place for approximately 25 years. Currently, three Australian states have laws in place that decriminalise, in some way, possession and use – and in some cases, cultivation and gifts – of cannabis.[28] Significant research has been completed on the effects of the Australian cannabis decriminalisation policies.[29] The social science and scientific literature on the impact of decriminalisation on the prevalence of marijuana use is mixed – some studies suggest a statistically significant increase in cannabis consumption; others suggest no significant increase in use. However, all generally agree that decriminalisation has not resulted in the catastrophic explosion in cannabis consumption many predicted would happen as a result of decriminalisation.

28. UNTIL 2011, THERE WERE FOUR DECRIMINALISED STATES. WESTERN AUSTRALIA REPEALED ITS DECRIMINALISATION POLICY IN JULY 2011. JONES L. TOUGH NEW CANNABIS LAWS FOR WA. SYDNEY MORNING HERALD JULY 17 2011 (HTTP://NEWS.SMH.COM.AU/BREAKING-NEWS-NATIONAL/TOUGH-NEW-CANNABIS-LAWS-FOR-WA-20110717-1HJQ2.HTML, ACCESSED 14 MAY 2012).

29. FOR DETAILED DISCUSSION, SEE: HUGHES C, RITTER A. A SUMMARY OF DIVERSION PROGRAMS FOR DRUG AND DRUG RELATED OFFENDERS IN AUSTRALIA. SYDNEY: NATIONAL DRUG AND ALCOHOL RESEARCH CENTRE, UNIVERSITY OF NEW SOUTH WALES, 2008.

## SOUTH AUSTRALIA

With some modifications over the years, South Australia's Cannabis Expiation Notice (CEN) scheme has been in place in some form since 1987. Under this policy, the police issue a CEN to individuals caught in possession of marijuana (up to 100 grams of cannabis); this requires the individual to pay a civil fine (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 contests the notice or fails to pay the fee, the matter is referred to court where investigation and prosecution commences.

Despite the intentions of South Australian officials, the introduction of the CEN scheme initially resulted in more prosecutions of cannabis users annually than in previous years, requiring policy adjustments after implementation. Because of the relative ease with which police officers could distribute CENs, early confusion among recipients of CENs as to payment requirements and methods, and inability to afford payment of the CENs,[30] 6000 CENs were issued in the first year of decriminalisation

30. CHRISTIE P, ALI R. OFFENCES UNDER THE CANNABIS EXPIATION NOTICE SCHEME IN SOUTH AUSTRALIA. DRUG AND ALCOHOL REVIEW 2000;19:255.

(1987–1988) and approximately 17,000 were issued by 1993–1994.[31] The result was a higher number of cannabis users ending up in the criminal justice system, because most offenders who did not pay the fee ultimately received a criminal conviction.[32] The South Australian Government responded to these trends 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.[33]

The literature on the impact of decriminalisation 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,[34] but most studies indicate there is no evidence of an increase in cannabis use that is attributable to the CEN scheme.[35] Thus, considering the literature balance, 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.[36] Furthermore, interviews with South Australian law-enforcement leaders more than 10 years after decriminalisation revealed near-unanimous support for continuing the CEN policy.[37]

For non-cannabis offences, the South Australia Controlled Substances Act requires police to refer individuals accused of simple possession offences to Drug Assessment Panels overseen by the Health Commission.[38] The assessment team then examines the individual's situation and can refer them to a range of services. A prosecution for simple possession cannot proceed unless the referral has been terminated by the service, a person fails to comply, or a person chooses not to participate. Successful participation for 6 months results in the withdrawal of criminal charges.

## WESTERN AUSTRALIA

Western Australia was the most recent Australian state to decriminalise cannabis possession. Beginning in 2004, police were able to issue a Cannabis Infringement Notice (CIN), similar to a South Australian CEN, 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 (up to AU$200), attending a Cannabis Education Session ('CES') with an approved treatment provider as determined by the Western Australia Chief Executive Officer of Health, 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 3-year period, they were no longer eligible to pay a fine and had to either attend a CES or go to court.[39] If an individual failed to pay a fine, they incurred a debt to the state but did not acquire a criminal record as a result.

The government of Western Australia was relatively successful in encouraging individuals to pay the fines associated with CINs and in avoiding the net-widening phenomena of other jurisdictions' notice

31. SINGLE E, CHRISTIE P, ALI R. THE IMPACT OF CANNABIS DECRIMINALISATION IN AUSTRALIA AND THE UNITED STATES. JOURNAL OF PUBLIC HEALTH POLICY 2000;21(2):167.

32. IBID: P.168

33. CHRISTIE P, ALI R. OFFENCES UNDER THE CANNABIS EXPIATION NOTICE SCHEME IN SOUTH AUSTRALIA. DRUG AND ALCOHOL REVIEW 2000;19:253.

34. DAMRONGPLASIT K, HSIAO C, ZHAO X. DECRIMINALIZATION AND MARIJUANA SMOKING PREVALENCE: EVIDENCE FROM AUSTRALIA. AMERICAN STATISTICAL ASSOCIATION JOURNAL OF BUSINESS AND ECONOMIC STATISTICS 2010;28(3):344–356.

35. SINGLE E, CHRISTIE P, ALI R. THE IMPACT OF CANNABIS DECRIMINALISATION IN AUSTRALIA AND THE UNITED STATES. JOURNAL OF PUBLIC HEALTH POLICY 2000;21(2):167.

36. IBID: P.167.

37. SUTTON A, MCMILLAN E. A REVIEW OF LAW ENFORCEMENT AND OTHER CRIMINAL JUSTICE ATTITUDES, POLICIES AND PRACTICES REGARDING CANNABIS AND CANNABIS LAWS IN SOUTH AUSTRALIA. CANBERRA: PUBLICATIONS PRODUCTION UNIT, DEPARTMENT OF HEALTH AND AGED CARE, 1999: P.VII–IX.

38. LEGAL SERVICES COMMISSION OF SOUTH AUSTRALIA. DIVERSIONARY SCHEMES. ADELAIDE: LEGAL SERVICES COMMISSION OF SOUTH AUSTRALIA, 1977 (HTTP://LAWHANDBOOK.SA.GOV.AU/CH10S08S10.PHP, ACCESSED 14 MAY 2012).

39. LENTON S, ALLSOP S. A TALE OF CIN – THE CANNABIS INFRINGEMENT NOTICE SCHEME IN WESTERN AUSTRALIA. ADDICTION 2010;105:810.

schemes by using the threat of driver's license suspensions to compel payment, resulting in over 75 per cent compliance with CIN fines.[40] The State government was also able to avoid the net-widening problem that South Australia faced in part by processing CINs at the police station, rather than issuing them in the field.

The CIN policy also resulted in a perceived decline in the prevalence of cannabis use: the number who reported using cannabis in the past year decreased from 19 per cent in 2002 to 12 per cent in 2007.[41] Reported lifetime cannabis use also declined from 54 per cent in 2002 to 46 per cent in 2007.[42] Opponents of decriminalisation of cannabis 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, 5 per cent of Western Australian residents reported an increase in their use of non-cannabis drugs, 9 per cent reported a decrease in use of other drugs and 82 per cent reported no change or a decline in their use of non-cannabis drugs.[43]

Following the election of the centre-right Liberal party in 2008, the government eliminated the CIN scheme in Western Australia. The new law came into effect in August 2011. Seemingly ignoring evidence of the success of the CIN policy, the government changed the threshold limit for a minor cannabis offence from 30 grams to 10 grams. One of the arguments put forward by the state government for the change in law was a perceived increase in cannabis use within the state.[44] However, data reveal there has been a decrease in levels of cannabis use within Western Australia during the period of decriminalisation, and that trends in prevalence rates are similar throughout the states, regardless of the law-enforcement model in place.[45] The new policy has resulted in a greater number of people being prosecuted for cannabis possession. Those caught in possession of less than 10 grams for the first offence no longer receive a civil response but are issued a cannabis caution. They are then required to attend a Cannabis Intervention Session (CIS), which explains the 'adverse health & social consequences of cannabis use'[46] and the laws relating to cannabis. Failure to attend results in a conviction for the offence and a criminal record.[47] Further offences receive stricter penalties, including custodial sentences.[48] Furthermore, cultivating a small number of cannabis plants will be treated as a criminal offence in the first instance.

## AUSTRALIAN CAPITAL TERRITORY

Beginning in 1993, the police in the Australian Capital Territory have had the authority to issue an individual found with up to 25 grams of cannabis a Simple Cannabis Offence Notice (SCON), instead of charging them with a criminal offence.[49] A SCON requires payment of an AU$100 fine within 60 days. Failure to pay the fine may trigger further sanctions, such as mandatory attendance at a treatment programme. If paid within 60 days, no criminal charge is recorded. However, a police officer may instead choose to refer the individual to criminal prosecution instead of granting a SCON, if the offence appears to be for sale, and not personal possession. Since 2002, the option of diversion into treatment was added to the law. Under this scheme, in lieu of paying a fine, an individual can be assessed and referred to treatment or education up to two times if necessary.[50]

40. REUTER, PETER H , 'MARIJUANA LEGALIZATION: WHAT CAN BE LEARNED FROM OTHER COUNTRIES?,' RAND DRUG POLICY RESEARCH CENTER, P. 9 (2010).

41. HYSHKA E. TURNING FAILURE INTO SUCCESS: WHAT DOES THE CASE OF WESTERN AUSTRALIA TELL US ABOUT CANADIAN CANNABIS POLICY-MAKING? POLICY STUDIES 2009;30(5):519.

42. FETHERSTON J, LENTON S. EFFECTS OF THE WESTERN AUSTRALIAN CANNABIS INFRINGEMENT NOTICE SCHEME ON PUBLIC ATTITUDES, KNOWLEDGE, AND USE. PERTH: NATIONAL DRUG RESEARCH INSTITUTE, 2007: P.IX.

43. IBID: P.43.

44. TOUGH NEW CANNABIS LAWS AS USAGE SOARS. ABC NEWS 27 JULY 2011 (HTTP://WWW.ABC.NET.AU/NEWS/2011-07-27/WA-TOUGH-NEW-CANNABIS-LAWS/2812558, ACCESSED 14 MAY 2012).

45. AUSTRALIAN INSTITUTE OF HEALTH AND WELFARE. 2010 NATIONAL DRUG STRATEGY HOUSEHOLD SURVEY REPORT. JULY 2011, DRUG STATISTICS SERIES NO. 25. CANBERRA: AUSTRALIAN INSTITUTE OF HEALTH AND WELFARE, 2011 – FOR ALL OF AUSTRALIA: RECENT USE OF CANNABIS INCREASED (FROM 9.1% IN 2007 TO 10.3%), BUT HAS DECLINED IN THE LONGER TERM (FROM 12.7% IN 1993). FOR WESTERN AUSTRALIA, THERE WAS AN 8.9% DECREASE IN RECENT USE OF CANNABIS BETWEEN 1998 AND 2010, WITH THE PREVALENCE RATE IN 2010 BEING 13.4%. COMPARED TO OTHER STATES SUCH AS NEW SOUTH WALES, VICTORIA OR QUEENSLAND (WHERE PERSONAL USE IS STILL CRIMINALISED), THERE IS NO SIGNIFICANT DIFFERENCE IN PERCENTAGE OF USAGE. IN FACT ALL STATES SHOW A SIMILAR TREND IN USAGE, REGARDLESS OF THE ENFORCEMENT IN PLACE. MOST INTERESTINGLY, USAGE LEVELS IN THE NORTHERN TERRITORY HAD THE GREATEST DECREASE IN USE WITHIN THAT PERIOD (20%), ALBEIT THEY ALSO HAD THE HIGHEST USAGE RATES OF ALL THE STATES.

46. CANNABIS LAW REFORM ACT 2010, DIVISION 3, SECTION 8J. (HTTP://WWW.AUSTLII.EDU.AU/AU/LEGIS/WA/NUM_ACT/CLRA2010450210224/, ACCESSED 20 MAY 2012)

47. LENTON S, ALLSOP S. A TALE OF CIN – THE CANNABIS INFRINGEMENT NOTICE SCHEME IN WESTERN AUSTRALIA. ADDICTION 2010;105:812.

48. NATIONAL CANNABIS PREVENTION AND INFORMATION CENTRE (NCPIC). CANNABIS AND THE LAW. RANDWICK: NCPIC, 2011 (HTTP://NCPIC.ORG.AU/NCPIC/PUBLICATIONS/FACTSHEETS/ARTICLE/CANNABIS-AND-THE-LAW, ACCESSED 14 MAY 2012).

49. IBID.

50. MCLAREN J, MATTICK RP. CANNABIS IN AUSTRALIA: USE, SUPPLY, HARMS, AND RESPONSES. SYDNEY: NATIONAL DRUG AND ALCOHOL RESEARCH CENTRE, UNIVERSITY OF NEW SOUTH WALES, 2007: P.57.

