

## IDPC Briefing Paper

# The drug policy reform agenda in the Americas

(Version 1)

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## Introduction

Latin America has emerged at the vanguard of efforts to promote debate on drug policy reform. For decades, Latin American governments largely followed the drug control policies and programs of Washington's so-called war on drugs.<sup>1</sup> Yet two parallel trends have resulted in a dramatic change in course: the emergence of left-wing governments that have challenged Washington's historic patterns of unilateralism and interventionism and growing frustration with the failure of the prohibitionist drug control model put forward by the US government. In recent years, the regional debate on drug policy issues -- long dormant -- has surged as evident in media coverage, renewed interest on the part of academia, the emergence of grassroots initiatives such as the cannabis reform movement, and perhaps most importantly, calls for reconsideration of prevailing drug policies by a range of local and national officials. For the first time, sitting presidents are questioning the underlining premises of the international drug control paradigm and calling for debate on alternative approaches. Their actions have had repercussions internationally, as those presidents have successfully pushed for debate within the Organization of American States (OAS) and the United Nations (UN).

At the national level, numerous countries have implemented or are debating drug policy reforms. Most significantly, two countries have boldly challenged the 1961 Single Convention on Narcotic Drugs. Bolivia is the first country to denounce and return to the convention with a reservation, in this case with regards to coca leaf use within its own territory. And the Uruguayan government has proposed creating legal, state-controlled markets for cannabis. Uruguayan officials are carefully watching the regulatory frameworks being put in place in the U.S. states of Colorado and Washington where in November 2012 voters approved cannabis legalization referendums. At the local level, officials such as Bogota Mayor Gustavo Petro are forging ahead with innovative harm reduction-oriented programs designed to provide access to health services and treatment to drug users and to reduce crime and violence.

However, the obstacles to reform -- at the national, regional and international levels -- loom large. Efforts to rewrite drug laws in Argentina and Ecuador, for example, are floundering in the face of opposition from powerful conservative political forces and some religious sectors. More often than not, public opinion continues to support

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*mano dura*, or hardline, approaches as a result of popular perceptions and fears that more flexible drug policies will lead to increased drug use and violence. Such fears are fanned by sensationalist or biased media coverage, as well as very real problems of citizen insecurity and violence in the poor neighborhoods where illicit drug use tends to be most prevalent. Regionally, while key Latin American leaders have spoken out in favor of reform, many others have remained silent or wedded to present policy. And internationally, a key group of countries, including the United States and Canada, are vociferously opposed to taking any action outside of the confines of the existing international drug control conventions.

Yet while drug policy reforms will no doubt advance slowly, major fissures are evident in the international drug control architecture so carefully crafted by the United States and other countries. Perhaps nowhere is that more evident than in Latin America. After analyzing the regional debate, national level reforms and impediments to those reforms, this report concludes with concrete policy recommendations that should be undertaken to maintain the momentum and advance drug policy debates and reforms in the region.

## The regional debate

At the root of the drug policy debate in Latin America is growing recognition that present policies have failed to achieve the desired objectives, the extremely high costs of implementing those policies paid by Latin American countries, and the need to place higher priority on reducing unacceptably high levels of violence. Of particular concern is the spread of organized crime and the resulting violence, corruption and erosion of democratic institutions. More than forty years after the U.S. “war on drugs” was launched, most Latin American countries face far deeper problems with drug trafficking. Drug dependency – and related health and societal consequences – continues to spread as trafficking routes multiply, bringing more and more Latin Americans into contact with

illicit substances. Jails are bursting at the seams with low-level drug offenders, causing a serious humanitarian crisis, while ineffective or lax law enforcement and corruption ensure that few medium or large-scale traffickers end up behind bars.<sup>2</sup> As noted, organized crime has spread its reach across the region, posing significant challenges to states characterized by weak law enforcement and judicial institutions. As succinctly stated by Guatemalan President Otto Pérez Molina, “We have seen that prohibitionism and the war against drugs have not given the results hoped for. Quite the opposite, the cartels have grown in strength, the flow of arms towards Central America from the north has grown and deaths in our country have grown. This has forced us to search for a more appropriate response.”<sup>3</sup>

While discontent with present policy in Latin America had been bubbling under the surface for some time, the 2009 launch of the Latin American Commission on Drugs and Democracy’s report marked a turning point, sparking widespread media coverage of the Commission’s calls for drug policy reform. As a result, more influential newspapers and influential individuals came out in support of drug policy reform. By the launch of the report of the Global Commission on Drug Policy two years later, drug policy was front and center on the regional agenda. However, it is only recently that ex-presidents have been joined by sitting presidents, such as Colombia’s Juan Manuel Santos and Guatemalan President Otto Pérez Molina, in calling for reconsideration of the prevailing international drug control regime.

Another significant shift in the debate came when a long taboo subject, legalization, was put on the table. While President Santos was the first of those presidents in office today to call for consideration of drug legalization, Guatemala’s President Pérez Molina can be credited with inserting the legalization issue into the drug policy reform debate – and Uruguay’s President José Mujica took that debate one step further with his proposal to create regulated cannabis markets in that country. While there has been much media confusion over the precise meaning of terms like decriminalization and legalization,<sup>4</sup>

for the first time the idea of legal, regulated markets has become part of the regional drug policy debate. As explained in more detail below, whether or not the Uruguayan government's proposal to create legal, regulated markets for cannabis is successful, it has shown that viable regulation models are an option and can be the subject of reasoned debate.

