

Latin America awakes: a review of the new drug policy debate

By Ilona Szabó de Carvalho¹

■ Executive summary

Latin America is confronted with astonishing levels of organised and interpersonal violence, much of it connected to illicit narcotics production and trafficking and the so-called “war on drugs”. There is evidence, however, of mounting resistance to the global drug control regime and its narrow emphasis on suppressing supply, chiefly through enforcement measures. This report considers how changes under way in Latin America are challenging the foundations of this regime. Over the past decade two independent commissions – the Latin American Commission on Drugs and Democracy and the Global Commission on Drug Policy – have broken the taboo on debating alternative drug policies. Both commissions have emphasised a paradigm shift from repressive approaches to more preventive interventions that focus on harm reduction and citizen security. Emboldened by these commissions’ recommendations, Latin American leaders from across the political spectrum are currently discussing a more balanced approach to drug policy. Some governments are experimenting with legislation and regulatory models that are tailored to their countries’ local realities and needs. These and other efforts have potentially dramatic implications not just for drug policy in Latin America, but globally.

Introduction

Latin America is at the epicentre of the global drug policy debate. In just a few years a decades-old taboo that prevented new thinking on ways to manage the production, trade and consumption of narcotics has been shattered. As a result a wide array of policy and programming alternatives to the drug control regime – ranging from the decriminalisation of drug use to the legal regulation of drugs markets – have been tabled, in some cases for the first time. Some national and local authorities are exploring new kinds of policies and programmes that are better aligned to the realities on the ground. In doing so, governments and civil societies are challenging the international drug control regime and its prohibitionist approach that criminalises drug use, trafficking, and production and focuses on reducing the drug supply at any cost.

The “new” drug policy debate is premised on a number of basic assumptions, the most fundamental of which is that the war on drugs has failed. Proponents of a more repres-

sive approach to drug policy have been unable to demonstrate real reductions in the production, sale or consumption of illicit drugs around the world. On the contrary, researchers have shown that these supply-side approaches have generated disastrous consequences, whether measured in terms of public health or public safety (Werb et al., 2010; UNODC, 2012). The pursuit of anti-narcotics interventions such as Plan Colombia, the Mérida Initiative, and the Central America Regional Security Initiative have not yielded demonstrable improvements in citizen security, but instead have resulted in unprecedented increases in violence, the corruption of state institutions, huge increases in prison populations and the systematic violation of human rights.

Most importantly, the new debate is precipitating concrete action. Specifically, a number of legal and policy-related transformations are occurring in countries most severely affected by the failed war on drugs. Some governments in the region, including those of Colombia, Ecuador, Guate-

¹ The author is grateful to Coletta Youngers, Florencia Fontan Balestra, John Walsh, Jorge Paladines, Jorge Tinajero, Pablo Cymerman, Martin Jelsma and Miguel Darcy for their inputs to earlier drafts. Credit is also due to Robert Muggah for editorial and content support.

mala and Uruguay, are actively reflecting on, and in some cases reversing, their approaches to drug policy. While their motivations for rethinking drug policy are subtly different, they are all animated by a common desire to tailor interventions to their countries' local cultures and promote the security and well-being of their citizens.

In the wake of high-level drug policy commissions,² a coalition of Latin American political leaders is influencing global debate. The issue was thrust centre stage during the Summit of the Americas in Cartagena in April 2012 when the Organisation of American States (OAS) was given a mandate to examine the results of hemispheric drug policies and explore new approaches to the drug problem in the Americas. In September 2012 several governments from the region issued a joint declaration to the United Nations (UN) General Assembly asking it to “exercise its leadership and conduct deep reflection to analyze all available options” and to hold a special General Assembly session on drugs in 2016. And in May 2013 the OAS launched two unprecedented reports and opened a debate at its 43rd General Assembly to develop an “integral policy for the problem of drugs in the Americas”.

The changes under way in Latin America may influence the U.S. approach to international and even domestic drug policy. In 2012 the Obama administration publicly acknowledged the shortcomings of current drug control policies (Hakim, 2011). The U.S. government also quietly dropped the “war on drugs” label and began more actively addressing drugs in relation to public health rather than narrow moral criteria. This apparent change in tone has still not led to meaningful changes in the allocation of resources (Walsh, 2012), but a recent decision by U.S. attorney general Holder will have important effects that stop low-level drug offenders receiving draconian mandatory minimum sentences (*The Economist*, 2013). Meanwhile, several U.S. states have initiated substantial reforms to their drug laws. Some 20 states have legalised the use of medical marijuana. Ballot initiatives in Colorado and Washington State have legalised and regulated the production, distribution and recreational use of marijuana for adults. Such reforms present serious challenges to the federal government, which has decided not to sue these states, although marijuana is still illegal under federal law (Southall, 2013). According to a national poll, 52% of the U.S. public is also in favour of legalising marijuana, the highest proportion ever recorded.³ These shifts under way in the U.S. are reverberating across the Americas.

This NOREF-Igarapé report offers a descriptive overview of the changing landscape of drug policy reform in Latin America. The future direction of legislation, policies, and programmes has major implications for wider questions of public health and safety across the region. While it is

difficult to state with certainty which route governments will take, especially the two regional powers of Brazil and Mexico, there is no doubt that the drug policy debate in the Americas is in a new, dynamic phase. Decisions taken in the next few years could very well set the stage for the emergence of a new international drug policy regime, with profound consequences for international co-operation across the continent. The first section begins with a brief review of why the war on drugs has failed. Section II considers how Latin America is rethinking its approach to drug policy. The third section highlights how, practically, Latin American governments are reviewing their policies. The report closes with some general observations.