## 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.

For non-cannabis offences, adult individuals in possession of small quantities of drugs are referred to the Northern Territory Illicit Drug Pre-Court Diversion Program, in which offenders are offered education and treatment services instead of prosecution; avoidance of a criminal charge depends on successful participation in the diversion programme.[51]

## 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 Australia's decriminalisation policies have little to no impact on an individual's decision to use cannabis or other narcotics. 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,[52] one study demonstrating a decrease in cannabis use after decriminalisation,[53] and five studies showing that decriminalisation had no significant impact on the prevalence of cannabis use.[54]

Collectively, these studies suggest that decriminalisation of cannabis in Australia has had a minor impact on cannabis use, if any. Yet the States that have implemented decriminalisation have shown a capacity to keep individuals out of the criminal justice system. One study compared the outcomes of individuals given a CEN in South Australia and individuals given a criminal sentence in Western Australia (pre-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.**[55]

On a broader societal level, research also suggests that moving from criminalisation to decriminalisation can save states' scarce fiscal resources.[56]

51. HUGHES C, RITTER A. A SUMMARY OF DIVERSION PROGRAMS FOR DRUG AND DRUG RELATED OFFENDERS IN AUSTRALIA. SYDNEY: NATIONAL DRUG AND ALCOHOL RESEARCH CENTRE, UNIVERSITY OF NEW SOUTH WALES, 2008: P.52.

52. SEE GENERALLY, DAMRONGPLASIT K, HSIAO C, ZHAO X. DECRIMINALIZATION AND MARIJUANA SMOKING PREVALENCE: EVIDENCE FROM AUSTRALIA. AMERICAN STATISTICAL ASSOCIATION JOURNAL OF BUSINESS AND ECONOMIC STATISTICS 2010;28(3):344-356.

53. SEE FETHERSTON J, LENTON S. EFFECTS OF THE WESTERN AUSTRALIAN CANNABIS INFRINGEMENT NOTICE SCHEME ON PUBLIC ATTITUDES, KNOWLEDGE, AND USE. PERTH: NATIONAL DRUG RESEARCH INSTITUTE, 2007: P.54.

54. SEE DONNELLY N, HALL W, CHRISTIE P. EFFECTS OF THE CANNABIS EXPIATION NOTICE SCHEME ON LEVELS AND PATTERNS OF CANNABIS USE IN SOUTH AUSTRALIA: EVIDENCE FROM THE NATIONAL DRUG STRATEGY HOUSEHOLD SURVEYS 1985–1995. PARKSIDE: DRUG AND ALCOHOL SERVICES COUNCIL, SOUTH AUSTRALIA, 2009; LENTON S, CHRISTIE P, HUMENIUK R ET AL. INFRINGEMENT VERSUS CONVICTION: THE SOCIAL IMPACT OF A MINOR CANNABIS OFFENCE UNDER A CIVIL PENALTIES SYSTEM AND STRICT PROHIBITION IN TWO AUSTRALIAN STATES. PARKSIDE: DRUG AND ALCOHOL SERVICES COUNCIL, SOUTH AUSTRALIA, 1999; LENTON S. CANNABIS POLICY AND THE BURDEN OF PROOF: IS IT NOW BEYOND REASONABLE DOUBT THAT CANNABIS PROHIBITION IS NOT WORKING?,' DRUG AND ALCOHOL REVIEW 2000;19(1):95–100; SINGLE E, CHRISTIE P, ALI R. THE IMPACT OF CANNABIS DECRIMINALISATION IN AUSTRALIA AND THE UNITED STATES. JOURNAL OF PUBLIC HEALTH POLICY 2000;21(2):157–186; ANNE LINN BRETTVILLE-JENSON AL, WILLIAMS J. DECRIMINALIZATION AND INITIATION INTO CANNABIS USE. MELBOURNE: UNIVERSITY OF MELBOURNE, 2011 (HTTP://WWW.ECONOMICS.UNIMELB.EDU.AU/MICROECO/DOWNLOADS/DECRIMINALIZATION%20AND%20INITIATION%20INTO%20CANNABIS%20USE.PDF, ACCESSED 14 MAY 2012). ALTHOUGH THEY DID NOT FIND AN IMPACT ON OVERALL USE, BRETTVILLE-JENSON AND WILLIAMS DO SUGGEST THAT THE AGE OF INITIATION INTO CANNABIS USE WAS LOWER IN THOSE STATES THAT HAD DECRIMINALISED CANNABIS, ALTHOUGH NO CAUSAL LINK IS ESTABLISHED.

55. MCLAREN J, MATTICK RP. CANNABIS IN AUSTRALIA: USE, SUPPLY, HARMS, AND RESPONSES. SYDNEY: NATIONAL DRUG AND ALCOHOL RESEARCH CENTRE, UNIVERSITY OF NEW SOUTH WALES, 2007: P.560.

56. SINGLE E, CHRISTIE P, ALI R. THE IMPACT OF CANNABIS DECRIMINALISATION IN AUSTRALIA AND THE UNITED STATES. JOURNAL OF PUBLIC HEALTH POLICY 2000;21(2):167.

## BELGIUM

After internal debates within political factions in Belgium, laws passed in 2003 created a legal distinction between possession of cannabis for personal use and other types of drug offences, creating a civil penalty system.[57] The laws were amended and supplemented by a Minister of Justice and Prosecutors-General directive issued in 2005, instructing that adult individuals found with under 3 grams of cannabis for personal use would be issued a 'Process-Verbal Simplifé' (PVS) or 'simple record'. There is no penalty associated with the PVS, nor is the cannabis confiscated from the individual. The police officer sends the individual's name, location, quantity of cannabis, and other basic details to the local police station, where notes are summarised and sent to the local prosecutor on a monthly basis for statistical purposes. Individuals' details are not, however, kept in any database and no punishment is administered.[58]

If aggravating factors are present (i.e., cannabis possession in a penitentiary, possession with a minor, etc.) or non-cannabis drugs are found, more serious penalties, including custodial sentences, are available to police and prosecutors.

According to the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), as of 2008, the prevalence of cannabis use in the UK was approximately 114 per cent higher than in Belgium.[59]

## BRAZIL

Possession of drugs for personal use was depenalised in 2006 as part of major revisions to Brazil's drug laws. If an individual is arrested for possession of illegal drugs, the criminal justice authorities (including police, prosecutors and, finally, a judge) will look at a number of factors to determine whether the drugs were intended for personal consumption, including the nature and quantity of the substance, the conditions in which possession occurred, and the personal circumstances and history of the accused individual.[60] If the authorities determine the drugs were intended for personal consumption, the offender is subject to a warning about the effects of drugs, community service requirements, and attendance at an educational course about drugs. For up to three instances of recidivism, the individual is subject to community service and educational courses lasting up to 5 months. On a fourth instance, the individual is subject to community service and educational courses lasting up to 10 months. If the educational programme is not complied with, a judge may issue a fine of the equivalent of between £16 and £40 – the current national minimum wage is £0.90 per hour.[61] This process is administered entirely within the criminal justice system.

While the 2006 legislation removes incarceration from the list of possible penalties for possession, for many legal professionals and judges, possession for personal use is still considered a criminal offence.[62] In 2008, a judge of the Sixth Appellate Court of the High Court of Justice in São Paulo ruled that Brazil's legislation regarding drug possession for personal use was in violation of Section 5 of Brazil's Federal Constitution.[63] Although the ruling appears not to have been followed throughout the country, the debate over further decriminalisation is ongoing in Brazil.[64]

57. EMCDDA. BELGIUM COUNTRY PROFILE. LISBON: EMCDDA, 2011 (HTTP://WWW.EMCDDA.EUROPA.EU/HTML.CFM/INDEX5174EN.HTML?PLUGINMETHOD=ELDD.COUNTRYPROFILES&COUNTRY=BE, ACCESSED 14 MAY 2012).

58. SLEIMAN, ED., BELGIAN NATIONAL REPORT ON DRUGS 2005. IPH/EPI REPORTS NR 2005-012. BRUSSELS: SCIENTIFIC INSTITUTE OF PUBLIC HEALTH UNIT OF EPIDEMIOLOGY, 2005: PP.14–15 (HTTP://USERS.SKYNET.BE/APPEL/TELECH/ISP_4.PDF, ACCESSED 14 MAY 2012).

59. EMCDDA. TABLE GPS-1: LIFETIME PREVALENCE OF DRUG USE BY AGE AND COUNTRY, MOST RECENT NATIONAL GENERAL POPULATION SURVEY AVAILABLE SINCE 2000. LISBON: EMCDDA, 2011 (HTTP://WWW.EMCDDA.EUROPA.EU/STATS11/GPSTAB1B, ACCESSED 14 MAY 2012) – ALTHOUGH IT SHOULD BE NOTED THAT A VARIETY OF FACTORS CAN RESULT IN DIFFERENT LEVELS OF USE AND THERE IS NO EVIDENCE TO SHOW THAT THE DIFFERING NATIONAL POLICY RESPONSES DIRECTLY IMPACT ON PREVALENCE RATES.

60. TORRES R, HENRIQUE J. DRUG POLICY AND THE COURTS: A BRAZILIAN EXPERIENCE. TRANSNATIONAL INSTITUTE SERIES ON LEGISLATIVE REFORM OF DRUG POLICIES NR. 2. AMSTERDAM: TRANSNATIONAL INSTITUTE, 2009: PP.2–3.

61. PRESIDÊNCIA DA REPÚBLICA. CASA CIVIL SUBCHEFIA PARA ASSUNTOS JURÍDICOS. LEI N. 11.343, 2006 (HTTP://WWW.PLANALTO.GOV.BR/CCIVIL_03/_ATO2004-2006/2006/LEI/L11343.HTM, ACCESSED 14 MAY 2012).

62. TORRES R, HENRIQUE J. DRUG POLICY AND THE COURTS: A BRAZILIAN EXPERIENCE. TRANSNATIONAL INSTITUTE SERIES ON LEGISLATIVE REFORM OF DRUG POLICIES NR. 2. AMSTERDAM: TRANSNATIONAL INSTITUTE, 2009: PP.2–3.

63. IBID: P.1.

64. JELSMA M. DRUG LAW REFORM TREND IN LATIN AMERICA. AMSTERDAM: TRANSNATIONAL INSTITUTE, 2009: P.3 (HTTP://WWW.AKZEPT.ORG/PDF/VOLLTEXTE_PDF/NR23/DROGENPO_INTER/TNITRENDS_LATAM0110.PDF, ACCESSED 14 MAY 2012).

## CHILE

Since 2007, individuals in Chile found with drugs intended for 'exclusive personal use or consumption in the near future' have been exempt from criminal prosecution.[65] It is up to a judge to determine whether the drugs were intended for private use or consumption when the evidence does not provide for a rational inference that it was for such purposes. The legal burden falls on the arrestee to prove possession was for personal use and not for distribution or sharing. However, if the individual is arrested for use or possession in public or in private and it is determined that 'they have assembled for that purpose,' the judge may administer fines, forced treatment, community service requirements, and/or suspension of his or her driver's licence.[66]

Although the majority of cases terminate in the suspension of sentences or administrative sanctions, many people caught with small quantities do end up in prison. Chile is assessing the possibility of further changes to its laws, including full decriminalisation and drug reclassification.[67]

65. LAW 20.000, ARTICLE 4, 2007, LIBRARY OF THE NATIONAL CONGRESS OF CHILE (HTTP://WWW.LEYCHILE.CL/NAVEGAR?IDNORMA=235507&BUSCAR=LEY+20.000, ACCESSED 14 MAY 2012).

66. JELSMA M. DRUG LAW REFORM TREND IN LATIN AMERICA. AMSTERDAM: TRANSNATIONAL INSTITUTE, 2009: P.5–6 (HTTP://WWW.AKZEPT.ORG/PDF/VOLLTEXTE_PDF/NR23/DROGENPO_INTER/TNITRENDS_LATAM0110.PDF, ACCESSED 14 MAY 2012).

67. IBID: P.6.

## COLOMBIA

Drug possession for personal use has been decriminalised in Colombia since the Colombian Constitutional Court ruled in 1994 that penalties for possession of a personal dose violated Article 49 of the 1991 Constitution guaranteeing the freedom of decision-making to affect one's own health as long as it does not impact the rights of third parties.[68] Following the Court ruling, possession of quantities under certain maximum thresholds was not prohibited until 2009, when Colombian President Álvaro Uribe's government succeeded in passing a constitutional amendment to restore a prohibition model – Uribe had been campaigning for this since his election in 2002.