## The Organization of American States

Perhaps the most significant turning point, however, was the April 2012 Cartagena summit and its outcome, where most of the hemispheres' presidents gathered in a private, closed-door meeting where drug policy was the only topic discussed. As a result of that exchange, President Santos announced that the OAS was being tasked with analyzing the results of present policy and exploring alternative approaches. OAS Secretary General José Miguel Insulza, with the support of OAS staff from the Secretariat for Multidimensional Security and the Inter-American Drug Abuse Control Commission (CICAD), has led a two-fold process. First, an analytical report was drafted with the input of a working group composed of CICAD and other multilateral officials, government representatives, academics and other experts. A subsequent, shorter study, drawing from the analytical report, was then prepared by Secretary Insulza's office. Second, two independent organizations, Reos Partners and the *Centro de Liderazgo y Gestión*, were contracted to carry out a "scenario planning" exercise where a multidisciplinary team of prominent individuals constructed a set of scenarios about possible future outcomes resulting from the application of different drug policies, with the objective of framing regional discussions and informing strategic decision making at the national level. These documents will be presented to the presidents of Colombia and Panama (which is hosting the next hemispheric summit) on May 17, 2013.

At the time of this writing, as the OAS study (including the scenario planning exercise) has not yet been released, the verdict is still out with regards to its contribution to the regional debate. However, the Cartagena summit and the

soon-to-be launched OAS report have already had one immediate impact: The Guatemalan government proposed that alternative strategies for combatting drugs be the theme for the next annual [OAS General Assembly](#) meeting to take place in Guatemala from June 4 to 6, 2013. With only minor objections from the United States and Canada (both of which expressed concern about the broad range of topics to be covered), the proposal was approved on February 25, 2013,<sup>5</sup> now with the official title, *Toward a Comprehensive Anti-Drug Policy in the Americas*. Five sub-themes are included in the Guatemalan government's proposal: 1) strengthening health systems for the prevention and treatment of drug abuse; 2) reducing crime and violence; 3) reducing arms trafficking and addressing money laundering; 4) analyzing the option of legalizing some crops; and 5) decriminalizing drug use and reducing prison populations. According to Guatemalan Foreign Minister Fernando Carrera, "We hope that the political dialogue in Antigua will be historic, one that marks a before and after in the issue of the war on drugs in the 21<sup>st</sup> century."<sup>6</sup> Negotiations on a draft declaration presented by the Guatemalan government are presently underway. One of the points under discussion is the Guatemalan government's proposal to hold a Special Session of the OAS General Assembly on drug policy in February 2014. The June 2013 OAS General Assembly meeting offers an unprecedented opportunity for the hemisphere's leaders to rethink the decades-old "war on drugs," as would a subsequent meeting of the region's foreign ministers. President Pérez Molina also announced earlier this year that he will host a meeting of some Latin American political and business leaders in Tikal, Petén during the second half of 2013, providing another important space for official debate.

As more progressive governments have taken power in Latin America, left-wing leaders have created new regional associations, including the Union of South American Nations (UNASUR) and the Community of Latin American and Caribbean States (CELAC), potentially making the OAS less relevant. Some expected UNASUR to play a proactive role in developing alternative

approaches to drug policy. However, while its South American Council on the World Drug Problem appeared to get off to a good start, it has largely replicated the working groups that presently exist in CICAD, no country is presently playing a leadership role that could shape a more reform-oriented approach and internal differences between countries have to date stymied reform-oriented action.<sup>7</sup> Similarly, even after the Cartagena summit, CELAC has not developed a leadership role on the issue, though various points related to drug policy were included in the EU-CELAC declaration from their January 2012 business summit. The next hemispheric presidential summit is scheduled to take place in Panama in 2015; however, it remains unclear whether or not the issue of Cuba's participation will be resolved such that it can move forward. In short, the regional power dynamics between these different bodies are still in the process of being defined, but for the time being the OAS has been tasked with moving forward the regional debate on drug policy issues. As noted, how well it does so remains to be seen.

### **The 2016 UN General Assembly Special Session on Drugs**

Finally, the governments of Colombia, Guatemala and Mexico were successful in getting the issue of drug policy reform on the United Nations' agenda. At the 2012 UN General Assembly meeting, those countries issued a formal statement underscoring the need to "review the approach" of present drug policies and called on the United Nations to "exercise its leadership...and conduct a profound reflection to analyze all available options, including regulatory or market measures, in order to establish a new paradigm that prevents the flow of resources to groups involved in organized crime. The statement concludes by asking the UN to host "an international conference to allow the necessary decisions to be made in order to achieve more effective strategies and tools with which the global community faces the challenges of drugs and their consequences."<sup>8</sup> These sentiments were echoed in the declaration of the Ibero-American Summit – including all countries of Latin America, Spain and Portugal – which took place on November 16 and

17, 2012. Shortly thereafter, it was announced that a special session of the UN General Assembly (UNGASS) would be convened in early 2016 on the "world drug problem."

The *Report of the Third Committee on International drug control* to the General Assembly states that the UNGASS review will include "an assessment of the achievements and challenges in countering the world drug problem, *within the framework of the three international drug control conventions and other relevant United Nations instruments* (emphasis added)."<sup>9</sup> Yet meaningful drug policy reform ultimately necessitates convention reform and a key question remains as to whether or not the issue of convention reform will finally make it to the negotiating table. A step forward in that direction was taken when in December 2012 President Santos joined President Pérez Molina (along with numerous former presidents, including former U.S. President Jimmy Carter) in signing a Beckley Foundation petition, *The Global War on Drugs has Failed: It is Time for a New Approach*, which states: "At the root of current policies lies the 1961 UN Single Convention on Narcotic Drugs. It is time to re-examine this treaty which imposes a 'one-size-fits-all' solution, in order to allow individual countries the freedom to explore drug policies that better suit their domestic needs."<sup>10</sup> Whether or not the United Nations member states are up to that challenge remains to be seen.