Section I: Five ways in which the drug regime's war on drugs has failed

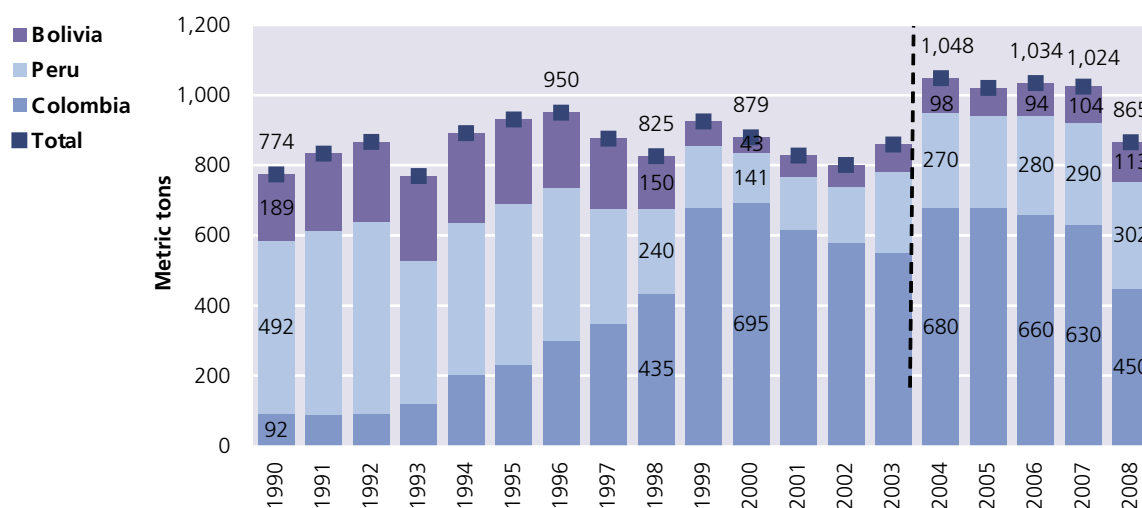
The international drug control regime features a principled and normative element together with prescriptive rules and a centralised decision-making body. At the centre of the regime is the UN Single Convention on Narcotic Drugs established in 1961 and amended by the 1971 Protocol, the 1971 Convention on Psychotropic Substances and the 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. The regime can actually be traced back to the International Opium Convention of 1912 and 1925 and the 1931 League of Nations Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, the first of a series of legally binding multilateral agreements on the issue. For the purposes of this report, the “drug regime” refers to the period since the 1961 Single Convention, while the narrow interpretation and forceful implementation of this regime are referred to here as the “drug war”.

Significantly, the drug control regime features a decision-making body (the Commission on Narcotic Drugs) and a treaty-monitoring body (the International Narcotics Control Board) to monitor the compliance of signatory states to the 1961 and 1971 conventions. One of the most ardent defenders of the drug control regime, the U.S., has also introduced specialised policies to both incentivise compliance and penalise those who fail to comply. Yet there is also evidence that the regime is being shaken. Examples of this are the instances of soft defections from the regime such as the decriminalisation of drug possession for personal consumption, a growing focus on harm reduction, the regulation of marijuana, and Bolivia's successful exit from and readherence to the Single Convention with a reservation upholding traditional uses of coca in Bolivian territory. After more than 40 years of the drug control regime there is a growing sense in the West that a new approach to the problem of drugs is needed. Taken together, there are at least five ways the war on drugs has failed in Latin America.

2 See Latin American Commission on Drugs and Democracy, <<http://www.drogasedemocracia.org>>; Global Commission on Drug Policy, <<http://www.globalcommissionondrugs.org>>.

3 See <<http://www.people-press.org/2013/04/04/majority-now-supports-legalizing-marijuana/>>.

Figure 1: Global cocaine production, 1990-2008



Source: UNODC (2010)

Firstly, it has failed in its primary task of *reducing the supply of illicit drugs* available on international markets. Indeed, anti-drug policies emphasising aerial herbicide spraying (“fumigation”), eradication, and crop substitution have made comparatively limited impacts on the cultivation and production of cocaine, heroin, and marijuana in Latin America. Despite the best efforts of the U.S. and the international community to support governments such as those of Bolivia, Colombia, and Peru, coca cultivation and cocaine production trends have remained stable over the last decade (see Figure 1). The Andean countries are still responsible for nearly 100% of global cocaine production, notwithstanding slight variations in individual countries’ production (UNODC, 2012). Indeed, the well-known “balloon effect” accounts for persistent regional production as counternarcotics efforts in one location tend to result in drug production moving elsewhere (*The Economist*, 2013).

Secondly, owing to their geostrategic location between North America and Western Europe, many Latin American and Caribbean countries are also *negatively affected by the transit of illicit drugs*. Indeed, most available estimates suggest that more than 90% of all cocaine consumed in the U.S. comes from Colombia and is transited through Central America and Mexico. What is more, intensified counternarcotics activities in Colombia, Central America and Mexico have resulted in an expansion of trafficking routes through neighbouring countries, greatly increasing the intensity of corruption and possibly exacerbating violence in the various subregions. When measuring the efficacy of drug policy, a regional perspective is necessary. Research confirms that “successful” policies intended to counter narcotics and reduce violence in one country can generate negative effects in others. For example, anti-drug policies pursued by the Colombian government over the past decade, combined with interventions supported by former Mexican president Calderón, played a critical role in the explosion of violence in Mexico between 2006 and 2012

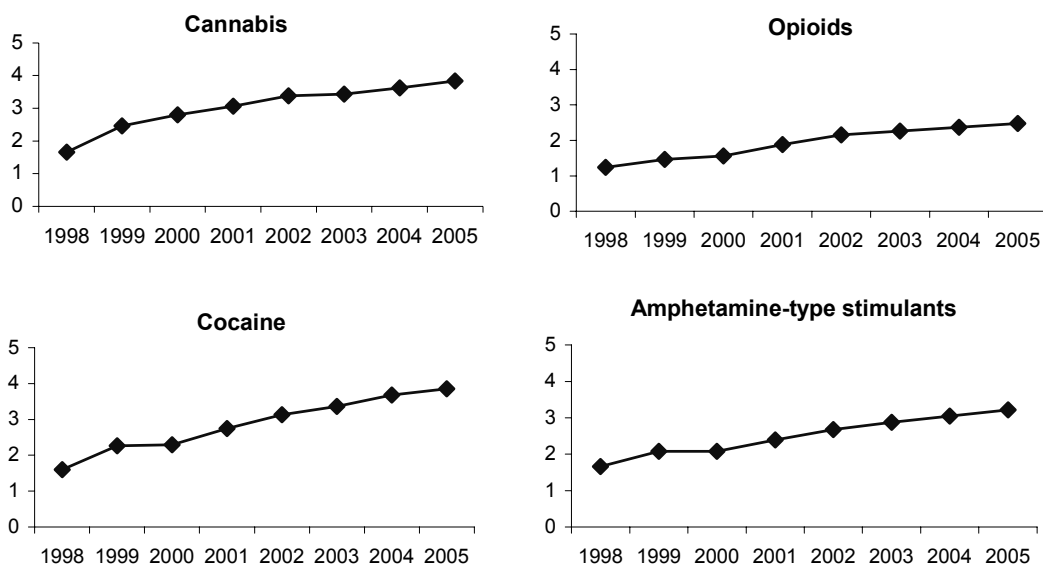
(Castillo et al., 2012). The call for more “integrated” approaches is therefore informed by past failure.