Following the passage of the amendment in 2009, possession for personal use and consumption became unlawful but the sanctions for possession for personal use were largely limited to administrative sentences, including referrals to various treatment and prevention services.

In August 2011, a challenge to the 2009 amendment was heard before the Colombian Supreme Court. The Court ruled that the new law 'violated personal freedoms' and reaffirmed the 1994 ruling that Colombian citizens has a right to carry the 'minimum dose' of drugs as outlined in that case.[69] The minimum dose is defined as 20 grams of cannabis or cocaine.[70]

In March 2012, Colombian media reported that the Santos government was preparing to introduce a new National Drug Statute to comply with the Supreme Court ruling which would establish 'personal dose' thresholds below which possession would be decriminalised – these were reported as 5 grams for marijuana, 1 gram for cocaine, and 200 grams for ecstasy.[71] Notably, the proposed legislation excluded possession of heroin from the list of decriminalised substances and also raised the possibility of low-level users possessing more than the minimum threshold amounts.[72] In May 2012, the Colombian House of Representatives passed a draft bill decriminalising the growing of coca, marijuana, and opium poppy plants.[73] While Colombia has long been a global centre of the 'war on drugs,' recent months have witnessed a flurry of activity moving the country's drug policies towards decriminalisation.

68. GUZMÁN DE, YEPES RU. PROHIBITION, A BACKWARDS STEP: THE PERSONAL DOSE IN COLOMBIA. TRANSNATIONAL INSTITUTE SERIES ON LEGISLATIVE REFORM ON DRUG POLICIES NR. 4. AMSTERDAM: TRANSNATIONAL INSTITUTE, 2010: P.3.

69. PACHIO E. COLOMBIA TAKES STEP TOWARDS DECRIMINALISATION. INSIGHT 25 AUGUST 2011 (HTTP://INSIGHTCRIME.ORG/INSIGHT-LATEST-NEWS/ITEM/1465-COLOMBIA-TAKES-STEP-TOWARDS-DRUG-DECRIMINALIZATION, ACCESSED 14 MAY 2012).

70. CORTE SUPREMA DEFIENDE EL PORTE DE DOSIS MINIMA DE DROGA. EL TIEMPO 24 AUGUST 2011 (HTTP://WWW.ELTIEMPO.COM/JUSTICIA/ARTICULO-WEB-NEW_NOTA_INTERIOR-10219935.HTML, ACCESSED 14 MAY 2012) – THE DOSE IS NOT THE ONLY FACTOR THE COURT CAN LOOK AT WHEN CONSIDERING IF DRUGS ARE FOR PERSONAL USE.

71. PACHECO D. REVIVE PULSO POR LA DOSS PERSONAL. EL ESPECTADOR 13 MARCH 2012 (HTTP://WWW.ELESPECTADOR.COM/IMPRESO/TEMADELDIA/ARTICULO-332022-REVIVE-PULSO-DOSIS-PERSONAL, ACCESSED 14 MAY 2012).

72. IBID.

73. COLOMBIA PASSES 1ST DRAFT OF DRUG CROP LEGALIZATION BILL. COLOMBIA REPORTS 9 MAY 2012 (HTTP://COLOMBIAREPORTS.COM/COLOMBIA-NEWS/NEWS/23958-COLOMBIA-PASSES-FIRST-DRAFT-OF-DRUG-CROP-LEGALIZATION-BILL-.HTML, ACCESSED 15 MAY 2012).

## CZECH REPUBLIC

Following years of intense debate, the Czech Republic became one of the most recent countries to formally decriminalise possession of illegal drugs in 2010.[74] Interestingly, the Czech Republic had decided to decriminalise drug possession after carrying out a cost-benefit analysis of its criminal laws that were adopted in 2000. After a two-year project that was concluded in 2002, research found that:

1. penalisation of drug use had not affected the availability of illicit drugs;
2. there was an increase in the levels of drug use within the country;
3. the social costs of illicit drug use increased significantly.[75]

As a result of this analysis of the impact of introducing penalties for drug possession, the Czech Republic formally decriminalised possession of illegal drugs in 2010.[76]

The delay in implementing decriminalisation was the result of a full assessment of drug-use patterns by the Czech authorities to ensure that quantity thresholds were set at the appropriate levels. Even before the new legislation, Czech policy focused on public health approaches to drug use and this was reflected in the low rates of imprisonment for possession offences.

Following passage of the legislation and a new directive issued by interim Prime Minister Jan Fischer in late 2009, police and prosecutors are now instructed to charge individuals possessing up to 15 grams of cannabis, 1 gram of cocaine, 1.5 grams of heroin, 4 ecstasy tablets, or 40 pieces of hallucinogenic mushrooms with an administrative offence – not a criminal charge. Such an offence brings with it potential fines of up to the equivalent of £550 processed through municipal administrative procedures, but no criminal record is created for the individual. In June 2011, the law changed to allow police officers to issue fines on the spot for drug use – similar to the process for minor traffic offences.[77]

While the broader effects of the Czech Republic's legislative change cannot yet be determined, preliminary assessments show the fears of the new law's critics that there would be an explosion of drug use in the country have not been realised. Jindřich Vobořil, the Czech government's national anti-drug coordinator explained in 2011:

**"There is not a more prevalent drug problem [since the new law came into effect]. We have always had high rates of marihuana use, and that has not changed. We also have problems with the use of harder drugs but that has not got much to do with this change".**[78]

As data are compiled in the coming years, it will become possible to draw further conclusions about the impact of the 2010 decriminalisation law.

74. NEW DRUG GUIDELINES ARE EUROPE'S MOST LIBERAL. PRAGUE POST 23 DECEMBER 2009 (HTTP://WWW.PRAGUEPOST.COM/NEWS/3194-NEW-DRUG-GUIDELINES-ARE-EUROPES-MOST-LIBERAL.HTML, ACCESSED 14 MAY 2012).

75. ZABRANSKY T, MRAVCIK V, GAJDOSIKOVA H, MIOVSKÙ M. IMPACT ANALYSIS PROJECT OF NEW DRUGS LEGISLATION SUMMARY FINAL REPORT. PRAGUE: SECRETARIAT OF THE NATIONAL DRUG COMMISSION OFFICE OF THE CZECH GOVERNMENT, 2001 (HTTP://WWW.DRUGLAWREFORM.INFO/IMAGES/STORIES/DOCUMENTS/CZECH_EVALUATION_2001_PAD_EN.PDF, ACCESSED 14 MAY 2012); PAVEL B. CZECH REPUBLIC: CASE STUDY IN THE LIBERALISATION OF DRUG POLICY, PRESENTED AT HOUSE OF LORDS EVENT ON DRUG POLICY REFORM ON 17TH AND 18TH NOVEMBER 2011 ORGANISED BY THE ALL PARTY PARLIAMENTARY GROUP ON DRUG POLICY REFORM.

76. NEW DRUG GUIDELINES ARE EUROPE'S MOST LIBERAL. PRAGUE POST 23 DECEMBER 2009 (HTTP://WWW.PRAGUEPOST.COM/NEWS/3194-NEW-DRUG-GUIDELINES-ARE-EUROPES-MOST-LIBERAL.HTML, ACCESSED 14 MAY 2012).

77. JOHNSTONE C. CZECH POLICE TO ISSUE SPOT FINES TO DRUG USERS. CZECH POSITION 23 JUNE 2011 (HTTP://WWW.CESKAPOZICE.CZ/EN/NEWS/SOCIETY/CZECH-POLICE-ISSUE-SPOT-FINES-DRUGS-USERS, ACCESSED 14 MAY 2012).

78. IBID.

## ESTONIA

Following amendments in 2002 to the Narcotic Drug and Psychotropic Substance Act, possession of small quantities of drugs for personal use has been decriminalised in Estonia.[79] The 'small quantity' standard is one determined by judicial precedent or expert court opinions in a particular case, but is generally considered to be 10 times a single dose for an average drug user.[80] While police still arrest individuals found with prohibited drugs, under the law, courts or 'extra-judicial bodies' may issue a sentence. This can include a fine of up to the equivalent of £685 or a sentence of administrative detention (non-prison detention) for up to 30 days.[81] This is considered an administrative, not a criminal offence.

## GERMANY

German law has contained decriminalisation elements since the early 1990s. At a federal level, the amendments to the federal 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.[82] The determination of whether a possession offence is minor largely depends on whether an individual possesses a 'small amount' of prohibited substances. The definition of 'small amount' ranges in different länder (German states) for different substances.[83,84]

In 1994, the German Federal Constitutional Court ruled that criminal penalties for individuals for possession or importation of small amounts of cannabis were unconstitutional.[85] Different länder have interpreted this ruling in different ways. Some have interpreted the ruling 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 narcotics, below which individuals are not prosecuted for possession. With regard to cannabis, these limits vary from 6 grams to 15 grams;[86] for cocaine the range is 1 gram to 3 grams. Some länder do not have statutory threshold limits but instead look to judicial precedent to establish limits on these and a wide range of other drugs.[87]

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.[88] In Germany, problematic drug users who have received a custodial sentence of 2 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 execution of the original custodial sentence.[89] Reports indicate, however, that, in practice, many problematic users face coerced therapy followed by a custodial sentence.[90]

While according to the EMCDDA Germany continues to have moderately high rates of use of cannabis, cocaine and LSD, the prevalence of use among adults is significantly below that of the UK.[91]

79. EMCDDA. COUNTRY LEGAL PROFILE – ESTONIA (HTTP://WWW.EMCDDA.EUROPA.EU/HTML.CFM/INDEX5174EN.HTML?PLUGINMETHOD=ELDD.COUNTRYPROFILES&COUNTRY=EE#, ACCESSED 14 MAY 2012).

80. EUROPEAN MONITORING CENTRE FOR DRUGS AND DRUG ADDICTION (EMCDDA) THRESHOLD QUANTITIES FOR DRUG OFFENCES. LISBON: EMCDDA, 2010 (HTTP://WWW.EMCDDA.EUROPA.EU/HTML.CFM/INDEX99321EN.HTML, ACCESSED 1 MAY 2012).

81. EMCDDA. THE STATE OF THE DRUGS PROBLEM IN THE ACCEDING AND CANDIDATE COUNTRIES TO THE EUROPEAN UNION LISBON: EMCDDA, 2003 (HTTP://CANDIDATES2003.EMCDDA.EUROPA.EU/DOWNLOAD/CANDIDATES_AR2003-EN.PDF, ACCESSED 14 MAY 2012).

82. NARCOTIC DRUGS ACT (BETÄUBUNGSMITTELGESETZ) OF 1981 SEC. 31A (AS AMENDED 18 DECEMBER 2009) (HTTP://WWW.EMCDDA.EUROPA.EU/HTML.CFM/INDEX5173EN.HTML?PLUGINMETHOD=ELDD.SHOWLEGALTEXTDETAIL&ID=677&LANG=EN&T=2, ACCESSED 14 MAY 2012).

83. MAX PLANCK INSTITUTE FOR FOREIGN AND CRIMINAL LAW. CANNABIS NON-PROSECUTION POLICIES IN GERMANY. FREIBURG: MAX PLANCK INSTITUTE FOR FOREIGN AND CRIMINAL LAW, 2011) (HTTP://WWW.MPICC.DE/WW/EN/PUB/FORSCHUNG/FORSCHUNGSARBEIT/KRIMINOLOGIE/ARCHIV/CANNABIS.HTM, ACCESSED 14 MAY 2012).

84. FOR THE DIFFERENT THRESHOLDS PLEASE SEE (HTTP://WWW.DRUG-INFOPOOL.DE/GESETZ/NORDRHEIN-WESTFALEN.HTML, ACCESSED 14 MAY 2012) – IT WOULD APPEAR THAT THE MORE CONSERVATIVE LÄNDERS IN THE SOUTH OF THE COUNTRY TAKE A MORE RESTRICTIVE APPROACH THAN LOCAL GOVERNMENTS IN THE NORTH.

85. DECISION OF GERMAN FEDERAL CONSTITUTIONAL COURT, SECOND SENATE, 9 MARCH 1994, BVERFGE 90, 145.

86. BERLIN SET TO RELAX CANNABIS LAWS. DER SPIEGEL 18 MAY 2010 (HTTP://WWW.SPIEGEL.DE/INTERNATIONAL/GERMANY/0,1518,695215,00.HTML, ACCESSED 14 MAY 2012).

87. EMCDDA. EUROPEAN MONITORING CENTRE FOR DRUGS AND DRUG ADDICTION (EMCDDA) THRESHOLD QUANTITIES FOR DRUG OFFENCES. LISBON: EMCDDA, 2010 (HTTP://WWW.EMCDDA.EUROPA.EU/HTML.CFM/INDEX99321EN.HTML, ACCESSED 1 MAY 2012).