Jockeying has already begun to control the UNGASS agenda. At this year's Commission on Narcotic Drugs (CND) meeting in Vienna, Austria in March,<sup>11</sup> a resolution was presented which would have ensured CND control over the planning process. Reform-minded governments were successful in garnering support for compromise language that refers to "its" leading role in the preparatory process, thereby leaving the door open for more actors to be involved. Reform advocates are proposing that UN agencies and missions in New York take the lead in preparing the UNGASS agenda, with the involvement of a range of agencies in addition to the CND, such as UNDP, UNAIDS, WHO, the Human Rights Council and others. Another

crucial question is the role that civil society organizations will have in the process. Having launched the UNGASS on drugs, Latin American leaders have the opportunity to play a key role in defining its content and outcome.

## National-Level Reforms

Even before drug policy alternatives became the subject of regional debate, some drug law reform efforts were already underway. However, key national level reforms described below have floundered due to a range of political obstacles. Draft legislation pending at the time of this writing in Brazil, a country that was among the first to reconsider its drug law, threatens to dramatically set back progress in implementing harm reduction-oriented reforms. The overall balance of advancing drug policy reform in the region over the last few years remains disappointing and has led some analysts to conclude that change will more likely come from below, as has happened in the United States with regards to cannabis. At the local level, officials such as Bogota Mayor Gustavo Petro are forging ahead with innovative harm reduction-oriented programs designed to provide access to health services to people who use drugs and to reduce the violence associated with the drug trade. Also, a regional cannabis reform movement is slowly being consolidated and significant momentum is building for cannabis law reform. Moreover, the balance could tip in favor of reforms if the Uruguayan government is ultimately successful in creating legal, regulated markets for cannabis – that could mark a significant turning point in options for reform in the region.

### Decriminalizing Consumption

The decriminalization of the possession of small amounts of drugs for personal use in those countries where it is illegal is one of the more widely discussed reforms.<sup>12</sup> In 2006, Brazil passed a law that partially decriminalized possession for personal use. Subsequently, in 2008, a Sao Paulo judge ruled that imposing sanctions for drug possession for personal use is unconstitutional.

In August 2009, Mexico adopted legislation decriminalizing the possession of small quantities of drugs for personal use and mandating the provision of prevention and treatment programs. Though the threshold quantities for determining personal use are problematically low, the law at least recognizes drug consumption as a public health – not criminal – matter.

That same month, the Argentine Supreme Court ruled that imposing criminal sanctions for the possession of small amounts of drugs for personal use is unconstitutional; at the same time, an official commission was drafting new drug legislation. In 2012, that and various other legislative proposals were combined into one law that would decriminalize 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. Unfortunately, though a political consensus was forged in support of the drug law reform, it was put on hold while a draft law on drug treatment policy is debated. Yet it is advancing very slowly, while other issues continue to dominate the political agenda. All indications are that President Cristina Fernández de Kirchner does not want to use her dwindling political capital on drug policy-related issues. With congressional elections looming in October 2013, it is likely that any proposed drug-related legislation will continue to languish for some time.

Particularly noteworthy, upon taking office Ecuadorean President Rafael Correa adopted a reform discourse and the country's new constitution is the only one in the hemisphere that declares drug use to be a public health issue. Article 364 of the 2008 Constitution states: "Addictions are a public health problem...Under no circumstances will these be criminalized or will their constitutional rights be violated."

### Setbacks to Reform Processes

President Correa also implemented a pardon of low-level drug offenders which led to the release of an estimated 2,300 individuals. The pardon was



intended as a temporary measure as the countries' drug law was reformed to ensure proportionality in sentencing (Ecuador has one of the harshest drug laws in the hemisphere and it makes no distinction between levels of involvement in the drug trade, subjecting low-level offenders to excessively long sentences). Significant effort went into drafting new drug legislation as part of a broader criminal penal code reform effort. However, the proposed changes to the existing drug law have suffered steady setbacks as they have gone through various government revisions (although the presently pending legislation would improve proportionality in sentencing). The draft legislation is now in the hands of the National Assembly, where members have repeatedly raised the issue of alleged increases in crime, violence and drug trafficking in order to toughen the legislation. It remains to be seen whether or not President Correa – with elections behind him and a newly-forged majority in the National Assembly – will return to his initial discourse of promoting drug law reform.

As noted above, Brazil's 2006 law removes prison sentences for possessing small amounts of drugs for personal use, though it is still a criminal offense. But because the law also increased the prison sentences for drug trafficking without specifying who would qualify as a trafficker or a drug user, one unintended consequence of the law was a dramatic increase in those arrested for street-level dealing. In response, in 2012 civil society organizations launched a sophisticated campaign in support of full decriminalization of drug use.<sup>13</sup> On April 16, 2013, seven former Ministers of Justice sent a letter<sup>14</sup> to the head of the federal Supreme Court requesting it to declare that the criminalization of possession for personal use is incompatible with the country's constitution (as was previously ruled at the state level). Yet at the same time, legislation has been introduced to Congress that could increase fines and mandatory education programs for users, increase mandatory penalties for small-scale trafficking and potentially institutionalize forced treatment. The proposed legislation is presently being fiercely debated in the Brazilian Congress.