Thirdly, a major failure of international efforts to counter narcotics is in the area of *demand reduction*. In 2010 between 150 and 300 million people aged 15-64 (3.4-6.6% of the world’s population in that age group) are estimated to have used an illicit substance at least once in the previous year (UNODC, 2012). And levels of consumption appear to be rising or stabilising, not declining. While it is difficult to predict total global drug consumption with certainty, an analysis by the Global Commission on Drug Policy (2011) sheds some light on international trends. From 1998 to 2008 annual consumption of opiates is believed to have increased by 34.5%, while annual consumption of cocaine grew by 27% and of cannabis by 8.5%. In Latin America, studies by the UN Office on Drugs and Crime reveal that consumption trends for the various categories of drugs have grown steadily in the region (see Figure 2). At the very least, current policies have done little to deter the overall consumption of illicit narcotics.

Fourthly, efforts to counter drug supply, transit and consumption in Latin America have generated *collateral damage in terms of corruption, imprisonment and violations of human rights*. Indeed, prisons and jails in most countries of Latin America are bursting, often operating at several times their intended capacity. A study on the relationships between drug legislation and prison populations in Argentina, Bolivia, Brazil, Colombia, Ecuador, Mexico, Peru and Uruguay concluded that the enforcement of severe laws for drug offences resulted in a massive surge of court caseloads, overcrowded prisons, and the suffering of tens of thousands of people for (often first-time) small-scale drug offences and simple possession (Hernández, 2011). The punitive response to traffickers and users has also resulted in an over-reliance on penalties and repression that often contribute to violations of basic

Figure 2: Trends in illicit drug use across Latin America and the Caribbean

(Note: National trend estimates weighted by population size.)



Source: UNECOSOC (2007)

human rights. And as the drug business flourished, organised crime has extended its reach and today constitutes a major threat to state authority and legitimacy, undermining the democratic process and economic growth (UNODC, 2007).

Finally, the failed drug war has contributed to Latin America's rise as *the most violent region on the planet*, measured by levels of homicidal violence and executions, extrajudicial killings, arbitrary detentions, and denial of basic health services (Count the Costs, 2012). Indeed, conflicts over the production and distribution of illicit drugs – including those waged between drug cartels over the transit of drugs, but also those pursued by national governments against organised crime – have been devastating (Global Commission on Drug Policy, 2011; Redmond, 2012; Rawlins, 2011). During the period 2004-09, 25% of all global violent deaths occurred in just 14 countries worldwide, half of which were located in Latin America and the Caribbean (i.e. El Salvador, Jamaica, Honduras, Colombia, Venezuela, Guatemala and Belize) (Krause et al., 2011). Latin America also registers the highest youth murder rate in the world, exceeding that of countries and regions at war (Waiselfisz, 2008; 2012). A 2008 survey analysed youth homicide rates in 83 countries worldwide and found the highest rates in Latin America.⁴ These trends persist in 2013.

The right to liberty and security of person, to a fair trial and due process are systematically violated in Latin American countries intent on prosecuting the drug war. The practice of extrajudicial killings, i.e. the killing of individuals by the

authorities outside the course of regular judicial proceedings, is alarmingly common. In Brazil, there are many accounts of extrajudicial killings perpetrated by members of the security forces during large-scale anti-drug operations in urban slums (known as *favelas*) (UNOHCHR, 2008). The principal victims of police brutality are young Afro-Brazilian males between 15 and 19 years of age who are generally labelled as drug traffickers in the *favelas* (UNECOSOC, 2004). In many cases the extent of the problem is concealed through ambiguous classification systems. For example, extrajudicial executions are commonly registered as "acts of resistance". Many of these killings are not investigated by the police and are instead justified as acts of self-defence by security force members against members of drug-trafficking organisations. A 2007 UN report on extrajudicial, summary or arbitrary executions in Brazil established that police were frequently killing criminal suspects instead of investigating and arresting them, and that a high number of suspected criminals and bystanders were being killed during brief, large-scale, war-style police operations in *favelas* (Harley, 2013).

In Central America, extrajudicial killings by security forces, already common since the peace accords of the 1980s and 1990s, remained high (Cleary, 2007). The case of Honduras emerged in the context of a new strategy – known as Operation Anvil – intended to disrupt the transit of drugs from South America through Central America (Corcoran & Arce, 2012). The wider impetus for enhancing engagement in Central America emerges from the aforementioned Central America Regional Security Initiative. As a sign of the way the public mood is changing in Latin America, a

⁴ Specifically, El Salvador (92.3 homicides per 100,000 population), Colombia (73.4 per 100,000), Venezuela (64.2 per 100,000) and Guatemala (55.4 per 100,000) were in the top five.

group of 40 Honduran scholars and former government officials supported by 300 academics from 29 countries sent a letter to President Obama and former secretary of state Hillary Clinton demanding a cessation of “all US support for Honduran military and police training”, stressing that the war on drugs is an insufficient rationale for supporting a regime that is violently suppressing its own people (*Real News*, 2012).

Section II. Latin America breaks the taboo

In Latin America and beyond a drug policy reform movement has emerged that focuses on citizen security, public health and development. Important Latin American leaders have been calling for a revision of repressive policies and an honest and informed debate about alternative approaches to the status quo. They are motivated not by an ideological vision, but rather by intelligent policies that privilege prevention, harm reduction, and treatment, and focus on reducing the violence associated with drug production, trafficking, and abuse (Hakim, 2011).

The first to break the taboo was the Latin American Commission on Drugs and Democracy. Launched in 2008 as an initiative of 17 Latin American leaders, the commission was led by three respected former presidents, Fernando Henrique Cardoso of Brazil, César Gaviria of Colombia and Ernesto Zedillo of Mexico. Its objective was to trigger debate through a balanced evaluation of the effectiveness and impact of drug policies in the region and to contribute toward the construction of “safer, more efficient and humane policies” (Latin American Commission on Drugs and Democracy, 2009). In 2009 the commission presented the principle findings and conclusions of its report *Drugs and Democracy: Toward a Paradigm Shift*.

The commission proposed an approach premised on three basic principles: (1) treating drug use as a public health issue; (2) reducing drug consumption through information, education and prevention; and (3) directing repression away from users and towards organised crime.

