



PATHS FOR REFORM

PROPOSED OPTIONS FOR
ALTERNATIVE DRUG POLICIES IN
GUATEMALA

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INTRODUCTION

Since the Global Commission on Drug Policy published its report *War on Drugs* in June 2011, the calls for review and reform of the current prohibitionist regime, widely perceived as a failure, have grown in number and intensity. During 2012, President Otto Pérez Molina, President Juan Manuel Santos and President Laura Chinchilla have led this movement, organising and participating in numerous national and international fora, while President José Mujica and President Evo Morales have driven the process of reform in their own countries. Together, they have broken the convention that only *ex-Heads of State* question the reigning orthodoxy.

Driven by undiminished demand in North America and Europe, the illicit traffic in controlled drugs and the violence generated by the traffic and by attempts to repress it, especially in Mexico and Central America, have continued to escalate. The illicit drug trade, and the disputes that it fosters among rival groups for control over territory and routes, leave a wake of conflict, death, corruption and environmental destruction. The increase in demand and the inverted market logic of the prohibitionist system, which is founded on the repression of supply, have caused significant and far-reaching collateral damage, mainly for drug-producing and transit countries.

On the other hand, the distribution of drugs for medical purposes, mainly opiates, is uneven across the globe. Both the licit production and the consumption of drugs for medical purposes are concentrated in a handful of rich, industrialised countries.

Poorer, developing countries thus suffer the vast majority of the side-effects of the current system.

President Pérez Molina has during 2012 played a crucial role in calling for the international community to look afresh at the realities of the War on Drugs, and to search for alternative drug policies which will stem the tide of violence, instability and corruption afflicting many countries, especially those in Latin America. The Beckley Foundation is honoured to have been working closely with the President and other key figures in the Guatemalan government on the development of these proposals. This document, *Paths for Reform*, contains the Beckley Foundation's suggestions regarding the steps which the Guatemalan government might now take to maintain the momentum of the President's initiatives to date.

These proposals are submitted as a contribution to the development of policies oriented towards public health, crime prevention, social harm-reduction and tackling violence. While our proposals have been specifically tailored for Guatemala, we hope that elements of what we suggest may also be of interest to other countries in the region and the hemisphere, and may nurture fruitful discussion and negotiation.

THE PROBLEM OF TRANSIT COUNTRIES

The difficulties afflicting Guatemala and the other states of Central America stem primarily from their situation as *transit countries*, as a land bridge between the sources of cocaine production in South America and the world's greatest market for cocaine – the United States. The attempt over the last 50 years to eliminate the *production* of drugs in South America has demonstrated beyond reasonable doubt that that battle is unwinnable – local successes only result in the transfer of production to other parts of the region (the so-called 'balloon effect').

Similarly, the enormous efforts to interdict *transfer* of these drugs from their areas of production to the North American market have demonstrated that that battle too is effectively unwinnable, even at the cost of considerable collateral damage to the transit countries.

Attempts to choke off *demand* for these drugs in the United States and elsewhere by policing and public education measures have similarly been largely ineffective.

A fourth avenue for ameliorating the sufferings of the transit countries, which remains entirely unexplored, is an alteration in the prohibitionist policy that has been promoted by the USA and has become the foundation of the current global regime.

This is by any standards an ambitious undertaking. Prohibition has deep roots in the theology, history and institutions of the United States. The years immediately following the achievement of independence in 1783 witnessed an extraordinary outbreak of alcoholism, which gave birth to a vigorous temperance movement, culminating in the Volstead Act of 1919, which imposed alcohol prohibition on the entire country. Although this Prohibition was so manifest a failure that its repeal was one of the first acts of the Roosevelt administration in 1933, the intrinsic impracticability of prohibition was not understood, and the organs which had failed to enforce alcohol prohibition transferred their energies to the prohibition of opium, marijuana and cocaine, later enshrined in the UN Drug Conventions of 1961, 1971 and 1988.

Nor have the United States always demonstrated a readiness to accommodate their policy to the needs of their neighbours in Latin America, towards whom their relations have too often been paternalistic.