88. BÖLLINGER L. DRUG LAW AND POLICY IN GERMANY AND THE EUROPEAN COMMUNITY: RECENT DEVELOPMENTS. JOURNAL OF DRUG ISSUES 2004; 34(3):499.

89. ACT ON THE TRADE IN NARCOTIC DRUGS SEC. 35 (AS AMENDED 18 DEC. 2009).

90. BÖLLINGER L. DRUG LAW AND POLICY IN GERMANY AND THE EUROPEAN COMMUNITY: RECENT DEVELOPMENTS. JOURNAL OF DRUG ISSUES 2004; 34(3):492.

91. EMCDDA. LIFETIME PREVALENCE OF DRUG USE BY AGE AND COUNTRY, MOST RECENT NATIONAL GENERAL POPULATION SURVEY AVAILABLE SINCE 2000. LISBON: EMCDDA, 2011 (HTTP://WWW.EMCDDA.EUROPA.EU/STATS11/GPSTAB1B, ACCESSED 14 MAY 2012).

## ITALY

Drug use and possession was first decriminalised in Italy over three and a half decades ago.[92] Since then, Italian drug laws and policies have fluctuated between harsh and lenient penalties for use and possession; custodial sentences and treatment for drug-dependent individuals and repeat offenders; and high and low levels of prevalence of drug use, drug-related disease rates, and treatment availability.[93] While penalties for possession of illicit drugs in Italy have varied in severity, little can be deduced about their impact. The conclusion is that the policies – whether harsh or lenient – have had little effect on the prevalence of drug use and related metrics in Italy.

The backbone of Italy's current drug laws was passed 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 3-month custodial sentences for repeat or drug-dependent offenders – the first punitive scheme since decriminalisation began in 1975. Yet the institution 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 European Union (EU).[94] Recognising the consequences of increasing criminalisation of drug users found with amounts of illegal drugs above the average dose, the Italian Constitutional Court issued a decision in 1991 encouraging judges to use the daily dose threshold as only one of many factors in determining intent to sell, not as an inflexible rule.[95] Then, following a national referendum in 1993, the law changed to eliminate custodial measures for drug users 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.[96]

This 'judicial discretion' regime existed for over a decade until new drugs legislation was passed by the Italian parliament in early 2006.[97] These laws, which are currently in force, made significant changes to existing law, including:

- reinstituting 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 4 years to 6 years (or with 6 years remaining in prison).[98]

Under the current Italian system, if the police find an individual in possession of a quantity of illegal drugs clearly below the 'maximum quantity allowed' threshold or clearly not intended for sale, he or she is

92. SOLVETTI LM. DRUG USE CRIMINALIZATION V. DECRIMINALIZATION: AN ANALYSIS IN LIGHT OF THE ITALIAN EXPERIENCE, REPORT PREPARED FOR THE SWISS FEDERAL OFFICE OF PUBLIC HEALTH. BERN: SWISS FEDERAL OFFICE OF PUBLIC HEALTH, 2001: P.32.

93. SEE GENERALLY IBID.

94. IBID: P.40.

95. ZUFFA G. HOW TO DETERMINE PERSONAL USE IN DRUG LEGISLATION: THE 'THRESHOLD CONTROVERSY' IN THE LIGHT OF THE ITALIAN EXPERIENCE. TRANSNATIONAL INSTITUTE SERIES ON LEGISLATIVE REFORM OF DRUG LAWS NR. 15. AMSTERDAM: TRANSNATIONAL INSTITUTE, 2011: P.4 (HTTP://WWW.TNI.ORG/SITES/WWW.TNI.ORG/FILES/DOWNLOAD/DLR15.PDF, ACCESSED 14 MAY 2012).

96. IBID.

97. SEE THE 'FINI-GIOVANARDI' LAW. DPR OF 9 DECEMBER 1990 N.390 (AS AMENDED BY LAW 309 OF 28 FEB. 2006).

98. ANTIGONE, CNCA, FORUM DROGHE, SOCIETÁ DELLA RAGIONE, THE EFFECTS OF THE 2006 ITALIAN DRUG LEGISLATION ('FINI-GIOVANARDI LAW') ON THE PENAL AND PRISONS SYSTEM (2006–2010) EXECUTIVE SUMMARY, P.1. KEY POINTS OF THE EXECUTIVE SUMMARY ARE AVAILABLE IN ENGLISH AT (HTTP://WWW.IDPC.NET/SITES/DEFAULT/FILES/LIBRARY/WHITE-BOOK_EXECUTIVE-SUMMARY.PDF, ACCESSED 14 MAY 2012).

brought to the local prefect (the provincial authority), where he or she faces any number of administrative sanctions ranging from a warning to fines or licence suspensions. If the quantity is close to or above the threshold, or packaged in a way that raises suspicion of an intent to sell, the individual may be arrested and detained while tests are conducted to determine the quantity of active ingredients in the substance, and will appear before a judge within 48 hours for a hearing to have the arrest ratified. If appropriate, a trial to contest the charges and determine sentencing may take place, potentially months later.

Since the new laws were implemented in 2006, the number of sanctions administered for personal use has more than doubled: from 7,229 in 2006 to 16,154 in 2010.[99] The proportion of individuals incarcerated for drug offences as part of the general prison population has also increased from 28 per cent in 2006 to 31 per cent in 2010. Additionally, the number of drug-dependent offenders in treatment has significantly decreased: from 3,852 at the start of 2006 to 1,597 at the start of 2010.[100] It is possible that this reduction in those accessing treatment is linked to the increasing stigmatisation of those who use drugs, as a result of criminalisation. While this increasing criminalisation of drug users as a result of low maximum-quantity thresholds has led some in Italy to describe a system that is not decriminalised in practice, the numbers of individuals who face administrative sanctions for personal possession but do not retain a criminal record remain high.[101] This is probably linked to a net-widening effect as demonstrated by the increased numbers of individuals receiving administrative sanctions between 2006 and 2010. The impact of this may also partially explain the drop in numbers in the treatment system, with many potentially fearing the risk of prosecution by participating in treatment.

The Italian legal system continues to grapple with challenges to the enforcement of the new laws. In June of 2011, Italy's Court of Cassation, its highest court, held that individuals could legally grow small amounts of cannabis on their home balconies or terraces.[102]

**Overall, as successive Italian governments attempt to legislate a solution to a perceived problem of widespread drug misuse, it does not appear that particular harshness or leniency in drug laws has made much of an impact.**

While the 2011 World Drug Report indicates that the prevalence of illicit drug use in Italy remains one of the highest in Europe, the prevalence of heroin and cocaine use still remains lower than in the UK.[103] Although more Italians are now going to prison for drug offences, drug use appears to continue unabated.

99. ZUFFA G. HOW TO DETERMINE PERSONAL USE IN DRUG LEGISLATION: THE 'THRESHOLD CONTROVERSY' IN THE LIGHT OF THE ITALIAN EXPERIENCE. TRANSNATIONAL INSTITUTE SERIES ON LEGISLATIVE REFORM OF DRUG LAWS NR. 15. AMSTERDAM: TRANSNATIONAL INSTITUTE, 2011: P.7 (HTTP://WWW.TNI.ORG/SITES/WWW.TNI.ORG/FILES/DOWNLOAD/DLR15.PDF, ACCESSED 14 MAY 2012).

100. IBID.

101. IBID.

102. IN ITALY, NO NEED TO HIDE THE POT PLANTS. UPI 29 JUNE 1011 (HTTP://WWW.UPI.COM/TOP_NEWS/WORLD-NEWS/2011/06/29/IN-ITALY-NO-NEED-TO-HIDE-THE-POT-PLANTS/UPI-74621309392885/, ACCESSED 14 MAY 2012).

103. UNITED NATIONS OFFICE ON DRUGS AND CRIME (UNODC), WORLD DRUG REPORT 2011. VIENNA: UNODC, 2011: P.220 (HTTP://WWW.UNODC.ORG/DOCUMENTS/DATA-AND-ANALYSIS/WDR2011/WORLD_DRUG_REPORT_2011_EBOOK.PDF, ACCESSED 14 MAY 2012).

## MEXICO

In recent years, Mexico has become the frontline for drug-war violence. Since a decision in late 2006 by Mexican president Felipe Calderón to send federal troops to the Mexican state of Michoacán to battle drug cartels there, at least 45,000–50,000 people have died in drug-war-related violence across the country.[104]

Advertised as a measure intended to focus law-enforcement priorities on combating traffickers and 'small-scale drug dealing' in lieu of drug users, Mexico decriminalised possession of small amounts of drugs in 2009.[105] Since the changes to the General Health Law, the Attorney General is 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.[106] If caught with drugs under the threshold amount, individuals receive only an encouragement to seek treatment; if caught three times with drugs under the threshold amount, treatment becomes mandatory.[107] If the arresting authorities, in consultation with medical officials, determine an individual is a problematic user, they can refer that individual to treatment on the first offence. And if individuals refuse to participate or fail to participate successfully in treatment, they are subject to criminal prosecution, as are those found in possession of drugs above the legal threshold amounts.

While news of Mexico's decriminalisation law made headlines around the world as a bold step in drug policy reform when President Calderón signed it in 2009, many have criticised the law as more of a symbolic decriminalisation than one that will have a significant effect on the lives of Mexicans. Many of the critiques centre on the low maximum-quantity thresholds – some suggest that the amounts are so low that they will potentially label more drug users as traffickers than before decriminalisation and will subject them to harsher penalties.[108] Others predict the changes will create ambiguity as to how threshold amounts are measured, will increase corruption, and will continue to force consumers to engage with those the law considers criminals in order to purchase the substances it is no longer criminal to possess.[109]

The changes to the law are too recent to draw any significant conclusions or to measure the large-scale effects of the new laws on Mexican society.

## THE NETHERLANDS

The Netherlands has long been regarded as a global pioneer in drug policy, often relating back to the amendments to its drug laws in 1976 that created a legal division between hard and soft drugs.[110] Technically, the 1976 legislation continued to criminalise drug possession and supply, but guidelines for prosecution introduced at the same time lay the foundation for the decriminalisation framework.[111] These guidelines determined that cannabis supply and possession should be of the lowest priority to law enforcement and prosecutors.[112] This was the system that led to the subsequent creation of the Netherlands' famous 'coffee shops,' which are legally permitted to sell cannabis in limited amounts.[113]

104. Q&A: MEXICO'S DRUG-RELATED VIOLENCE. BBC NEWS 25 JANUARY 2012 (HTTP://WWW.BBC.CO.UK/NEWS/WORLD-LATIN-AMERICA-10681249, ACCESSED 14 MAY 2012).

105. MEXICO LEGALIZES DRUG POSSESSION. NEW YORK TIMES 21 AUGUST 2009 (HTTP://WWW.NYTIMES.COM/2009/08/21/WORLD/AMERICAS/21MEXICO.HTML, ACCESSED 14 MAY 2012).

106. 'NARCOMENUDEO DECREE,' AMENDING GENERAL HEALTH LAW ART. 478, AVAILABLE AT HTTP://WWW.DIPUTADOS.GOB.MX/LEYESBIBLIO/PDF/142.PDF [LAST VISITED 10 AUG. 2011].

107. IBID.

108. MORAFF C. LATIN AMERICA'S LEGALIZATION PUSH. THE AMERICAN PROSPECT 26 JUNE 2009 (HTTP://PROSPECT.ORG/CS/ARTICLES?ARTICLE=LATIN_AMERICAS_LEGALIZATION_PUSH, ACCESSED 14 MAY 2012).

109. HERNÁNDEZ TINAJERO J, ANGLES CZ. MEXICO: THE LAW AGAINST SMALL-SCALE DRUG DEALING. TRANSNATIONAL INSTITUTE SERIES ON LEGISLATIVE REFORM OF DRUG POLICIES NR. 3. AMSTERDAM: TRANSNATIONAL INSTITUTE, 2009: P.3 (HTTP://WWW.TNI.ORG/FILES/DOWNLOAD/DLR3.PDF, ACCESSED 14 MAY 2012).

110. THE LEGISLATION REFERS TO DRUGS THAT POSE 'UNACCEPTABLE RISKS' AND THOSE WITH 'LESS SEVERE' RISKS.

111. SEE STEVENS A. DRUGS, CRIME AND PUBLIC HEALTH: THE POLITICAL ECONOMY OF DRUG POLICY. ABINGDON: ROUTLEDGE, 2010: PP.120–122.

112. IBID.

113. OPIUM ACT (HTTP://WWW.CANNABIS-MED.ORG/DUTCH/REGULATIONS/OPIUM_ACT.PDF, ACCESSED 14 MAY 2012).

Drug possession in the Netherlands is not statutorily decriminalised; rather, there is a long-standing non-prosecution policy in place, established by written guidelines issued by the Ministry of Justice, which generally instruct prosecutors not to prosecute possession offences of up to 5 grams of cannabis for personal use (the amount was 30 grams before 1996)[114] or about one dose of 'hard' drugs for personal use.[115] Individuals found with amounts at or below this threshold face no penalties – civil or criminal.