Building on the successes of the Latin American Commission, in 2010 the commissioners expanded its mandate. A new Global Commission on Drug Policy was established chaired by former president Fernando Henrique Cardoso, with the continued membership of former presidents Gaviria and Zedillo. They were joined by 19 other statesmen and leading figures, including George Shultz, Paul Volker, Kofi Annan, Richard Branson, and former presidents and statesmen and -women such as Aleksander Kwasniewski (Poland), George Papandreu (Greece), Jorge Sampaio (Portugal), Ricardo Lagos (Chile) and Ruth Dreifuss (Switzerland). The Global Commission was established to extend the paradigm and stimulate a science-based discussion about humane and effective ways of reducing the harm generated by drug production, transit and consumption.

In June 2011 the Global Commission published its first report, entitled *War on Drugs*, which concluded:

The global war on drugs has failed, with devastating consequences for individuals and societies around the world. Fifty years after the initiation of the UN Single Convention on Narcotic Drugs, and 40 years after President Nixon launched the US government’s War on Drugs, fundamental reforms in national and global drug control policies are urgently needed.

The Global Commission issued 11 recommendations to guide an alternative approach to drug policy. The central ones are to:

- acknowledge the failure of the war on drugs and its disastrous impact on human rights, violence and corruption;
- replace the criminalisation and punishment of people who use drugs with the offer of health and treatment services to those who need them; and
- encourage governments to experiment with models of legal regulation to undermine the power of organised crime and safeguard people’s health and security, starting with cannabis.

In June 2012 the Global Commission launched a second report entitled *The War on Drugs and HIV/AIDS*. The report described how the global war on drugs exacerbates the HIV pandemic among drug users and their sexual partners. More recently, in May 2013, a third report entitled *The Negative Impacts of the War on Drugs on Public Health* was launched. The report shows that a hepatitis C epidemic fuelled by repressive approaches to drugs is spreading among injecting drug users.

Propelled by the Global Commission, but also by an informed appraisal of the costs of the drug war, Latin American leaders are today calling for changes to the existing international drug control regime. In questioning the content and direction of this regime – including the appropriateness of metrics of success – they reveal that such regimes are never immutable and can and do frequently undergo transformations. Indeed, the commissioners set out a new body of principles and recommendations that go beyond what the existing regime can accommodate. And there are signs that these fissures in the regime are growing. In country after country across Latin America politicians, the business elite, and activists are signalling the failures of the status quo and the importance of charting a new course.

A major champion of the new emerging paradigm is Colombian president Juan Manuel Santos, who has openly challenged the regime and called for a “global rethinking of the war on drugs” (Mulholland, 2011). While adopting a more cautious tone, former president Felipe Calderón of Mexico also argued that “if the consumption of drugs could not be limited, then decision-makers must seek solutions

– including market alternatives – in order to reduce the astronomical earnings of criminal organizations” (Graham, 2011). The newly elected president of Mexico, Peña Nieto, has noted how the issue was open to debate, but has not joined presidents Santos and Molina in debating alternative policies to date (Youngers, 2013). Guatemala’s President Otto Pérez Molina, a former army general, has also demanded that the international community consider alternative drug policy strategies for the region, including the option of the legalisation and regulation of the drug market (Molina, 2012). Parts of his call drew support from neighbouring Central American countries, including Costa Rica.

A crucial episode in the unfolding debate occurred in April 2012 during the Sixth Summit of the Americas held in Cartagena, Colombia. The drug policy issue was placed on the summit’s agenda by the host, President Santos, who declared that “we have an obligation to see whether we’re doing the best that we can, or whether there are other alternatives that could be much more efficient” and that “one extreme is that all drug consumers go to jail. The other extreme is legalization. In the middle ground, we may have more practical policies” (*BBC News*, 2012). Although President Obama insisted that “legalization is not the answer”, he nevertheless acknowledged that it constituted a legitimate topic for debate. The heads of state voted unanimously for the creation of an Inter-American System Against Organized Crime that would be responsible for drawing up and implementing a “hemispheric action plan against transnational organized crime” (Pachico, 2012). Furthermore, the OAS was tasked with studying and evaluating existing anti-drug policies in the hemisphere and exploring new approaches and alternatives to make them more effective.

Emboldened by these developments, Latin American leaders took their mandate to the UN General Assembly in September 2012. There, presidents Santos of Colombia, Calderon of Mexico and Molina of Guatemala openly criticised the war on drugs and requested that the UN begin a serious debate to explore alternatives. President Santos declared that “it is our duty to determine — on an objective scientific basis — whether we are doing the best we can or whether there are better options to combat this scourge” (*Americas Quarterly*, 2012). A joint statement was presented to the UN secretary general, Ban Ki-moon, in October 2012 that called on member states to begin an assessment of “the achievements and limitations of current drug policy, as well as in regards to the violence that the production, trafficking and the consumption of drugs generates throughout the world”.

Furthermore, there continues to be expanding pressure to set a new course in drug policy at the international and regional levels. The 2012 Ibero-American Summit in Cadiz issued a declaration to this effect⁵ acknowledging how

violence generated by transnational organised crime – and in particular by the global drug problem – constitutes a serious threat to the welfare of citizens, economic development and democratic stability. The document, approved by 21 heads of state, highlighted the need to analyse the political, economic and social measures that have been taken or are being discussed in some countries to legalise the consumption of certain drugs. The declaration also supports the holding of a special session of the UN General Assembly on the global drug problem in 2016.

Another major development occurred in May 2013 with the presentation of two much-anticipated reports by the OAS: an analytical report and a scenarios one. The OAS-backed scenario study proposes four possible scenarios for future drug policy that reflect an emerging consensus across Latin America. Crucially, none of the scenarios calls for the status quo to be maintained. Many experts endorse the first three scenarios – the shift from repressive approaches to ones that privilege citizen security, experimentation with different approaches to regulating illegal drugs, and the strengthening of community resilience. Ultimately, the OAS study charts out complementary (as opposed to exclusive) paths. The report assumes that the demand for narcotics will continue and that only a small proportion of users will become dependent.

Section III. Implementing change at the national level

A growing number of Latin American governments and civil societies resent the straitjacket imposed by the international drug control regime. They do so not on ideological grounds, but due to mounting evidence that the regime is not curbing either the supply of or demand for illicit narcotics. A number of countries in Central and South America are therefore beginning to rethink and reconfigure national policies on illicit narcotics. Some are in the process of implementing reforms that are aligned with, and in some cases deviate from, the framework of the various international conventions. While not exhaustive, the following subsections highlight a number of recent developments in selected countries.