## Guatemala and Colombia Initiate Reform Processes

On a more positive note, two key presidents who have been advocating for international reforms while maintaining hardline drug policies at home are beginning to talk of domestic-level reforms. Despite his public support for regulated drug markets, President Pérez Molina has increased military involvement in counter-drug activities. Yet he also commissioned a report from the UK-based Beckley Foundation on options for alternative drug policies and has said he will consider a proposal to permit legal poppy cultivation for producing pain medications, to be used domestically.<sup>15</sup> (Presently, access to such medications in Guatemala is extremely limited.) In early February, the Guatemalan government announced a record elimination of poppy plants for the first part of the year. Interestingly, it also announced that nobody was detained in the process. According to the Minister of Government, Mauricio López Bonilla, as reported by *El Periódico*, "The destruction, focused on attacking the product and not detaining people, was carried out within the framework of the depenalization model being promoted by President Otto Pérez."<sup>16</sup>

Perhaps of even greater significance, Colombia's President Santos – who had previously said that a new regional and international consensus was needed in order for reforms to go forward – has very recently moved in the direction of domestic-level reforms. Between 1994 and 2009, possession of small amounts of marijuana and cocaine for personal use was not prosecuted in Colombia, due to a Constitutional Court ruling that states that the possession of a "minimum dose" of drugs cannot be penalized when it occurs "in the exercise of their personal rights... and the defendant did not affect others."<sup>17</sup> After repeated efforts, former Colombian President Alvaro Uribe was finally successful in amending the country's constitution in order to allow for the criminalization of the minimum dose and illicit drug consumption. In a subsequent citizen security law, an article was included to eliminate the provision in the previously existing law allowing for the minimum dose, thereby codifying

the results of the constitutional change into law. In addition, shortly after taking office the Santos government circulated a draft of a proposed National Drug Law which, among other matters, also criminalized possession for personal use. However, in June 2012, the Constitutional Court ruled on the article in the citizen security law referred to above, stating that the constitution does not allow penalizing consumers (similar rulings on individual cases were also handed down by the Supreme Court). Civil society groups and legal experts also played an important role in providing input into the draft legislation and advocating for reforms. The draft drug legislation went through several revisions and in January 2013, Colombia's Justice Minister, Ruth Stella Correa, announced that the revised drug law to be presented to congress in the coming months will also decriminalize possession for personal use of small amounts of synthetic drugs, such as ecstasy and methamphetamines, in addition to cocaine and marijuana which is still allowed under current law. The proposed legislation would also obligate municipalities to provide funds for prevention and treatment programs.<sup>18</sup>

The Justice Minister also announced the formation of a [Drug Policy Commission](#), which has a broad mandate to evaluate the drug policies implemented over the last ten years and make recommendations for future drug policy. It is to present a first draft of its work by September and a final document by the end of the year. The draft drug law described above will not likely move forward until the commission has made its recommendations. Particularly interesting is the composition of the commission which appears intended to ensure that alternative policies are indeed put forward. The widely-respected webpage, *La Silla Vacía*, refers to it as *una comisión de ruptura*, or a commission designed to make a break from the past.<sup>19</sup> It includes former President César Gaviria (member of the Global Commission on Drug Policy), former police General Óscar Naranjo (now on the drug policy event circuit expressing some sympathy towards certain reforms), former Constitutional Court member Rodrigo Uprimny (a leading reform advocate) and Universidad

de los Andes economic professor Daniel Mejía Londono (a leading economist working on drug policy issues), who will chair the commission. As noted by *La Silla Vacía*, President Santos is finally sending a "clear signal that he intends to align internal policy with his international discourse."<sup>20</sup>

Drug policy is also on the agenda of the negotiations between the Colombian government and the Revolutionary Armed Forces of Colombia (FARC); it is the second to last agenda item and sub-items include alternative/economic development, prevention and public health, and addressing the problem of production and trafficking. Also according to *La Silla Vacía*, the last draft of the proposed National Drug Law that it obtained in March of this year includes numerous proposals that coincide to a certain extent with those put forward by the FARC. In the context of the negotiations on rural development, the FARC has called for economic development in coca growing regions; an end to the criminalization and persecution of those communities; an immediate and definitive end to aerial spraying and other forms of eradication; the legalization of coca, poppy and marijuana cultivation for therapeutic and medicinal purposes, industrial use or cultural purposes; and the reorientation of land use towards sustainable agricultural production. *La Silla Vacía* reports that the Colombian government's draft drug law also allows for some legal cultivation for licit uses, restricts aerial spraying, and promotes voluntary manual coca reduction. It would also create mechanisms such that coca producers who voluntarily participate in coca eradication would not be held criminally liable for having cultivated coca, which is presently illegal in Colombia.<sup>21</sup> Agreement in the negotiations on certain basic principles related to coca cultivation could result in a significant turning point in Colombian drug policy, which has long been the US poster child for criminalization of coca growers and forced eradication.