Numerous studies have been undertaken to evaluate the effects of the Netherlands' cannabis policies on the prevalence of drug use there. 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.[116] Another concluded there is no evidence that the decriminalisation component of the 1976 policy increased levels of cannabis use.[117] 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.[118]

With regard to other drugs, policies in the Netherlands have resulted in a smaller proportion of 'hard'drug addicts there than in most of the rest of Western Europe and the USA.[119] 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.[120]

**Recent evaluations of Dutch drug policies show low numbers of deaths from heroin and methadone use compared to the rest of the globe, low prevalence of injecting drug use, and a decrease in the number of young people who become problematic offenders, demonstrating the Netherlands' decriminalisation policies may have contributed to reducing the worst drug harms.**[121]

Despite the decades of de facto decriminalisation in the Netherlands, according to the EMCDDA, the prevalence of cannabis and cocaine use in the country is still below that of the UK.[122]

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. The new conservative government wants to restrict access by introducing a 'weed pass' system that will allow only legal residents of the Netherlands to buy cannabis and turn coffee shops into closed clubs with a maximum of 2000 resident members. The new system went into effect in southern cities in May 2012[123] and is expected to expand nationwide in 2013.[124]

114. REUTER P. MARIJUANA LEGALIZATION: WHAT CAN BE LEARNED FROM OTHER COUNTRIES? SANTA MONICA, CA: RAND DRUG POLICY RESEARCH CENTER, 2010: P.2 (HTTP://WWW.RAND.ORG/CONTENT/DAM/RAND/PUBS/WORKING_PAPERS/2010/RAND_WR771.PDF, ACCESSED 14 MAY 2012).

115. EMCDDA. THRESHOLD QUANTITIES FOR DRUG OFFENCES. LISBON: EMCDDA, 2010 (HTTP://WWW.EMCDDA.EUROPA.EU/HTML.CFM/INDEX99321EN.HTML, ACCESSED 1 MAY 2012).

116. KILMER B. DO CANNABIS POSSESSION LAWS INFLUENCE CANNABIS USE?. CANNABIS 2002 REPORT: A JOINT INTERNATIONAL EFFORT AT THE INITIATIVE OF THE MINISTERS OF PUBLIC HEALTH OF BELGIUM, FRANCE, GERMANY, THE NETHERLANDS, SWITZERLAND: TECHNICAL REPORT OF THE SCIENTIFIC CONFERENCE. BRUSSELS: BELGIAN MINISTRY OF PUBLIC HEALTH, 2002: P.105.

117. IBID.

118. MACCOUN R, REUTER P. DRUG WAR HERESIES: LEARNING FROM OTHER VICES, TIMES AND PLACES. CAMBRIDGE: CAMBRIDGE UNIVERSITY PRESS, 2001: P.259.

119. MAMBER N. NOTE: COKE AND SMACK AT THE DRUGSTORE: HARM REDUCTIVE DRUG LEGALIZATION: AN ALTERNATIVE TO A CRIMINALIZATION SOCIETY. CORNELL JOURNAL OF LAW AND POLICY 2006;619:641.

120. GRAY JP. THE HOPELESSNESS OF DRUG PROHIBITION. 13 CHAPMAN LAW REVIEW 2010;521:545.

121. STEVENS A. DRUGS, CRIME AND PUBLIC HEALTH: THE POLITICAL ECONOMY OF DRUG POLICY. ABINGDON: ROUTLEDGE, 2010: PP.122–123.

122. EMCDDA. THE STATE OF THE DRUGS PROBLEM IN THE ACCEDING AND CANDIDATE COUNTRIES TO THE EUROPEAN UNION LISBON: EMCCDA, 2003 (HTTP://CANDIDATES2003.EMCDDA.EUROPA.EU/DOWNLOAD/CANDIDATES_AR2003-EN.PDF, ACCESSED 14 MAY 2012).

123. KRANJC S., ESCRITT, T. TOURISTS PROTEST DUTCH CANNABIS BAN, TORONTO SUN 1 MAY 2012 (HTTP://WWW.TORONTOSUN.COM/2012/05/01/PROTESTORS-SAY-NO-TO-DUTCH-CANNABIS-BAN, ACCESSED 15 MAY 2012).

124. DUTCH CANNABIS CAFE OWNERS FIGHT CHANGES. BBC NEWS 7 APRIL 2012 (HTTP://WWW.BBC.CO.UK/NEWS/WORLD-EUROPE-17865663, ACCESSED 14 MAY 2012).

## PARAGUAY

Paraguay has formally decriminalised possession of illicit drugs since 1988. Under Law N° 1.340, 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, if a court determines that an individual is drug dependent, a judge is authorised, following an assessment by medical authorities, to mandate custodial drug treatment for a period of his or her determination.[125]

According to the UN World Drug Report, after decades of decriminalisation, Paraguay has the lowest prevalence of use for heroin, is tied for the lowest prevalence of cocaine use with Ecuador and Suriname, and is in the lower third of prevalence of cannabis use in South America.[126]

## PERU

Historically a major source of coca cultivation, consumption of the traditional coca leaf has never been criminalised in Peru, but consumption and possession of other drugs for personal use have been exempted from maximum thresholds for personal possession. Since 2003, individuals found with up to 5 grams of cocaine paste, 2 grams of cocaine hydrochloride, 200 milligrams of heroin or 8 grams of tetrahydrocannabinol (THC) are not punishable under Peruvian law.[127]

Despite this statutory decriminalisation, research reveals a disconnection between policy and the reality of police practices in Peru. Police regularly hold in custody individuals 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 charge.[128] This reveals that the criminal justice structures and operations within a state may have a significant impact on the ability of decriminalisation policies to be implemented effectively and successfully; policing and detention practices on the ground do not necessarily reflect the legislature's policy alignment. Drug-related offences have become the third leading cause of imprisonment in Peru, yet approximately one-third of nearly 12,000 inmates incarcerated for drug offences have not been formally charged or convicted of a crime.[129]

## POLAND

Following years of intense debate, Poland took its first steps towards decriminalisation when President Komorowski signed an amendment to the country's drug laws in May 2011. This gives prosecutors the discretion not to prosecute drug-possession offences when the offender possesses a 'small quantity' for personal use and is a first-time offender.[130] Prosecutors may also discontinue prosecution in favour of a referral to treatment if the individual is judged to be drug-dependent. The law, which formally took effect by the end of 2011, does not set out thresholds for determining what constitutes a 'small quantity,' leaving that determination to prosecutors.

It remains to be seen how Poland's recent drug law amendment will function in practice and what effects it will have on the prevalence of drug use, drug dependence, and drug-related disease, among other metrics.

125. JELSMA M. DRUG LAW REFORM TREND IN LATIN AMERICA. AMSTERDAM: TRANSNATIONAL INSTITUTE, 2009: P.2 (HTTP://WWW.AKZEPT.ORG/PDF/VOLLTEXTE_PDF/NR23/DROGENPO_INTER/TNITRENDS_LATAM0110.PDF, ACCESSED 14 MAY 2012).

126. UNODC, WORLD DRUG REPORT 2011. VIENNA: ONODC, 2011: P.220 (HTTP://WWW.UNODC.ORG/DOCUMENTS/DATA-AND-ANALYSIS/WDR2011/WORLD_DRUG_REPORT_2011_EBOOK.PDF, ACCESSED 14 MAY 2012.

127. PERUVIAN PENAL CODE, LAW 28,002 OF 2003, ART. 299 (HTTP://WWW.SEGURIDADIDL.ORG.PE/NORMAS/LEY28002.HTM, ACCESSED 14 MAY 2012).

128. GARRIDO RS. LEGISLATION ON DRUGS AND THE PRISON SITUATION IN PERU. IN: SYSTEMS OVERLOAD: DRUG LAWS AND PRISONS IN LATIN AMERICA. WASHINGTON/AMSTERDAM: WASHINGTON OFFICE ON LATIN AMERICA (WOLA)/TRANSNATIONAL INSTITUTE, 2010: P.71–80 (HTTP://WWW.DRUGLAWREFORM.INFO/EN/PUBLICATIONS/SYSTEMS-OVERLOAD/ITEM/875-DRUG-LAWS-AND-PRISONS-IN-PERU, ACCESSED 14 MAY 2012).

129. IBID: P.71.

130. INTERNATIONAL DRUG POLICY CONSORTIUM. [POLISH PRESIDENT APPROVES NEW DRUG LAW.] LONDON: INTERNATIONAL DRUG POLICY CONSORTIUM, 2011 (HTTP://WWW.IDPC.NET/ALERTS/POLISH-PRESIDENT-APPROVES-NEW-DRUG-LAW, ACCESSED 14 MAY 2012).

## 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. Portugal passed new harm reduction measures in 2001 to better coordinate and bolster drop-in centres, shelters, mobile health units, prescription programmes, syringe-exchange schemes, and other initiatives for dependent drug users.[131]

131. EMCDDA. DRUG POLICY PROFILES – PORTUGAL. LISBON: EMCDDA, 2011: P.18 (HTTP://WWW.EMCDDA.EUROPA.EU/PUBLICATIONS/DRUG-POLICY-PROFILES/PORTUGAL, ACCESSED 14 MAY 2012).

**Over 10 years later, 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 critics had said it would be.**

Rather, the decriminalisation model and the associated public health policies were followed by important reductions in drug-related harms and Portugal has experienced a perceived decline in drug use among some of the most vulnerable populations – young people and 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,[132] an officer issues that individual a citation referring him or her to a meeting with a 'dissuasion commission' (CDT) – a three-person panel made up of medical experts, social workers and legal professionals.[133] Designed to be non-adversarial, the panels do not meet in courtrooms; panel members 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 requiring 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.[134] 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.[135]

132. EMCDDA. THRESHOLD QUANTITIES FOR DRUG OFFENCES. LISBON: EMCDDA, 2010 (HTTP://WWW.EMCDDA.EUROPA.EU/HTML.CFM/INDEX99321EN.HTML, ACCESSED 14 MAY 2012) – THIS AMOUNTS IN PRACTICE TO UP TO 5 GRAMS OF CANNABIS RESIN OR 25 GRAMS OF HERBAL CANNABIS, 1 GRAM OF ECSTASY, 1 GRAM OF HEROIN, AND 2 GRAMS OF COCAINE.

133. KREIT A. THE DECRIMINALIZATION OPTION: SHOULD STATES CONSIDER MOVING FROM A CRIMINAL TO A CIVIL DRUG COURT MODEL? UNIVERSITY OF CHICAGO LEGAL FORUM. CHICAGO: UNIVERSITY OF CHICAGO, 2010: 299-326.

134. DOMOSŁAWSKI ARTUR. DRUG POLICY IN PORTUGAL: THE BENEFITS OF DECRIMINALIZING DRUG USER. (TRANSLATED FROM POLISH TO ENGLISH BY HANNA SIEMASZKO). GLOBAL DRUG POLICY PROGRAM: OPEN SOCIETY FOUNDATION (HTTP://WWW.SOROS.ORG/SITES/DEFAULT/FILES/DRUG-POLICY-IN-PORTUGAL-20110829.PDF, ACCESSED 12 JUNE 2012).

135. HUGHES CE, STEVENS A. WHAT CAN WE LEARN FROM THE PORTUGUESE DECRIMINALIZATION OF ILLICIT DRUGS? BRITISH JOURNAL OF CRIMINOLOGY 2010;50:1002.

Between 2002 and 2009, CDTs facilitated approximately 6,000 administrative processes each year against individuals in possession of illicit drugs.[136] Most of these cases – ranging from 59 per cent to 68 per cent in a given year – have resulted in suspensions of proceedings for non-dependent users. The use of punitive sanctions – such as licence suspension, restrictions on movement, or fines – has increased from 3 per cent in 2002[137] to 14 per cent in 2009 (10 per cent non-pecuniary sanctions and 4 per cent fines).[138] In 2009, CDTs provisionally suspended 15 per cent of cases with an agreement that the individual would undergo treatment.[139] Approximately 76 per cent of cases involved

136. IBID: P.1004.

137. IBID: P.1005.

138. EMCDDA, DRUG POLICY PROFILES – PORTUGAL. LISBON: EMCDDA, 2011: P.17 (HTTP://WWW.EMCDDA.EUROPA.EU/PUBLICATIONS/DRUG-POLICY-PROFILES/PORTUGAL, ACCESSED 14 MAY 2012).

139. IBID.

cannabis alone, 11 per cent involved heroin, 6 per cent involved cocaine and the remaining cases involved multiple drugs.