Argentina

In August 2009 the Argentine Supreme Court ruled that imposing criminal sanctions for the possession of small amounts of drugs for personal use was unconstitutional. In 2012 other legislative proposals were combined into one law to decriminalise possession for personal use, reduce penalties for low-level drug-related crimes, give judges greater discretion in determining penalties and potentially allow the cultivation of cannabis for personal use. The proposal was put on hold while draft legislation on drug treatment policy approved in the lower house is debated in the Senate. In 2013 a progressive mental health law was passed that favours treatments that do not restrict the

5 See the Declaración de Cadiz [2012], <<http://segib.org/cumbres/files/2012/03/DCLAXXIICUMIB-ESP.pdf>>.

freedom of drug addicts, and that sees involuntary and coercive treatments as exceptional measures.⁶

Bolivia

In March 2009 the Bolivian government proposed an amendment to the 1961 Single Convention. The recommendation was to remove the two subparagraphs of Article 49, including paragraphs 1 c) and 2 e), that state that “coca leaf chewing must be abolished within twenty-five years from the coming into force of this Convention as provided in paragraph 1 of article 41”. Describing this requirement as a historical anachronism, the Bolivian government requested that the UN eliminate it in order to

enable countries where there is evidence of this ancient, cultural and religious tradition to preserve their own millenary indigenous cultural practice; based on the grounds that it does not cause any harm to people’s health nor any kind of disorder or addiction. The Constitution of Bolivia declares that the coca leaf is a part of the nation’s cultural heritage and biodiversity.⁷

A U.S.-led coalition presented objections within the 12-month period established by the procedure and blocked the amendment (TNI, n.d.).

In July 2011 Bolivia became the first country in the world to withdraw from the 1961 Single Convention by presenting a formal notification to the UN secretary general. Despite continued opposition from the U.S.-led coalition, Bolivia rejoined the convention in 2013, under the condition of an express declaration that it does not accept the ban imposed by the convention on the coca leaf and its traditional uses. Furthermore, on the domestic front, on taking office, President Morales launched a programme called “Yes to Coca, No to Cocaine” (Coca Si, Cocaina No). As a result, according to UN figures, net coca cultivation has fallen for two years in a row. The government has increased its efforts to crack down on the illegal production of cocaine (Frye, 2012), including with support from Brazil.

Brazil

Over the past two decades Brazil’s major cities have witnessed a dramatic escalation in drug use and drug-related violence. Indeed, homicide rates have practically tripled since the 1980s (Waiselfisz, 2012) and incarcerations have increased by 450% over the same period (Macedo, 2010).

Only very tentative progress has been made in Brazil to explore alternative approaches to drug policy. For example, in 2006 the Brazilian Congress enacted Law 11.343/06 banning prison sentences for drug users, prescribing instead alternative penalties such as official cautions,

community service and educational measures. The same alternative penalties also apply to those accused of cultivating illicit drugs for personal use. Even so, both cultivation and use continue to be defined as “crimes”. Moreover, the new legislation increased the minimum penalty for drug dealing from three to five years, resulting in further strains on an over-stretched penal system (Boiteux, 2011). A quarter of Brazil’s inmate population – the fourth largest after the U.S., Russia and China – are serving drug-related sentences or awaiting trial on drug charges.

Crucially, this law does not specify any threshold quantities that can be used to differentiate “users” from “traffickers”. It leaves the distinctions to be drawn arbitrarily by judges, based on general criteria such as the quantity and quality of the drug, the criminal record of the suspect, and his/her personal and social circumstances. These highly discretionary criteria are difficult to apply and often result in the discriminatory application of the law. As a result, legislation initially intended as progressive ended up being regressive. Between 2007 and 2010 the number of people incarcerated for drug-related crimes increased by over 62%. This increase was due primarily to the imprisonment of first-time offenders who had no involvement with organised crime (Boiteux et al., 2009).

In 2012 a Congressional Commission was established to revise the Criminal Code. It recommended the decriminalisation of the possession of quantities of drugs sufficient for five days of personal individual use, but there is no sign this will be voted on any time soon. Another bill is being discussed in the Senate that goes against the regional trend by suggesting, among other controversial and somewhat outdated proposals, an increase in the mandatory minimum sentence given to drug dealers. These proposals are still to be voted on by the Brazilian Congress.

At the same time, the Brazilian Supreme Court decided that the mandatory preventive detention of a juvenile suspected of a drug offence and who is a first time offender is unconstitutional. Moreover, the court observed that the presiding judge should only imprison the juvenile if the offence was committed using violence or serious threat, or if the juvenile is a repeat offender or has previously disobeyed a disciplinary sanction.⁸ The court’s goal was to put an end to the widespread imprisonment of young offenders. The Supreme Court is also expected to decide in 2013 if the criminalisation of the possession and use of drugs is constitutional. The expectation is that it will decide in favour of the decriminalisation of drugs.

It is likely that drug policy reform in Brazil will be precipitated by Supreme Court decisions and civil society mobilisation and campaigns.

6 Author interview with Pablo Cymerman, July 2013.

7 See “Aide-Memoire on the Bolivian proposal to amend Article 49 of the Single Convention on Narcotic Drugs of 1961”, <http://www.druglawreform.info/images/stories/documents/ayuda_memoria_coca_en_ingles.pdf>.

8 See Superior Tribunal de Justiça, Súmula 492, August 15th 2012, <<http://atualidades-do-direito.jusbrasil.com.br/noticias/100033732/sumula-492-do-stj>>.

Colombia

In June 2012 Colombia's Constitutional Court decided that Article 11 of the Citizen Security Act,⁹ which criminalised the possession of small quantities of illicit drugs for personal use, was unconstitutional (Zona Cero, 2012). This article specified that persons found with up to 1 kilogram of marijuana or 100 grams of cocaine should be sentenced to at least 64 months in prison. In its ruling the Constitutional Court established that possession of a minimum amount of drugs for personal use should not be subject to any legal penalty and that the person carrying the drugs could not be detained. The threshold limit for considering the substance as being for personal use was set at 1 gram of cocaine and 20 grams of cannabis.

Admittedly, this is not the first time that Colombia's Constitutional Court has decriminalised drug use. In a ruling in 1994 (Colombia, 1994) the court declared that selected articles of the National Narcotics Statute¹⁰ that punished the possession and consumption of a small amount of drugs for personal use were unconstitutional. However, in 2009 under the Uribe presidency the Colombian government amended the Constitution and abolished this exception, once again allowing for the criminalisation of drug possession for personal use. In addition, in July 2010 the Colombian government approved the Citizen Security Act, which amended the Criminal Code by imposing severe penalties on anyone caught carrying amounts of cannabis and cocaine above a given threshold quantity. This is the law noted above that contains the article that the Constitutional Court declared unconstitutional.