Finally, Bogota mayor Gustavo Petro is playing a significant role in advancing a public health focus in the drug policy debate in Colombia, implementing a novel program, the Medical Care Center for Dependent Drug Users (*Centos*

*de Atención Médica a Drogodependientes*), or CAMAD.<sup>22</sup> Launched in September 2012, the CAMAD is a pilot project focused primarily on the use of *bazuco*, or cocaine base, in the Bronx, an extremely poor neighborhood of Bogota where homeless people are concentrated and drug use, trafficking and violence proliferate. An estimated 7,500 *bazuco* users – who often panhandle or commit crimes to support their habit – and 9,500 homeless people are in the Bronx.<sup>23</sup> The CAMAD began as a mobile medical care center staffed by psychiatrists, psychologists, doctors and nurses that refers dependent drug users to detoxification and rehabilitation treatment. The next phase of the project is a program to reduce *bazuco* consumption by replacing it with marijuana and possibly coca, in order to reduce the anxiety caused both by consuming *bazuco* and in trying to get off the drug. In addition to weaning patients off drugs, the idea is to eliminate the violence associated with *bazuco* consumption. Initially, a small group of people dependent on drugs from the Bronx who are already receiving assistance from the CAMAD will undertake an 8-month program that also includes counseling, job training and other services. According to the Director of Acción Técnica Social, Julián Andrés Quintero, “This project is not aimed at getting people to quit using. This is about reducing the risks and mitigating the damage. We want people to quit a substance that is very, very damaging and transition to something less dangerous and which will allow them to function in society.”<sup>24</sup> If successful, the presently controversial program will be expanded.

## The Cannabis Reform Movement

The most radical change presently under discussion in the region has come from the Uruguayan government, which on June 20, 2012 unveiled a proposal that, if adopted by the country’s legislature, would create legal, government-controlled markets for cannabis, as part of a broader strategy to promote a public health-oriented drug policy and separate the marijuana market from the far more dangerous

*paco* market. (Though there are a variety of theories about what *paco* is and it appears that production varies depending on where it is produced, *paco* is usually described as being produced from the refuse in making cocaine mixed with various solvents. Its use is highly addictive and damaging.) In the Uruguayan government’s proposal as it stands at the time of this writing, the market would be highly regulated, with strict age limits, electronic controls limiting the amount purchased per month, and would prohibit public use. A state agency, the National Cannabis Institute (INCA), would be created to control the cultivation, distribution and sale of cannabis. The draft law also includes allowing the cultivation of up to 6 plants for personal consumption and the creation of “cannabis clubs,” or cooperatives, along the lines of those presently in operation in Spain. At the time of this writing the legislation is pending in the House of Representatives and if approved, will be taken up by the Senate.

Prior to the government’s announcement of its intention to legally regulate cannabis, legislation was already pending that would allow for the cultivation of cannabis for personal use – and it appeared to have a very good chance of congressional approval. As noted, Argentina is contemplating similar action and there is also a movement in Brazil to allow for the cultivation of marijuana for personal use. Congressional initiatives to legally regulate the cannabis market have also been introduced in Mexico and Chile. Proponents of creating legal, regulated marijuana markets point out that it poses comparatively smaller risks than many other substances (including legal drugs) and yet the prohibitionist approach causes enormous harm to those caught up in the criminal justice system. More tolerant attitudes towards cannabis use in many countries – including the United States – suggest that sooner or later, more and more countries will begin the shift toward legal, regulated markets.

Nowhere is this trend clearer than in the United States, and Uruguay and other Latin American countries are closely watching Colorado and Washington. In the November 2012 U.S. elections, in the state of Washington 55.4 percent



voted to “legalize the production, distribution and possession of marijuana, and establish regulations.” A similar initiative passed in Colorado with 54.8 percent of the vote. In both cases, possession for personal use will become legal and ultimately cannabis could be sold at state-licensed stores. Colorado will also allow individuals to cultivate six plants. Washington’s 66-page regulatory proposal was carefully written to stand up to federal pressure. If Washington and Colorado are able to implement fully their legislative initiatives, they would be the only places in the world (with the possible exception of Uruguay as explained above) where cannabis could be cultivated, sold and consumed legally (even in Holland production remains illegal, though the purchase and consumption of small amounts of cannabis in coffee shops is tolerated).

The Obama administration faces a political conundrum as it defines its response to the cannabis legalization initiatives approved in Washington and Colorado, which pit state law against federal law. (The federal Controlled Substances Act prohibits the production, sale and possession of marijuana.) A range of policy tools are at its disposal, including stepping up DEA enforcement activities, taking action in the courts, or threatening to seize marijuana tax revenues. An April 2012 report by the Brookings Institution and the Washington Office on Latin America argues that a more appropriate response would be for the U.S. Justice Department to “use its considerable leverage to ensure that state regulators protect the federal government’s interests in minimizing exports across state lines, sales outside the state-regulated system, sales of unduly large quantities, sales of adulterated products, sales to minors, organized crime involvement, and other abuses.”<sup>25</sup>

Upon taking office, President Obama initially promised to respect state laws on medical marijuana. However, the DEA publicly expressed opposition to that position and over time has significantly increased its raids of medical marijuana facilities. The DEA is part of the Department of Justice and hence should follow White House directives; however in this case

it appears that there was no attempt on the part of the White House to object or attempt to reign in the DEA. Two years ago when California voted on Proposition 19, which would have legally regulated marijuana, Attorney General Eric Holder spoke out forcefully against it. This year, however, the Justice Department remained silent prior to the voting in Washington and Colorado. (Some speculate that was because Colorado was a battle-ground state and Obama needed the youth vote.) Since the elections, officials have made only broad statements that they are reviewing the ballot initiatives and that drug enforcement policy has not changed. In December when asked about recreational marijuana users in the states where it has been legalized, President Obama responded, “We’ve got bigger fish to fry.”<sup>26</sup> As of mid-May 2012, U.S. Attorney General Eric Holder had only said that he has had “good conversations” with elected leaders in Washington and Colorado; at the time of this writing he has yet to provide any more details on the administration’s response. Some analysts think that Justice Department officials are waiting for more details on the proposed regulatory frameworks before reacting.<sup>27</sup>