Reports on the impact of the Portuguese model have ranged from a 'resounding success'[140] to 'disastrous failure'.[141] 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 analysed in a 2012 report and 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.[142]

The impact of decriminalisation on any of the trends is debatable, not least because of the significant investment in harm reduction that took place in 2001, but:

**Analysis appears to suggest Portugal experienced a small increase in lifetime drug use among adults following decriminalisation, on par with its regional neighbours.[143] Yet Portugal's level of drug use still remains generally below the European average.[144] Significantly, analysis has also demonstrated marked decreases in reported prevalence of use among particularly vulnerable groups.**

After a slight increase leading up to and immediately after decriminalisation,[145] lifetime use among 15–16 year olds decreased between 2003 and 2007[146] and both recent and current reported drug use declined among 15 to 24 year olds from 2001 to 2007. Rates of reported lifetime use appeared to increase for older age groups, but these increases were smaller for recent and current use. The prevalence of cannabis use in this age group is one of the lowest in Western Europe[147] and trends suggest reductions in the number of young people becoming dependent on harder drugs like heroin.[148] Furthermore, from 2000 to 2005, the estimated number of problematic drug users declined, while the same category of users increased in regional neighbours Italy and Spain. Recent studies have suggested that there has been a 50 per cent decrease in the number of problematic drug users, from 100,000 in the early 1990s to 50,000 in 2012.[149] The estimated numbers of injecting drug users in Portugal also decreased by over 40 per cent during that period.[150]

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 in treatment[151] and has seen significant reductions in transmission of HIV and tuberculosis.[152] The number of new drug users diagnosed with HIV decreased from 907 in 2000 to 267 in 2008 and the number of new AIDS cases decreased from 506 to 108 over the same period.[153] Experts on the ground attribute this to the significant expansion of harm reduction services in conjunction with the decriminalisation policy.[154] While the number of new HIV cases is still high by international standards, the trends demonstrate an encouraging sign of the success of harm reduction services there.

140. GREENWALD G. DRUG DECRIMINALISATION IN PORTUGAL: LESSONS FOR CREATING FAIR AND SUCCESSFUL DRUG POLICIES. WASHINGTON DC: CATO INSTITUTE, 2009.

141. PINTO C. THE RESOUNDING SUCCESS OF THE PORTUGUESE DRUG POLICY: THE POWER OF AN ATTRACTIVE FALLACY. LISBON: ASSOCIACAO PARA UMA PORTUGAL LIVRE DE DROGAS, 2010.

142. HUGHES CE, STEVENS A. A RESOUNDING SUCCESS OF A DISASTROUS FAILURE: RE-EXAMINING THE INTERPRETATION OF EVIDENCE ON THE PORTUGUESE DECRIMINALISATION OF ILLICIT DRUGS. DRUG AND ALCOHOL REVIEW 2012;31:101–113.

143. HUGHES CE, STEVENS A. WHAT CAN WE LEARN FROM THE PORTUGUESE DECRIMINALIZATION OF ILLICIT DRUGS? BRITISH JOURNAL OF CRIMINOLOGY 2010;50:1006 – CITING A SMALL INCREASE FROM 2001 TO 2007.

144. EMCDDA, DRUG POLICY PROFILES – PORTUGAL. LISBON: EMCDDA, 2011: P.20 (HTTP://WWW.EMCDDA.EUROPA.EU/ATTACHEMENTS.CFM/ATT_137215_EN_POLICYPROFILE_PORTUGAL_WEB_FINAL.PDF, ACCESSED 14 MAY 2012).

145. PORTUGAL NATIONAL DRUG SURVEYS ARE NOT CARRIED OUT ANNUALLY; THE REPORTED INCREASE OCCURRED DURING THE PERIOD 1999 TO 2003.

146. HUGHES CE, STEVENS A. WHAT CAN WE LEARN FROM THE PORTUGUESE DECRIMINALIZATION OF ILLICIT DRUGS? BRITISH JOURNAL OF CRIMINOLOGY 2010;50:1006.

147. EMCDDA, DRUG POLICY PROFILES – PORTUGAL, P. 17 (2011), AVAILABLE AT HTTP://WWW.EMCDDA.EUROPA.EU/ATTACHEMENTS.CFM/ATT_137215_EN_POLICYPROFILE_PORTUGAL_WEB_FINAL.PDF.

148. HUGHES CE, STEVENS A. WHAT CAN WE LEARN FROM THE PORTUGUESE DECRIMINALIZATION OF ILLICIT DRUGS? BRITISH JOURNAL OF CRIMINOLOGY 2010;50:1015.

149. AFP. PORTUGAL DRUG LAW SHOW RESULTS TEN YEARS ON, EXPERTS SAY. AFP . 2011 (HTTP://WWW.GOOGLE.COM/HOSTEDNEWS/AFP/ARTICLE/ALEQM5G9C6X99ENFVDFUXW_B8PVDRZLQCA?DOCID=CNG.E740B6D0077BA8C28F6D1DD931C6F679.5E1 ACCESSED 2 JULY 2012).

150. IBID.

151. GREENWALD G. DRUG DECRIMINALISATION IN PORTUGAL: LESSONS FOR CREATING FAIR AND SUCCESSFUL DRUG POLICIES. WASHINGTON DC: CATO INSTITUTE, 2009.

152. HUGHES CE, STEVENS A. WHAT CAN WE LEARN FROM THE PORTUGUESE DECRIMINALIZATION OF ILLICIT DRUGS? BRITISH JOURNAL OF CRIMINOLOGY 2010;50:1014.

153. IBID: 1015.

154. IBID: 1016.

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 most reliable reporting data is from the National Statistics Institute (INE), which has backdated its research to 2001 and measures drug-related death as only those incidents where a doctor has determined the cause of death as related directly to drug consumption. The INE data show a significant decrease in the number of drug-related deaths since the introduction of decriminalisation and the increased investment in harm reduction services.[155]

On the criminal justice side, Portugal has reduced the number of criminal drug offences from approximately 14,000 per year to an average of 5000 to 5500 per year after decriminalisation.[156] This has led to a significant reduction in the proportion of individuals in Portuguese prisons for drug-related offences – in 1999, 44 per cent of prisoners were incarcerated for drug-related offences; by 2008, that figure had reduced to 21 per cent. This resulted in a major reduction in prison overcrowding in Portuguese prisons.[157] 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.[158]

Critics of the Portuguese system have attempted to link the change in policy with an increase in the murder rate in the country.[159] These claims are simply unfounded. In their 2012 paper, Hughes and Stevens tackle this issue head on and assert that the claims that the murder rate have increased are related to an unsubstantiated comment in the World Drug Report 2009.[160] Hughes and Stevens found that there was no evidence linking decriminalisation to the increase in the murder rate.[161] Interestingly, the Eurostat data that record homicide rates in Europe show that, prior to the introduction of decriminalisation in 2001, Portugal's homicide rate was 0.9 per 100,000 and fluctuated between 1.1 per 100,000 in 1999 and a peak of 1.7 in 100,000 in 2004. In 2009, the murder rate was again 0.9 per 100,000 of the population, arguably debunking the notion that decriminalisation results in an increased homicide rate.

## THE RUSSIAN FEDERATION

Following years of harsh drug policies, Russia moved towards decriminalisation for possession of small quantities of drugs in the last 10 years. 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. Over the previous 8 years, the threshold that determines a 'large' quantity of drugs has oscillated from a very low limit to slightly higher limit and then back to a very low level. This has made decriminalisation in Russia an inconsistent and effectively unrealised policy.[162]

155. HUGHES CE, STEVENS A. A RESOUNDING SUCCESS OF A DISASTROUS FAILURE: RE-EXAMINING THE INTERPRETATION OF EVIDENCE ON THE PORTUGUESE DECRIMINALISATION OF ILLICIT DRUGS. DRUG AND ALCOHOL REVIEW 2012;31:101, 107–108.

156. HUGHES CE, STEVENS A. WHAT CAN WE LEARN FROM THE PORTUGUESE DECRIMINALIZATION OF ILLICIT DRUGS? BRITISH JOURNAL OF CRIMINOLOGY 2010;50:1008.

157. IBID: P.1010.

158. IBID: PP.1012–1013.

159. PINTO C. THE RESOUNDING SUCCESS OF THE PORTUGUESE DRUG POLICY: THE POWER OF AN ATTRACTIVE FALLACY. LISBON: ASSOCIACAO PARA UMA PORTUGAL LIVRE DE DROGAS, 2010.

160. THE UNODC WORLD DRUG REPORT 2009 (HTTPS://WWW.UNODC.ORG/DOCUMENTS/WDR/WDR_2009/WDR2009_ENG_WEB.PDF, ACCESSED 14 MAY 2012) STATED THAT 'WHILE COCAINE SEIZURES IN A NUMBER OF EUROPEAN COUNTRIES INCREASED SHARPLY DURING THAT PERIOD, IN 2006, PORTUGAL SUDDENLY HAD THE SIXTH-HIGHEST COCAINE SEIZURE TOTAL IN THE WORLD. THE NUMBER OF MURDERS INCREASED 40% DURING THIS SAME PERIOD OF TIME, A FACT THAT MIGHT BE RELATED TO THE TRAFFICKING ACTIVITY. ALTHOUGH THE RATE REMAINS LOW AND LISBON IS ONE OF EUROPE'S SAFEST CITIES, PORTUGAL WAS THE ONLY EUROPEAN COUNTRY TO SHOW A SIGNIFICANT INCREASE IN MURDER DURING THIS PERIOD'.

161. HUGHES CE, STEVENS A. A RESOUNDING SUCCESS OF A DISASTROUS FAILURE: RE-EXAMINING THE INTERPRETATION OF EVIDENCE ON THE PORTUGUESE DECRIMINALISATION OF ILLICIT DRUGS. DRUG AND ALCOHOL REVIEW 2012;31:108.

162. LEVISON L. HALF A GRAM – A THOUSAND LIVES. HARM REDUCTION JOURNAL 2008;5(22):2 (HTTP://WWW.HARMREDUCTIONJOURNAL.COM/CONTENT/PDF/1477-7517-5-22.PDF, ACCESSED 14 MAY 2012).

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 from the Expert Board of the International Narcotics Control Board. This table defined 0.1 grams of cannabis and 0.005 grams of heroin as exceptionally large amounts. This meant that the application of administrative punishment was practically unavailable.

In 2004, the Russian Government introduced RF Government Decree No. 231, which stated that 10 to 50 times a single dose should be treated as a 'large amount'.[163] In practice, this translated to threshold amounts of 20 grams of cannabis, 1 gram of heroin, and 1.5 grams of cocaine, and resulted in 40,000 people who had been previously convicted being released or having their sentences reduced. In 2004–2005, an estimated 60,000 people avoided criminal prosecution as a result of the change.[164]

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 cocaine – are still higher than the pre-2004 thresholds but have significantly increased the number of individuals convicted under the drug possession laws.[165]

If found in possession of an amount below the 'large amount' threshold, individuals face fines of up to 1000 rubles (approximately £21) or 15 days of administrative detention.[166] It is worth noting that according to the European Court of Human Rights any detention of an individual by the State for such acts is equal to criminal liability.[167]

As of 2011, Russia's Kremlin-controlled parliament was planning to institute harsh new drug laws, described as a 'total war on drugs'. Under the proposed legislation, dependent drug users would be jailed or forced into treatment, in a departure from the existing administrative sentencing regime, and dealers will be handed more severe custodial sentences, including sentences of up to life imprisonment.[168] There are also proposals to introduce the criminal offence of internal possession, meaning anyone testing positive for the presence of an illegal drug would be guilty of an offence.

Despite the appearance of a moderate statutory decriminalisation policy, in practice Russia's approach to drug use has been an unmitigated disaster. As well as their failure to properly implement decriminalisation, punitive laws have prevented the availability of opiate substitute-prescribing and a restriction on needle exchanges. This has led to an HIV epidemic among people who use drugs, especially those who inject intravenously, with 80 per cent of all HIV cases registered from 1987 to 2008 associated with injecting drug use.[169] Human rights abuses against those who use drugs have been well documented, with 'treatment methods' including beatings, starvation, long-term handcuffing to bed frames, electric shock and burying patients in the ground.[170]

163. IBID: P.1.

164. IBID: P.2.

165. IBID: P.3.

166. IBID: P.1.

167. MERKINAITE, S. A WAR AGAINST PEOPLE WHO USE DRUGS: THE COSTS. EURASIAN HARM REDUCTION NETWORK (EHRN), VILNIUS: 2012, PAGE15 (HTTP://WWW.HARM-REDUCTION.ORG/IMAGES/STORIES/LIBRARY/COSTS_REPORT_FINAL_ENG.PDF, ACCESSED 20 MAY 2012).