Several legislative initiatives emphasising revisions in drug policy have been proposed in Congress with the support of representatives of civil society. In 2011 the government submitted a more repressive drug law bill that was highly criticised by activists and drug policy specialists. Many critics argued that it expanded the list of "controlled substances" and aimed once again to penalise the possession and consumption of a minimum amount of drugs, going directly against the Constitutional Court's earlier rulings (Vargas, 2011). A national commission to discuss the drug issue was appointed by President Santos under the Ministry of Justice and it issued an initial report reaffirming the importance of decriminalisation.

More recently, the mayor of Bogotá announced the creation of special centres for the medical treatment of drug addicts (known as Centros de Atención Médica para Adictos a las Drogas), and discussions about a pilot project where crack addicts will receive cannabis as part of their treatment under the control of local authorities are under way (*El Comercio*, 2012).

Ecuador

In 2013 the Ecuadorian National Narcotics Control Board (CONSEP) issued Resolution 001 CD-2013. The new legislation set out maximum amounts for personal drug consumption. By way of example, it authorises the carrying of a maximum of 10 grams of marijuana (*El Comercio*, 2013). This arrangement was established in order to decriminalise drug use in line with Article 364 of the Constitution that stresses how drug addiction constitutes a public health problem. The thresholds set for narcotics possession were based on a study commissioned by the Ministry of Health. They also serve as a guide for judges to better discriminate between trafficking and personal consumption.

Even so, the resolution has yet to be implemented by Ecuadorian judges. A debate is taking place on whether courts should apply the CONSEP resolution across the board in the absence of law. It has also yet to be determined if a draft Criminal Law Code will include the suggested thresholds issued by CONSEP. The debate over how to proceed is occurring amid a rapid growth in domestic consumption. Another path-breaking legislative innovation occurred in late 2008 and early 2009 when more than 2,000 Ecuadorians incarcerated for drug trafficking were released. The mass "pardon for mules" singled out a specific group of convicted felons who were victims of the disproportionate laws and represented a major step toward reforming outdated penal practices.

Mexico

Since 2006 Mexico has been devastated by the impacts of the war on drugs. At least 60,000 people have reportedly been killed, tens of thousands disappeared and hundreds of thousands more displaced. In 2009 Mexico enacted the Law Against Small Scale Drug Dealing (Ley del Narcomenudeo) as part of a package to reduce "micro" drug trafficking, increase citizen security and reverse escalating levels of violence. The law introduced important changes in the country's drug policy as it decriminalised the possession of small quantities of illicit narcotics for personal use and drew a distinction between recreational drug users, addicts and different types of dealers.

The 2009 law set out a number of important precedents for alternatives to the status quo. At the outset, it established that

the Public Prosecutor's Office will not prosecute persons suffering from drug dependency or consumers who possess some of the drugs that appear in the table, in equal or lesser quantity to the limits stated, for their strict personal consumption and not within the places that appear in section ii of article 475 5 of this law.¹¹

9 See Ley de Seguridad Ciudadana, <<http://wsp.presidencia.gov.co/Normativa/Leyes/Documents/ley145324062011.pdf>>.

10 See, for example, Law 30 of 1986.

11 See, for example, Article 478 of the General Health Law (Ley General de Salud), <<http://mexico.justia.com/federates/leyes/ley-general-de-salud/titulo-decimo-octavo/capitulo-vii/#articulo-478>>.

This implies that no criminal sanction can be imposed when possession is determined to be for personal use. The law sets the following maximum quantities for each drug: 5 grams of cannabis, 2 grams of opium, 0.5 grams of cocaine, 0.05 grams of heroin, 0.04 grams of methamphetamine and 0.015 milligrams of LSD, among others. Any amount above these thresholds is considered evidence of intent to supply and is subject to severe punishment.¹²

The threshold amounts set in the 2009 law also serve to differentiate between large-scale drug traffickers (*narco-mayorista*) and small-scale street-level dealers (*narcomendista*) (Tinajero & Zamudio, 2009). This alteration was introduced with the intention of speeding up the prosecution and conviction of small-scale dealers. Although initially considered a major advance in drug policy reform, given that it decriminalised personal drug use, parts of the law prevent the government from shifting away from repressive strategies. In the view of some civil society groups the Mexican government continues to emphasise criminalisation and incarceration. This is because the law strengthens the legal powers of the state and local police forces over drug users by setting extremely low threshold quantities that do not reflect the reality of drug markets on the streets. Thus, in practice, the law has increased the criminalisation of consumers, leaving Mexican prisons as over-crowded as ever.

Uruguay

By far the most progressive changes in drug policy in Latin America are emerging from Uruguay. Indeed, the possession of minimal amounts of illicit drugs for personal use is not a punishable offence in Uruguay (Infodrugs, 1998). In June 2012 the government publicly presented a new strategy proposing to legalise and regulate marijuana use and assume exclusive control over its production and distribution. Defence Minister Huidobro observed that the prohibition of certain drugs was causing “more problems in society than the drug itself” (*The Independent*, 2012). He determined that the “war on drugs” policies had not only failed to prevent addictions, but had also engendered ever-more-violent trafficking networks (Moffet & Kaplan, 2012).

By legalising the supply of marijuana and making it safer for users to purchase drugs from regulated dispensaries, the government contends that it will more successfully focus on combatting and reducing drug trafficking. It also intends to reduce the consumption of harder drugs by pricing cannabis cheaply enough to tempt users away from drugs such as cocaine and crack (*The Economist*, 2012). Additionally, the government plans to use the revenues from drug sales to improve treatment and health facilities for drug addicts.

The legislation passed the lower house of Congress in July 2013, and it is expected to be approved by the Senate before the end of the year. Once this happens, Uruguay could be determined to be in breach of the international drug control regime, which prohibits drug sales for non-medical use. Predictably, the Uruguayan government’s announcement of its intentions has already triggered some concern across the UN establishment, particularly in the International Narcotics Control Board (Walsh & Jelsma, 2012).

Conclusion

There is growing consensus that traditional approaches to drug policy, particularly those narrowly advocating supply reduction, are outdated and unsustainable. What is more, mounting evidence indicates that the international drug control regime and the war on drugs have failed to safeguard people’s health and safety and that alternative approaches are urgently required. This report has demonstrated that the regime is weakening, in large part owing to the pressure of global networks of leaders and pressure from Latin America. Cracks are beginning to emerge that are internal to the regime, but most evidence suggests that it is failing by its own metrics and milestones.