Such prudence is warranted given the broad popular support received in each state – and given the clear trend in the United States towards relaxing marijuana laws. Polls now show that more than half of all Americans support some form of legalization. Sixteen U.S. states have decriminalized marijuana use, 18 states and the District of Colombia have legalized marijuana for medical use, and two states are in the process of implementing legal, regulated markets. Six states have marijuana legalization bills pending and three more are likely to join them soon. At least two more states, including California, are likely to have referendums to legalize marijuana in the next presidential elections in 2016.<sup>28</sup> And legislation has been introduced in the U.S. Congress to legalize cannabis at the federal level, though it has little chance of passing anytime soon.

The inconsistency in the United States’ situation – with the federal government advocating for strict prohibition while more and more states

move in the direction of relaxing cannabis laws – has not been lost on Latin America. In public comments immediately following the U.S. elections, Luis Videgaray, who at the time was leading Mexican President Enrique Peña Nieto's transition team, called the vote a game-changer, stating that "Obviously we can't handle a product that is illegal in Mexico, trying to stop its transfer to the United States, when in...at least part of the United States it has a different status."<sup>29</sup> At the Davos meeting in January 2013, the governments of Costa Rica, Mexico and Colombia announced that they were initiating talks with U.S. officials to prepare for the legalization of marijuana in Colorado and Washington. These developments further erode U.S. credibility in the regional drug policy debate, providing more political space for those countries like Uruguay, Guatemala and Colombia that are advocating for national, regional and international drug policy reform.

## Coca and the Conventions

The fact that the United States, one of the primary architects of the international drug control conventions, is now in violation of those conventions has also not been lost on the Bolivian government. The 1961 Convention mistakenly classifies the coca leaf – which has been consumed in its natural state for centuries by indigenous peoples in the Andean region of South America – as a dangerous narcotic, along with cocaine. Yet Bolivia's 2009 Constitution (Article 384) states: "The State shall protect native and ancestral coca as cultural patrimony, a renewable natural resource of Bolivia's biodiversity, and as a factor of social cohesion; in its natural state it is not a narcotic. Its revaluing, production, commercialization, and industrialization shall be regulated by law." The Constitution allowed for a period of four years for the government to "denounce and, in that case, renegotiate the international treaties that may be contrary to the constitution." In other words, Bolivia had to reconcile its new constitution with its international obligations.

As a first, more modest effort, the government of Bolivia sought to amend the Single Convention by deleting its provision requiring that "coca leaf chewing must be abolished" within 25 years (Article 49), a period that ended in 1989. Without any objections, Bolivia's request would have been approved automatically. But the U.S. government organized a "friends of the convention" group that led to 18 countries objecting to Bolivia's request. In response, the Bolivian government took more drastic action.<sup>30</sup>

In June 2011, the Plurinational State of Bolivia withdrew from the 1961 Convention on Narcotic Drugs as amended by the 1972 Protocol with the intention to re-adhere with a new reservation allowing for the traditional uses of the coca leaf in its territory. In order to block Bolivia's return to the Single Convention, one-third or more of the 184 UN treaty members would have had to formally object by January 10, 2013. Bolivia launched a diplomatic campaign to secure support and gained an important victory at the November 2012 [Ibero-American Summit](#) held in Cádiz, Spain. At that summit, a special communiqué was adopted on the traditional use of coca chewing in which the presidents unanimously stated:

Conscious of the importance of conserving the ancestral and cultural practices of indigenous peoples, in the framework of respect for human rights and the fundamental rights of indigenous peoples, in accordance with international instrument ... We recognize that the traditional use of coca chewing (*akulliku*) of the coca leaf is a cultural and ancestral manifestation of the people of Bolivia and Peru and should be respected by the international community.

In other words, Bolivia gained at least tacit support from all Latin American countries, as well as Spain and Portugal, for eliminating the international stigma presently—and erroneously—associated with the coca leaf.

By the January 10 deadline, only 15 countries had formally objected.<sup>31</sup> Bolivia is now again a party to the Single Convention, having won a significant victory in its efforts to right the

historic wrong in the classification of the coca leaf as a dangerous narcotic. Bolivia is the first country to ever denounce the 1961 Convention and then re-accede with a reservation (though other countries included reservations with their original adoption of the convention). However, the right to traditional uses of the coca leaf only pertains to Bolivia; the exportation and use of coca leaf internationally remains prohibited.

## Impediments to Reform

Despite these promising signs, the response by other Latin American governments to the Bolivian and Uruguayan initiatives illustrate the myriad of political and other obstacles to drug policy reform in the region – and beyond. Although Bolivia secured recognition of the licit uses of the coca leaf at the Ibero-American summit in Cádiz in November 2012, Mexico broke ranks and was the only Latin American country to oppose Bolivia's re-entry to the 1961 Convention. Countries around the region have criticized Uruguay's actions. Perhaps the toughest condemnation came from Colombia's President Santos, who reiterated his assertion that national reforms should only be implemented after a new international consensus is reached. At the November 2012 bi-annual meeting of the OAS's CICAD, following a presentation on the Uruguayan government's cannabis initiative only one country offered concrete support, Guatemala.