168. PARFITT T. RUSSIA DEFIES GROWING CONSENSUS WITH DECLARATION OF 'TOTAL WAR ON DRUGS'. THE GUARDIAN 8 JUNE 2011 (HTTP://WWW.GUARDIAN.CO.UK/WORLD/2011/JUN/08/RUSSIA-TOTAL-WAR-ON-DRUGS, ACCESSED 14 MAY 2012) – BORIS GRYZLOV, SPEAKER OF THE STATE DUMA, SAID, 'THE BARONS OF NARCO-BUSINESS MUST BE PUT ON A PAR WITH SERIAL KILLERS WITH THE APPROPRIATE PUNISHMENT IN THE FORM OF A LIFE SENTENCE'.

169. MERKINAITE S. A WAR AGAINST PEOPLE WHO USE DRUGS: THE COSTS. VILNIUS: EURASIAN HARM REDUCTION NETWORK, 2012: P.22.

170. IBID: P.21.

## SPAIN

Personal possession and private use of small amounts of drugs have been formally decriminalised in Spain for nearly 30 years.[171] While the Spanish Supreme Court ruled in 1974 that drug consumption and possession were not criminal offences, the concept was not integrated into Spanish law until 1982.[172] In 1992, Spanish law first called for administrative penalties for public drug use and personal possession.[173]

Under current law, if police find an individual in possession of up to 5 days' worth of drugs – 200 grams of cannabis, 25 grams of cannabis resin, 2.4 grams of ecstasy, 3 grams of heroin, 7.5 grams of cocaine[174] – that individual is likely to face an administrative penalty issued by the police.[175] Such sanctions can include a fine, suspension of an individual's driver's licence or firearms licence, or other minor penalties. Penalties are established by the Spanish Ministry of the Interior but local authorities may also determine sanctions in conjunction with a hearing before a local safety board if local laws or regulations for drug offences are present.

If an individual is found with a quantity above the threshold, that individual may go before a court or a local safety board, which considers the quantity together with other factors, including whether the individual is a known user, where the drugs were found, how they were stored, and the presence of large quantities of cash, to determine if the drugs were intended for self-consumption or trade.[176] Although Supreme Court precedent holds that possession of quantities over the 5-day threshold constitutes a crime, individuals apprehended with larger quantities have been acquitted of criminal liability. Many issues remain contestable in Spanish drug offence court proceedings, including whether a drug is 'hard' or 'soft' (which may impact the determination of a particular sanction) and whether the drugs were intended for use or distribution. If an individual is found to possess drugs for distribution or sale, custodial sentences are available to the court. For drug-dependent users, penalties or fines can be suspended if an offender agrees to attend treatment at an officially recognised service or centre.

**Although the prevalence of illicit drug use in Spain has fluctuated over the past 30 years, and the prevalence of possession and use among the general population – particularly of cocaine – is currently high, Spain's experience seems to clearly illustrate what research continues to bear out: a country's drug-enforcement policies do not have a significant impact on drug use.**

For example, in the 5 years following Spain's formal decriminalisation of illicit drugs in 1982, the prevalence of heroin dependence reached its peak.[177] However, consumption of cannabis and hashish declined over the same period.[178] Neither appears to necessarily be a product of changes in legislation or enforcement.

In the past decade, cannabis growers and users have begun opening 'cannabis clubs', which are private organisations that administer bars or clubs where members can use cannabis in private together with

171. GAMELLA J, RODRIGO MLJ. A BRIEF HISTORY OF CANNABIS POLICIES IN SPAIN (1968–2003). JOURNAL OF DRUG ISSUES 2004;SUMMER:630.

172. MARTÍN BA. CANNABIS SOCIAL CLUBS IN SPAIN: A NORMALIZING ALTERNATIVE UNDERWAY. TRANSNATIONAL INSTITUTE SERIES ON LEGISLATIVE REFORM OF DRUG POLICIES NR. 9. AMSTERDAM: TRANSNATIONAL INSTITUTE, 2011 (HTTP://WWW.TNI.ORG/SITES/WWW.TNI.ORG/FILES/DOWNLOAD/DLR9.PDF, ACCESSED 14 MAY 2012).

173. CONSTITUTIONAL LAW 1/1992, ART. 25-30. (HTTP://WWW.EMCDDA.EUROPA.EU/HTML.CFM/INDEX5173EN.HTML?PLUGINMETHOD=ELDD.SHOWLEGALTEXTDETAIL&ID=564&LANG=EN&T=2, ACCESSED 20 MAY 2012).

174. EMCDDA. THRESHOLD QUANTITIES FOR DRUG OFFENCES. LISBON: EMCDDA, 2010 (HTTP://WWW.EMCDDA.EUROPA.EU/HTML.CFM/INDEX99321EN.HTML, ACCESSED 14 MAY 2012).

175. GAMELLA J, RODRIGO MLJ. A BRIEF HISTORY OF CANNABIS POLICIES IN SPAIN (1968–2003). JOURNAL OF DRUG ISSUES 2004;SUMMER: P 623 - 660 – EXPLAINING THAT BECAUSE OF RELATIVELY HIGH LIMITS FOR SELF-CONSUMPTION QUANTITY, MOST USERS DO NOT DEAL WITH THE COURTS AS POLICE HANDLE PROCEEDINGS FOR ADMINISTRATIVE SANCTIONS AND FINES.

176. IBID: P.638.

177. IBID: P.629.

178. IBID: P.634.

other members. While Spanish law enforcement has been inconsistent in its response to the emergence of cannabis clubs, the organisations adhere to Spanish law by only facilitating use in private. This principle was recognised in a series of Supreme Court decisions in 2001 and 2003 that held that private cannabis possession without an intention of trafficking, even of large quantities, is not a criminal offence.[179] There are an estimated 300 such clubs operating in Spain.[180]

## URUGUAY

Possession of drugs for personal use has never been criminalised in Uruguay.[181] The decriminalisation principle formally entered Uruguayan law in 1974 and was 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 – criminal or administrative.[182] 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.[183] Uruguay has also implemented harm reduction strategies to accompany its decriminalisation policy position over the past 12 years.[184] According to the 2011 UN World Drug Report, Uruguay reports lower prevalence of drug use than the UK for opiates, cocaine, marijuana, amphetamines and ecstasy.[185]

In April 2011, the Uruguayan legislature debated legalising cultivation and harvesting of up to eight cannabis plants per household.[186] It is expected that this bill will be discussed further in 2012.

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 low-level drug users. Many individuals are placed in pre-trial detention, with the de facto presumption of a cultivation or trafficking offence but no formal charges. Weaknesses of the Uruguayan criminal justice structures and detention system impact both drug and non-drug offences, and may work counterproductively with the legislative goal of decriminalisation. As of 2009, 11 per cent of the Uruguayan prison population was composed of drug offenders, but 65.3 per cent of all prisoners were held in pre-trial detention without conviction – some for months or years at a time.[187] Despite Uruguay's decriminalisation policy, implementation of the policy in practice remains challenging.

179. BUXTON N. DRUG CLUB: SPAIN'S ALTERNATIVE CANNABIS ECONOMY. AMSTERDAM: TRANSNATIONAL INSTITUTE, 2011 (HTTP://WWW.TNI.ORG/ARTICLE/DRUG-CLUB-SPAINS-ALTERNATIVE-CANNABIS-ECONOMY, ACCESSED 14 MAY 2012).

180. IBID.

181. JELSMA M. DRUG LAW REFORM TREND IN LATIN AMERICA. AMSTERDAM: TRANSNATIONAL INSTITUTE, 2009: P.1 (HTTP://WWW.AKZEPT.ORG/PDF/VOLLTEXTE_PDF/NR23/DROGENPO_INTER/TNITRENDS_LATAM0110.PDF, ACCESSED 14 MAY 2012).

182. LAW NO. 17.016 ART. 31. 1998, UPDATING LAW NO. 14.294 ART. 31. 1974.

183. IBID.

184. GARIBOTTO G. PRISONS AND DRUGS IN URUGUAY. IN: SYSTEMS OVERLOAD: DRUG LAWS AND PRISONS IN LATIN AMERICA, WASHINGRON/AMSTERDAM: WASHINGTON OFFICE ON LATIN AMERICA (WOLA)/TRANSNATIONAL INSTITUTE, 2010: P.82 (HTTP://WWW.DRUGLAWREFORM.INFO/IMAGES/STORIES/DOCUMENTS/SYSTEMS_OVERLOAD/TNI-SYSTEMS_OVERLOAD-URUGUAY-DEF.PDF, ACCESSED 14 MAY 2012).

185. UNODC. WORLD DRUG REPORT 2011. VIENNA: ONODC, 2011: P.220 (HTTP://WWW.UNODC.ORG/DOCUMENTS/DATA-AND-ANALYSIS/WDR2011/WORLD_DRUG_REPORT_2011_EBOOK.PDF, ACCESSED 14 MAY 2012).

186. VALERIA G. PERMITIRÁN HASTA 8 PLANTAS DE MARIHUANA. EL PAIS 19 APRIL 2011 (HTTP://WWW.ELPAIS.COM.UY/110419/PNACIO-561056/NACIONAL/PERMITIRAN-HASTA-8-PLANTAS-DE-MARIHUANA/, ACCESSED 14 MAY 2012).

187. GARIBOTTO G. PRISONS AND DRUGS IN URUGUAY. IN: SYSTEMS OVERLOAD: DRUG LAWS AND PRISONS IN LATIN AMERICA, WASHINGRON/AMSTERDAM: WASHINGTON OFFICE ON LATIN AMERICA (WOLA)/TRANSNATIONAL INSTITUTE, 2010: PP.82–86 (HTTP://WWW.DRUGLAWREFORM.INFO/IMAGES/STORIES/DOCUMENTS/SYSTEMS_OVERLOAD/TNI-SYSTEMS_OVERLOAD-URUGUAY-DEF.PDF, ACCESSED 14 MAY 2012).

## UNITED STATES OF AMERICA: STATE OF CALIFORNIA

While the USA is infamous for both its extremely harsh drug laws (and consequential incarceration rates – often as the result of mandatory minimum sentencing) and its insatiable appetites for illicit drugs, 14 US states have passed some variety of cannabis decriminalisation laws since 1973.[188] Although cannabis is still criminalised under US federal law, states and municipalities throughout the USA have set their own cannabis-enforcement policies and penalties for decades. Studies conducted in the 1970s to assess the impact of decriminalisation on the prevalence of cannabis use in four decriminalised US states indicated slight but statistically insignificant increases in cannabis use among the adult population. Over the same time period, states with harsh penalties experienced larger and statistically significant increases in the prevalence of use.[189] Other studies have suggested a slightly greater likelihood (2–5 per cent) that young people living in decriminalised states will have used cannabis recently, but have not found any statistically significant impact on the annual prevalence of use.[190]

**Following decriminalisation in California, the total cost of cannabis enforcement declined from $17 million in the first half of 1975 to $4.4 million in the first half of 1976.**[191]

Although cannabis is the only decriminalised illicit drug in any state in the USA, some jurisdictions have made strides towards reducing the punitive sanctions associated with minor drug offences. In 2000, voters in California approved Proposition 36 in a state-wide referendum, changing California law to sentence offenders convicted of non-violent, first- or second-time simple drug possession to community drug treatment and probation, in lieu of a custodial sentence.[192] Since implementation began in 2001, hundreds of thousands of individuals have been referred to treatment in lieu of entering the criminal justice system, with savings to the state of $5,836 for each offender that successfully completed treatment.[193] Overall, the programme has resulted in $2.50 in savings for every $1.00 spent implementing it and over 5 years has saved a total of between $850 million and $1.3 billion.[194]

Proposition 36 has not been an unqualified success, however: 5 years after implementation, only 34 per cent of people who entered treatment through the programme completed it successfully[195] and half of people who entered the programme were re-arrested for drug offences within 30 months.[196,197] For those who did complete treatment successfully, subsequent drug use dropped by 71 per cent and employment rates nearly doubled.[198]

In practice, Proposition 36 did not create a formal decriminalisation system, as an individual must plead guilty or be convicted of the offence in order to be eligible for the diversion programme. An individual must successfully complete treatment to be eligible to have the arrest and criminal conviction wiped from their permanent record. While many participants completed the programme and successfully struck the crime from their records, many more did not.

Following California's budget crisis in recent years, all funding for Proposition 36 treatment programmes had been eliminated by 2011, while the prohibition on incarceration remains in place.[199] For individuals convicted of offences eligible under Proposition 36 now, many will be released without a referral to treatment, while others will remain on waiting lists for treatment availability.