Some governments are experimenting with legislation and regulatory models that are more suited to their countries’ local realities and needs. In the coming years the position of two Latin American regional powers – Brazil and Mexico – will be decisive to consolidating a new Latin American consensus on alternative ways to deal with the drug question. The upcoming 2016 Special Session on Drugs of the UN General Assembly offers a unique opportunity for an open and informed debate, and not only to Latin American countries. This debate should be based on the evidence of the limitations of the current drug control regime and on the lessons from countries that have experimented with more progressive and humane drug policies.

References

- Americas Quarterly*. 2012. “Colombia, Guatemala and Mexico ask UN to revise drug war tactics.” September 27th. <<http://www.americasquarterly.org/node/3980/>>
- BBC News*. 2012. “Obama: ‘Drug legalisation not the answer to drug war’.” April 14th. <<http://www.bbc.co.uk/news/world-latin-america-17716926>>
- Boiteux, Luciana. 2011. “Drugs and prisons: the repression of drugs and the increase of the Brazilian penitentiary population.” In WOLA & TNI, eds. *Systems Overload: Drug Laws and Prisons in Latin America*. <<http://reformdrugpolicy.com/wp-content/uploads/2011/09/Systems-Overload.pdf>>

¹² Article 477 of the General Health Law states that the simple possession of amounts greater than those stipulated by law that are not for commerce or supply carries a penalty of ten months to three years in prison.

- Boiteux, Luciana et al. 2009. "Sumário executivo: relatório de pesquisa 'Tráfico de Drogas e Constituição' – projeto pensando o direito." Universidade Federal do Rio de Janeiro and Universidade de Brasília. <http://arquivos.informe.jor.br/clientes/justica/agencia/agosto/Sumario_executivo_pesquisa_Tráfico.pdf>
- Castillo, Juan Camilo, Daniel Mejía & Pascual Restrepo. 2012. *Illegal Drug Markets and Violence in Mexico: The Causes beyond Calderón*. Universidad de Los Andes, December 28th. <http://cie.itam.mx/SEMINARIOS/Marzo-Mayo_2013/Mejia.pdf>
- Cleary, Eduard. 2007. *Mobilizing for Human Rights in Latin America*. Boulder: Kumarian Press.
- Colombia. 1994. Corte Constitucional de Colombia, Sentencia C-221/94, Despenalización del Consumo de la Dosis Personal. May. <<http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=6960#1>>
- Corcoran, Katherine & Albert Arce. 2012. "Operation Anvil: drug strategy led to deadly Honduras raid." *Huffington Post*, June 25th. <http://www.huffingtonpost.com/2012/06/25/operation-anvil-us-drug-s_n_1623658.html>
- Count the Costs: 50 Years of the War on Drugs. 2012. *Undermining Human Rights*. <http://www.countthecosts.org/sites/default/files/Human_rights_briefing.pdf>
- El Comercio*. 2012. "Petro busca el consumo controlado de drogas." August 13th. <http://www.elcomercio.com/mundo/Petro-busca-consumo-controlado-drogas_0_754724521.html>
- El Comercio*. 2013. "Dosis máximas para el consumo ya están vigentes." June 21st. <http://www.elcomercio.com/seguridad/Dosis-maximas-droga-consumo-vigentes_0_941905849.html>
- Frye, Alexander. 2012. "Spotlight on Bolivia: the 'coca diplomacy' of Evo Morales." Council of Hemispheric Affairs, April. <<http://www.coha.org/spotlight-on-bolivia-the-coca-diplomacy-of-evo-morales/>>
- Global Commission on Drug Policy. 2011. *Report of the Global Commission on Drug Policy*. June. <http://www.globalcommissionondrugs.org/wp-content/themes/gcdp_v1/pdf/Global_Commission_Report_English.pdf>
- Graham, Davi. 2011. "Mexico president hints legalizing drugs may be needed." Reuters, September 19th. <<http://www.reuters.com/article/2011/09/20/oukwd-uk-mexico-usa-drugs-idAFTRE78J0KL20110920>>
- Hakim, Peter. 2011. *Rethinking US Drug Policy*. Inter-American Dialogue, February. <<http://www.thedialogue.org/PublicationFiles/Rethinking%20US%20Drug%20Policy.pdf>>
- Harley, Oliver. 2013. "Sun man witnesses brutal Rio slums 'clean-up' ahead of next year's World Cup tournament." *The Sunday*, July 21st. <<http://www.thesun.co.uk/sol/homepage/features/5025520/Brazils-war-on-drugs-as-World-Cup-approaches.html>>
- Hernández, Ana Paula. 2011. "Drugs legislation and prison situation in Mexico." WOLA and TNI, eds. *Systems Overload: Drug Laws and Prisons in Latin America*. <<http://reformdrugpolicy.com/wp-content/uploads/2011/09/Systems-Overload.pdf>>
- Infodrogs. 1998. "Art. 31 of Law 14294, modified by Law 17.016 from 1998." <http://www.infodrogas.gub.uy/html/marco_legal/documentos/02-DecretoLey14294.pdf>
- Krause, Keith, Robert Muggah & Elisabeth Gilgen. 2011. *Global Burden of Armed Violence*. Cambridge: Cambridge University Press. <<http://www.genevadeclaration.org/measurability/global-burden-of-armed-violence/global-burden-of-armed-violence-2011.html>>
- Latin American Commission on Drugs and Democracy. 2009. *Drugs and Democracy: Toward a Paradigm Shift: Statement by the Latin American Commission on Drugs and Democracy*. <http://www.drogasedemocracia.org/Arquivos/declaracao_ingles_site.pdf>
- Macedo, Natalia. 2010. *Sistema penitenciário Brasileiro: evolução da população carcerária (1990-2010)*. Instituto de Pesquisa e Cultura Luiz Flávio Gomes.
- Moffett, Matt & Eduardo Kaplan. 2012. "Uruguay considers selling marijuana." *Wall Street Journal*, June 21st. <<http://online.wsj.com/article/SB10001424052702304898704577480764220930718.html>>
- Molina, Otto. 2012. "We have to find new solutions to Latin America's drugs nightmare." *The Guardian*, April 7th. <<http://www.guardian.co.uk/commentisfree/2012/apr/07/latin-america-drugs-nightmare>>
- Mulholland, John. 2011. "It is time to think again about the war on drugs." *The Guardian*, November 12th. <<http://www.guardian.co.uk/world/2011/nov/13/colombia-juan-santos-war-on-drugs>>
- Pachico, Elyssa. 2012. "At summit, Americas unanimously back new regional crime body." InSight Crime, April 16th. <<http://www.insightcrime.org/news-briefs/at-summit-americas-unanimously-back-new-regional-crime-body>>
- Rawlins, Aimée. 2011. "Mexico's drug war." Council on Foreign Relations, January 11th. <<http://www.cfr.org/mexico/mexicos-drug-war/p13689>>
- Real News*. 2012. "Honduran scholars call on US to cease support for military and police." June 24th. <<http://thereal>>

news.com/t2/index.php?option=com_content&task=view&id=31&Itemid=74&jumival=8450>

Redmond, Helen. 2012. "Drug war devastation in Latin America." *Socialist Worker*, May 31st. <<http://socialistworker.org/2012/05/31/drug-war-devastation>>