Efforts by Guatemalan President Otto Pérez Molina to create a united front among Central American countries in favor of drug policy reform have failed to bear fruit. Prior to the Cartagena summit, Guatemalan President Pérez Molina invited Central American presidents to attend a regional summit to shape a joint position on drug policy alternatives. In response, U.S. officials went on a "charm offensive" in Central America sending more U.S. officials to the region in a one month period than at any time in recent history, including Vice President Joe Biden, Homeland Security Secretary Janet Napolitano, then-Under Secretary of State Maria Otero and the State

Department's top drug official, William Brownfield. The effort paid off: Though all of the Central American presidents had initially accepted the invitation, the presidents of El Salvador, Honduras and Nicaragua dropped out at the last minute – no doubt due at least in part to U.S. pressure. Costa Rican president Laura Chinchilla did attend the summit and initially adopted a more reform-oriented discourse, at least for an international audience. But as her popularity has plummeted and popular concerns about crime and drug trafficking have grown, she too has adopted a hardline approach, proposing "looser wiretapping laws, easier confiscation of suspect assets and quicker approval of U.S. warships docking in Costa Rican ports. President Laura Chinchilla also wants to drop a longstanding ban on extraditing Costa Ricans for prosecution."<sup>32</sup>

As noted above and as evident in Costa Rica, governments often face pressure from media and some political sectors to maintain "tough" drug policies. Both foment popular perceptions and fears that more flexible drug laws will lead to increased drug use and violence. As has long been the case in the United States, politicians often fear that they have a lot to lose and little to gain in promoting alternative drug policies. In contrast to shifting public opinion in the United States on cannabis legalization, public opinion in Latin America by and large remains in favor of prohibitionist and *mano dura* approaches. Improved and more informed media coverage and public education is needed to promote an evidence-based debate on drug policy and drug policy alternatives in the region.

In short, while key Latin American countries have spoken out in favor of reform, many others have remained silent or remain closely allied with the United States and Canada, strong defenders of the prevailing drug control paradigm. Countries with leftwing governments that have played a leading role in creating Latin American policies and positions independent from Washington – such as Brazil and Venezuela – have failed to advocate for regional or international drug policy reforms and often resist efforts to promote more debate. (Indeed, the strongest advocates

of reform, Presidents Santos and Pérez Molina, come from conservative political backgrounds and Pérez Molina, a retired general, faces troubling allegations of responsibility for human rights violations.) Since taking office in late 2012, Mexican President Enrique Peña Nieto has not yet shown an inclination to join Presidents Santos and Pérez Molina in advocating for an international debate on drug policy alternatives, as his predecessor, Felipe Calderón, ultimately did. In Latin America, the scale remains tipped towards those governments supporting the status quo.

For its part, Washington largely continues on auto-pilot when it comes to the implementation of drug control programs in Latin America.<sup>33</sup> In response to the growing drug policy debate in Latin America, US officials have made clear their willingness to discuss any policies – as long as they fall within the confines of the existing conventions. Unfortunately, there is little reason to think that a second Obama administration will be any different. To its credit, since taking office President Obama and the Director of National Drug Control Policy, Gil Kerlikowske, have refrained from using “drug war” rhetoric and have focused much more on the issue of U.S. demand for illicit drugs, publicly recognizing the U.S. role in stimulating illicit drug trafficking. The change in tone was evident in President Obama’s recent visit to Mexico and Costa Rica where, following Mexican President Peña Nieto’s lead, he focused on economic development and trade issues, downplaying security concerns.

Meanwhile, despite the Obama Administration’s change in rhetoric, in reality the U.S. “war on drugs” continues to be waged across the region. On any given day, 4,000 US troops are deployed across Latin America on counter-drug missions. In addition, as many as four U.S. Navy ships are on patrol, U.S. pilots are clocking tens of thousands of hours per year flying drug-control missions and agents from at least 10 U.S. agencies are involved in training and other drug control activities in the region.<sup>34</sup> As Plan Colombia and the Merida Initiative in Mexico wind down, U.S. attention has steadily shifted to Central America. U.S. sources report that an estimated 80 percent

of the cocaine bound for the United States now passes through the isthmus. U.S. drug control assistance to Central American security forces has steadily increased through the Central American Regional Security Initiative (CARSI). A variety of U.S. agencies are now on the ground in Central America; in Guatemala, U.S. marines have trained the feared Kaibiles special forces unit, while the DEA’s Foreign-Deployed Advisory Support teams (FAST) accompany Honduran forces on anti-drug missions and in the process have been implicated in various killings.<sup>35</sup> In 2011, the U.S. Defense Department trained more than 300 Honduran military personnel and spent nearly US\$90 million to maintain Joint Task Force Bravo, the 600-member U.S. unit stationed at the Soto Cano Air Base.<sup>36</sup> Yet the dangers loom large of further militarization in a region with a tragic history of U.S. intervention and internal conflict, violence and extremely weak and often corrupt institutions.