188. THESE STATES INCLUDE: ALASKA, CALIFORNIA, COLORADO, CONNECTICUT, MAINE, MASSACHUSETTS, MINNESOTA, MISSISSIPPI, NEBRASKA, NEVADA, NEW YORK, NORTH CAROLINA, OHIO AND OREGON. WHILE SOME STATES' CANNABIS LAWS APPEAR CLOSER TO A CLASSIFICATION OF 'DEPENALISATION' THAN 'DECRIMINALISATION,' EACH HAS AT A MINIMUM SIGNIFICANTLY REDUCED OR ELIMINATED PENALTIES FOR SMALL AMOUNTS OF CANNABIS, OR MADE CANNABIS ENFORCEMENT A LOW PRIORITY FOR LAW ENFORCEMENT. IN ADDITION TO THESE STATES, MANY US MUNICIPALITIES HAVE PASSED DECRIMINALISATION LAWS OR MADE MARIJUANA ENFORCEMENT A LOWEST-LEVEL POLICING PRIORITY. AS OF JUNE 2012, THE U.S. STATE OF RHODE ISLAND WAS POISED TO BECOME THE FIFTEENTH STATE TO DECRIMINALIZE POSSESSION OF CANNABIS. FURTHER TO THIS TWO ADDITIONAL U.S. STATES, COLORADO AND WASHINGTON, WILL HAVE BALLOT QUESTIONS ON DECRIMINALIZATION IN NOVEMBER 2012, WHICH, IF PASSED, WOULD BRING THE NUMBER OF U.S. STATES DECRIMINALIZED UP TO 17. (HTTP://WWW.FOXNEWS.COM/US/2012/06/10/EFFORTS-TO-RELAX-POT-RULES-GAINING-MOMENTUM-IN-US/, ACCESSED 13 JUNE 2012).

189. SINGLE E, CHRISTIE P, ALI R. THE IMPACT OF CANNABIS DECRIMINALISATION IN AUSTRALIA AND THE UNITED STATES. JOURNAL OF PUBLIC HEALTH POLICY 2000;21(2):171.

190. PACULA R, CHRIQUI J, KING J. MARIJUANA DECRIMINALIZATION: WHAT DOES IT MEAN IN THE UNITED STATES? CAMBRIDGE, MA: NATIONAL BUREAU OF ECONOMIC RESEARCH, 2004: P.17 (HTTP://WWW.RAND.ORG/PUBS/WORKING_PAPERS/2004/RAND_WR126.PDF, ACCESSED 14 MAY 2012).

191. SINGLE E, CHRISTIE P, ALI R. THE IMPACT OF CANNABIS DECRIMINALISATION IN AUSTRALIA AND THE UNITED STATES. JOURNAL OF PUBLIC HEALTH POLICY 2000;21(2):26.

192. SUBSTANCE ABUSE AND CRIME PREVENTION ACT OF 2000 (HTTP://WWW.NATIONALFAMILIES.ORG/GUIDE/CALIFORNIA36-FULL.HTML, ACCESSED 14 MAY 2012).

193. URADA D, HAWKEN A, CONNER BT ET AL. EVALUATION OF PROPOSITION 36: THE SUBSTANCE ABUSE AND CRIME PREVENTION ACT OF 2000, UCLA INTEGRATED SUBSTANCE ABUSE PROGRAMS, PREPARED FOR THE DEPARTMENT OF ALCOHOL AND DRUG PROGRAMS, CALIFORNIA HEALTH AND HUMAN SERVICES AGENCY. LOS ANGELES: UCLA, 2008: P.228 (HTTP://WWW.UCLAISAP.ORG/PROP36/DOCUMENTS/2008%20FINAL%20REPORT.PDF, ACCESSED 14 MAY 2012).

194. DOOLEY M. GIVE PROP. 36 A CHANCE. LOS ANGELES TIMES 7 APRIL 2007 (HTTP://WWW.LATIMES.COM/NEWS/OPINION/LA-OEW-DOOLEY5APR05,0,1087793.STORY, ACCESSED 14 MAY 2012).

195. SEE CALIFORNIA SOCIETY OF ADDICTION MEDICINE (CSAM). SAN FRANCISCO: CSAM, 2009. 2009/10 BUDGET: FUNDING FOR PROPOSITION 36 ADDICTION TREATMENT (HTTP://WWW.CSAM-ASAM.ORG/200910-BUDGET-FUNDING-PROPOSITION-36-ADDICTION-TREATMENT, ACCESSED 14 MAY 2012) – SHOWING THAT BY 2007, 40% OF ANNUAL PARTICIPANTS COMPLETED TREATMENT SUCCESSFULLY.

196. IBID.

197. GARVEY M., LEONARD J. DRUG USE REARRESTS UP AFTER PROP. 36. LOS ANGELES TIMES 14 APRIL 2007 (HTTP://ARTICLES.LATIMES.COM/2007/APR/14/LOCAL/ME-DRUG14, ACCESSED 14 MAY 2012).

198. SEE CALIFORNIA SOCIETY OF ADDICTION MEDICINE (CSAM). SAN FRANCISCO: CSAM, 2009. 2009/10 BUDGET: FUNDING FOR PROPOSITION 36 ADDICTION TREATMENT (HTTP://WWW.CSAM-ASAM.ORG/200910-BUDGET-FUNDING-PROPOSITION-36-ADDICTION-TREATMENT, ACCESSED 14 MAY 2012).

199. RICHMAN J. MONEY IS GONE, BUT PROPOSITION 36'S DRUG-TREATMENT MANDATE REMAINS. OAKLAND TRIBUNE 22 FEBRUARY 2011.

# RECOMMENDATIONS FOR AN EFFECTIVE DECRIMINALISATION POLICY MODEL

**The decriminalisation country profiles above highlight the reality that many countries adopt models which are ineffective, unworkable, or in some cases which result in greater harms for those who use drugs and for society more broadly. The following highlights both issues for the development of the policy itself and implementation considerations:**

1 **Thresholds or no thresholds** – as highlighted a number of countries do not determine threshold amounts when deciding if someone is in possession of a drug for personal use. This approach can overcome the inflexibility of strict application of thresholds but can also result in abuses by the police or others in the criminal justice system in determining whether someone should be subject to the decriminalisation model. It is important to balance these competing positions to ensure that the system works properly.

1.1 **Non threshold approach** – one benefit of adopting an approach where police make initial determinations about personal use versus supply, is that those found in possession of an illegal substance for their own use will not face criminal sanctions regardless of the amount seized. However, such a system can be subject to abuse as demonstrated by the decriminalisation system in Uruguay, which is plagued by high levels of pre-trial detention for possession cases where supply is alleged. 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 to ensure that in the absence of quantity thresholds non-criminal users are not mistakenly subject to criminal penalties. Judges ought to consider the totality of circumstances as well as embrace principles of lenity in cases such as these.

1.2 **The adoption of thresholds** – as illustrated above, there is a considerable variety of threshold quantities that have been adopted for similar substances in different countries of the world. 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, to ensure that the principle of decriminalisation of personal possession is properly achieved. 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 simple possession of drugs for personal use. In addition, although threshold quantities can be useful, these should only be considered as indicative, prosecutors and judges should retain the discretion to decide on a case-by-case basis according to all available evidence.

**2 Response and Sentencing** – there are a number of responses a country can take in addressing drug possession outside a criminal justice setting:

**2.1 No response** – some countries such as the Netherlands or Belgium 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, added to this the individual caught does not have to undergo an unnecessary penalty. For example, large numbers of people subject to a civil fine for possession will agree to undertake a treatment programme in lieu of payment. Many do this 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% of all users) suffer from a medically problematic drug-dependence, and may need 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 generally no action is taken, unless the individual wishes to be referred to treatment. The person's name is simply recorded by the authorities, after six months their name is expunged from the records. However, if they are caught again with drugs within that six month period they are brought before individualised dissuasion commissions and face a penalty or referral to treatment.

It is arguably a waste of police resources to pursue and arrest those who use drugs recreationally, and the decision not to police such offences did not lead to an increase in drug use in the Netherlands.

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

**2.3 Treatment** – in terms of those who are dependent on drugs, we would recommend that the police work with treatment agencies to offer an individualised referral route such as that advocated in Portugal. It should also be recognised that a variety of treatment options should be made available including opiate substitute prescribing. 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.

**2.4 Administrative detention** – such detention, as adopted in some countries in South East Asia and in the former Soviet Union, 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 lead to many of the same destructive consequences as criminal custodial penalties and do not serve the foundational aims of a decriminalisation policy.

**2.5 Disproportionate sentencing for cases involving possession above the threshold or supply offences** – often States that have adopted a decriminalisation approach significantly heighten the sentences for those committing drug offences outside of the threshold quantities or otherwise decriminalised circumstances. It is critical 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 which are much harsher than other violent offences, such as rape and even murder.

**3 Public Health Interventions and Treatment** – Policymakers must view the positive outcomes of the Portuguese decriminalisation experience in light of the significant investment in public health initiatives Portugal made in conjunction with decriminalisation, including needle exchanges and opiate substitute-prescribing. Countries wishing to reduce the potential 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.

## 4 Implementation considerations:

**4.1 Disparate Enforcement** – the introduction of decriminalisation ends the needless prosecution and criminalisation of a countless number of people globally each year. However, a careful assessment of how decriminalisation works in practice must be undertaken by those responsible for the system. In systems where threshold quantities have been adopted or where there are significant periods of detention prior to judicial resolution of individual cases of those charged, it is often those from minority communities who are targeted by law enforcement. The racial disparity that exists in the policing of drug offences is apparent in many jurisdictions and apart from the clear abuse of civil rights that this entails, it also undermines community relations with the police and the State. Policymakers must monitor the enforcement of their drug policies to ensure that resources are used fairly, effectively, and efficiently.

**4.2 Net-widening** – as highlighted in the South Australian experience, policymakers must work to ensure that decriminalisation does not result in more people coming into contact with the criminal justice system. Whether this comes as a result of expanded police powers or low thresholds, decriminalisation policies must be targeted at reducing the number of individuals who suffer from the consequences of a criminal conviction, not merely the enactment of decriminalisation in name only.

# 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 country. Countries with some of the harshest criminalisation systems have some of the highest prevalence of drug use in the world, and countries with decriminalisation systems have some of the lowest prevalence, and vice versa. But this does not end the discussion. More research is needed; governments and academics must invest more in researching which policy models 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 of the future.

**Recognizing that drug laws have little impact on drug use, policy-makers must be willing to consider the broader – and more difficult – social factors that influence individuals' relationships with drugs.**

Though more research is needed, socioeconomic characteristics such as income disparity and levels of social support appear to correlate more closely with drugs problems 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.[200] It would behove advocates and policy-makers interested in designing effective drug policies that reduce costs and harms to recognize that drug use is often a symptom of broader social and economic factors and not necessarily a cause of them.

200. WILKINSON R, PICKETT K. THE SPIRIT LEVEL: WHY EQUALITY IS BETTER FOR EVERYONE. LONDON: PENGUIN BOOKS, 2010: P.71.

**Around the globe, increasing numbers of countries are assessing their current drug policies and considering the alternatives.**

Central and Latin America are at the centre of the call for reform. This trend towards a more pragmatic and evidenced-based approach will have a significant impact on millions of people's lives, ending the continued criminalisation of many within our society, most notably the young and vulnerable.

Over 50 years into the failed 'War on Drugs,' we must not forget that some countries now have nearly 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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**Tel:** +44 (0)207 324 2979
**Fax:** +44 (0)207 324 2977
**Email:** ask@release.org.uk
**Web:** www.release.org.uk

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Release is the national centre of expertise on drugs and drugs law – providing free and confidential specialist advice to the public and professionals. Release also campaigns for changes to UK drug policy to bring about a fairer and more compassionate legal framework to manage drug use in our society.

'A Quiet Revolution: Drug Decriminalisation Policies in Practice Across the Globe' is the first report to support Release's campaign 'Drugs - It's Time for Better Laws'. This campaign was launched in June 2011 and saw the organisation write to David Cameron, the British Prime Minister, calling for a review of our current drug policies and promoting the introduction of decriminalisation of drug possession. The letter was supported by high profile individuals including Sting, Richard Branson, Caroline Lucas MP and Baroness Meacher.

The campaign will progress this year with the publication of three reports: the first, this paper on decriminalisation, demonstrates that the law enforcement model adopted has little impact on the levels of drug use within a country and yet the criminalisation of people who use drugs causes significant harms to the individual and society. The second paper will be launched in autumn 2012 and will look at the disproportionate policing and prosecution of drug possession offences in the UK. The final report to be launched in early 2013 will look at the crude economic costs associated with policing and prosecuting the possession of drugs in the UK.

More information about the campaign can be accessed at: www.release.org.uk/decriminalisation

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Tel: +44 (0)207 324 2979
Fax: +44 (0)207 324 2977
Email: ask@release.org.uk
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