Southall, Ashley. 2013. "US won't sue to reverse states' legalization of marijuana." *New York Times*, August 29th. <http://www.nytimes.com/2013/08/30/us/politics/us-says-it-wont-sue-to-undo-state-marijuana-laws.html?_r=0>

The Economist. 2012. "Uruguayan drug legalisation – thinking the unthinkable." June 30th. <<http://www.economist.com/node/21557804>>

The Economist. 2013. "Why is less cocaine coming from Colombia?" April 2nd. <<http://www.economist.com/blogs/economist-explains/2013/04/economist-explains-why-colombia-produces-less-cocaine>>

The Independent. 2012. "Nationalisation: Uruguay's solution to its drug problem." June 22nd. <<http://www.independent.co.uk/news/world/americas/nationalisation-uruguays-solution-to-its-drug-problem-7873537.html>>

Tinajero, Jorge & Angles Zamudio. 2009. *Mexico: The Law Against Small-Scale Drug Dealing*. Series on Legislative Reform of Drug Policies no. 3, October. WOLA-TNI. <<http://www.wola.org/sites/default/files/downloadable/Drug%20Policy/2011/Spanish/joint%20pubs/dlr3.pdf>>

TNI (Transnational Institute). n.d. "Fact sheet: coca leaf and the UN drugs conventions." <http://www.tni.org/sites/www.tni.org/files/download/fact_sheet_on_coca_and_the_conventions.pdf>

UNECOSOC (United Nations Economic and Social Council). Commission on Human Rights. 2004. *Civil and Political Rights, Including the Question of Disappearances and Summary Executions: Extrajudicial, Summary or Arbitrary Executions: Report of the Special Rapporteur, Asma Jahangir*. E/CN.4/2004/7/Add.3. <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/105/98/PDF/G0410598.pdf?OpenElement>>

UNECOSOC. 2007. *World Situation with Regard to Drug Abuse: Report of the Commission on Narcotic Drugs*. March. <http://www.unodc.org/pdf/cnd_session/ECN72007_3E.pdf>

UNODC (United Nations Office on Drugs and Crime). 2007. *Crime and Development in Central America: Caught in the Crossfire*. Vienna: UNODC. <<http://www.unodc.org/documents/data-and-analysis/Central-america-study-en.pdf>>

UNODC. 2011. *World Drug Report*. Vienna: UNODC. <http://www.unodc.org/documents/data-and-analysis/WDR2011/World_Drug_Report_2011_ebook.pdf>

UNODC. 2012. *World Drug Report*. Vienna: UNODC. <http://www.unodc.org/documents/data-and-analysis/WDR2012/WDR_2012_web_small.pdf>

UNOHCHR (United Nations Office of the High Commissioner for Human Rights). 2008. *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston*. A/HRC/8/3/. May. <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/134/70/PDF/G0813470.pdf?OpenElement>>

Vargas, Ricardo. 2011. "Sociedad civil Colombiana pide ser consultada sobre la reforma de la Ley de Droga." TNI, October 6th. <<http://www.druglawreform.info/es/weblog/item/2805-sociedad-civil-colombiana-pide-ser-consultada-sobre-la-reforma-de-la-ley-de-droga>>

Waiselfisz, Julio. 2008. *Mapa da violência: os jovens da América Latina*. RITLA, Ministério da Justiça do Brasil and Instituto Sangari. Artector Gráfica e Editora. <http://www.mapadaviolencia.org.br/publicacoes/Mapa_2008_al.pdf>

Waiselfisz, Julio. 2012. *Mapa da violência 2012: os novos padrões da violência homicida no Brasil*. Instituto Sangari. <http://www.sangari.com/mapadaviolencia/pdf2012/mapa2012_web.pdf>

Walsh, John. 2012. "Just how 'new' is the 2012 National Drug Control Strategy?" WOLA, May. <http://www.wola.org/sites/default/files/downloadable/Drug_Policy/May/How_New_is_the_2012_NDCS.pdf>

Walsh, John & Martin Jelsma. 2012. "Cannabis regulation in Uruguay – someone has to be first." TNI, July 17th. <<http://www.undrugcontrol.info/en/weblog/item/3676-someone-has-to-be-first>>

Werb, Dan et al. 2010. *Effect of Drug Law Enforcement on Drug-related Violence: Evidence from a Scientific Review Urban Health Research Initiative*. International Centre for Science and Drug Policy, British Columbia. <http://www.icsdp.org/Libraries/doc1/ICSDP-1_FINAL_1.sflb.ashx>

Youngers, Coletta. 2013. "The drug policy reform agenda in the Americas." IDPC Briefing Paper. May. <http://www.wola.org/commentary/the_drug_policy_reform_agenda_in_the_americas>

Zona Cero. 2012. "Corte Constitucional despenalizó la dosis mínima de drogas." June 28th. <http://zonacero.info/index.php/index.php?option=com_content&view=article&id=26013:la-corte-constitucional-despenaliza-la-dosis-minima-de-drogas&catid=82:colombia&Itemid=154>

■ THE AUTHOR

Ilona Szabó de Carvalho is executive director of the Igarapé Institute and executive co-ordinator of the Secretariat of the Global Commission on Drug Policy.



Disclaimer

The content of this publication is presented as is. The stated points of view are those of the author and do not reflect those of the organisations for which he works or NOREF. NOREF does not give any warranties, either expressed or implied, concerning the content.



- **The Norwegian Peacebuilding Resource Centre**
- **Norsk ressurscenter for fredsbygging**

The Norwegian Peacebuilding Resource Centre (NOREF) is a resource centre integrating knowledge and experience to strengthen peacebuilding policy and practice. Established in 2008, it collaborates and promotes collaboration with a wide network of researchers, policymakers and practitioners in Norway and abroad.

Read NOREF's publications on www.peacebuilding.no and sign up for notifications.

Connect with NOREF on Facebook or @PeacebuildingNO on Twitter

Email: info@peacebuilding.no - Phone: +47 22 08 79 32