The ruling Conservative party in Canada has also stepped up its military assistance for counter-drug efforts in Central America. Since 2006, Canadian forces have joined with other countries in an unprecedented increase in military involvement in drug interdiction in Latin America.<sup>37</sup> Though the Canadian government has long participated in naval operations in the Caribbean and has provided radar and reconnaissance patrol aircraft to countries in the region, the commander of Canada’s operational forces, Lt.-Gen. Stuart Beare, recently announced stepped-up efforts in Central America and the Caribbean. “We’re staying connected in the hemisphere, in particular, in capacity-building partners in the Caribbean Basin, sustaining a great effort with Jamaica, reaching into Belize and Guatemala, helping them to build their own capacity, to manage their own security forces and security conditions,” he told the CBC. Canada now has a “forward-deployed operational staging center” in Jamaica and is training its troops in jungle warfare in Belize, as it provides military support to that country.<sup>38</sup>

Canada also participates in ongoing counter-narcotics missions in the Caribbean Sea and the eastern Pacific. Canadian warships and aircraft

have acted as eyes and ears for the U.S.-led Joint Interagency Task Force – South (JIATF-S) to prevent transport of drugs and money by air and sea between South America, Central America, the Caribbean islands and North America.<sup>39</sup> Canadian military aircraft and warships have been involved in interdiction efforts in the Caribbean Sea including assisting the U.S. Coastguard to board vessels and seize illegal drugs. Canadian military aircraft have been involved in surveillance sorties in the region.<sup>40</sup> Canada also participates in Operation Martillo, a multilateral counter-drug interdiction effort in the Caribbean Basin led by the United States, through Operation CARIBBE, which provides Canadian ships and aircrafts to the multilateral initiative.<sup>41</sup> These moves are consistent with Canada's recent objections to Bolivia's reservation on the coca leaf and its return to the 1961 Convention, as well as its opposition to the UNGASS 2016 debate on global drug policy.<sup>42</sup>

For Central American governments and peoples, a fundamental concern is the potential for drug trafficking and organized crime to further exacerbate the region's high levels of crime and violence. Crucial to mitigating the corrosive impact of drug trafficking and other forms of crime are solid institutions, particularly Central American judiciary and police forces, which remain among the weakest in the hemisphere. Yet institutional reform and institution-building are medium to long-term strategies. In the short term, viable strategies to reduce crime and violence and needed in order to give governments the space they need to pursue a longer-term reform agenda. More promising options are focused-deterrence and selective targeting strategies, which have shown some success in reducing violent crime in numerous locations in the United States. According to Vanda Felbab-Brown, these strategies "seek to minimize the most pernicious behavior of criminal groups, such as engaging in violence, or to maximize certain kinds of desirable behavior sometimes exhibited by criminals..."<sup>43</sup> In other words, enforcement efforts are designed to shape criminal behavior in ways that, in this case, discourage violence. For example, police can clearly communicate that

they will target those criminal groups that engage in the most violent behavior and act accordingly. While the amount of illicit drugs available will not necessarily be impacted, homicides and other violent crimes should decline.

## Policy Recommendations

Meaningful drug policy reform will no doubt be a long and messy process, yet demands for reform are steadily growing across the hemisphere. Latin American leaders have played a key role in advancing regional and international drug control debates and some countries, such as Bolivia and Uruguay, are moving forward with significant reforms. Numerous efforts could and should be undertaken to maintain the momentum and advance drug policy debates and reforms:

- President Obama should allow Colorado and Washington to implement the referendums approved by the citizens in those states and should participate constructively in the drug policy debate at home and abroad; in the least, the U.S. and Canadian governments should show greater tolerance for the drug policy debate that has blossomed across Latin America.
- As the drug policy debate continues, there are a series of reforms that can be undertaken now by countries that are in-line with the conventions. Of these, perhaps the most significant are the decriminalization of drug consumption; drug law reform to ensure proportionality in sentencing and alternatives to incarceration for those convicted of low-level, non-violent drug offenses; and the expansion of evidence-based treatment services for people dependent on drugs, which remain woefully inadequate across the region.
- In Central American and other countries facing high levels of violence, law enforcement agencies should consider



adopting focused-deterrence and selective targeting strategies aimed at reducing violence and promoting development, rather than simply focusing on attempts to stifle the flow of drugs to the United States and Europe.

- Countries across the region should support the efforts of the government of Uruguay to create legal, regulated markets for cannabis. Countries should be given the flexibility to experiment with and implement policies that are appropriate for their national realities. In addition, much could be learned from the Uruguayan experience about basic questions such as how to implement regulatory frameworks that avoid, or limit, parallel black markets and the impact of creating legal, regulated markets on the consumption of cannabis, other drugs and alcohol.
- Bolivia's experience to gain international acceptance for the use of the coca leaf in its natural form points to the need for at least the modernization and revision

of the existing international drug control conventions. On the coca issue, the WHO should undertake a review of the coca leaf and consider the possibility to remove it from Schedule I of the 1961 Single Convention on Narcotic Drugs. More broadly, serious convention reform is needed to make them "fit for purpose" and the 2016 UNGASS on Drugs provides an ideal forum for initiating that process.

- Having launched the 2016 UNGASS on drugs, Latin American leaders should take advantage of the opportunity, through their foreign ministries and missions in New York and Vienna, to play a key role in defining its content, ensuring that it maintains a reform-oriented focus.
- At the June 2013 OAS General Assembly meeting in Antigua, Guatemala, the region's Foreign Ministers should include in their final declaration a decision to hold a Special Session of the OAS General Assembly on drug policy in February 2014.

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For decades, Latin American governments largely followed the drug control policies and programs of Washington's so-called war on drugs. Yet, Latin America has recently emerged at the vanguard of efforts to promote debate on drug policy reform. After analyzing the regional debate, national level reforms and impediments to those reforms, this report concludes with concrete policy recommendations that should be undertaken to maintain the momentum and advance drug policy debates and reforms in the region.

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