Nevertheless, the possibilities of bringing about an alteration in US drug policy away from prohibition towards harm reduction or legal regulation are better in 2013 than they have ever been. The failure of the War on Drugs approach, especially in Latin America, is becoming more obvious month by month. The Latin American ex-Presidents calling for a re-appraisal of the War on Drugs have now been joined by the ruling Presidents of Guatemala and Colombia and – with the concurrence of the United States – the Organisation of American States is conducting an inquiry into the Drug Problem in the Americas, which will include an evaluation of current drug policies and an analysis of alternative legal and regulatory frameworks. The experiments in decriminalisation and harm reduction in countries such as the Netherlands, Portugal, Spain and Switzerland have, by and large, been successful. The US States of Washington and Colorado have voted to legalise the possession of limited quantities of marijuana for personal use, and to

regulate its production and distribution and the growth of a licit domestic industry. It is not inconceivable that in his second term President Obama may permit the growth of this domestic industry, and so undercut the Mexican suppliers of low-grade marijuana and seriously curb their profits.

In January 2013, Bolivia successfully completed the process of 're-accession' to the 1961 Single Convention with a 'reservation' on coca-leaf, having 'denounced' (withdrawn from) the treaty with effect from 1 January 2012. This historic step demonstrates the ability of Latin American countries to exercise more independent initiative in respect of their domestic drug policies than had hitherto been suspected. The Uruguayan Government's proposal to legalise the production and distribution of cannabis is a further indication of the shifting attitudes of Latin American leaders.

The international and Latin American context is therefore unprecedentedly favourable for a joint initiative by Latin American countries to press for a change in the drug laws. In our view, Guatemala's interests would be well served by efforts to concert a new approach to drug policy in collaboration with other Latin American governments, and jointly to present their new position to the United States and the rest of the international community.

The Commission set up at the Cartagena OAS summit to investigate and evaluate current drug policies provides one opportunity to advocate reform, but there are no doubt other fora which Guatemala could utilise.

While there are many policies which could be instituted on a national level to mitigate the destructive effects of the current system, we believe that the beneficial effects for transit countries would multiply if a relaxation of prohibition in all countries of the hemisphere could be realised. We therefore recommend that, as reforms in Guatemalan policy are formulated, this ultimate goal should be ever kept in view.

SUMMARY OF RECOMMENDATIONS

1. *Public engagement*

- We recommend that His Excellency Special Ambassador Edgar Gutiérrez lead the process of drug policy reform, with the support of a Core Group (either the *Consejo Asesor de Seguridad*, CAS, or a committee reporting to the CAS). The Group would include representatives from civil society, the Church, business, academics and intellectuals, indigenous groups, and experts in the fields of crime-prevention, public health, human rights, justice, security and democratic governance.
- We recommend that the Core Group convene a network of organisations who would share responsibility for raising knowledge and awareness surrounding Guatemala's problems as a transit country, and for disseminating the Government's reform programme at local level.

2. *Legislative reform, including reform of marijuana control*

- We recommend an in-depth review of international precedents for drug-policy reform.
- We recommend the full decriminalisation of drug possession, including the cultivation of a limited amount of cannabis, for personal use.
- We recommend that the legal distinction between minor drug offences and major offences relating to transnational organised crime be clarified and reinforced, and that sentences for relatively minor drug offences be reduced.
- We recommend that consideration be given to how a regulated market in cannabis might be developed, subject to the addressing of any tensions with the current UN treaty system.

3. *Protocols for police and prosecutors*

- We recommend the development and promulgation of guidelines that prioritise the detection and prosecution of violent and serious crime, and that afford the prosecution of minor drug offences a low judicial priority.

4. *Legalisation of the currently illicit poppy crop*

- We recommend the establishment of a Poppy Commission to evaluate options for converting Guatemala's current illegal poppy crop into a licit crop for the production of opioid medication.
- We recommend that, subject to a satisfactory evaluation by the Commission and to the development of robust controls to avoid diversion of the crop into the illicit market, the Government experiment cautiously with legal growth of the poppy.

5. *Discussions regarding international traffic of cocaine*

- We recommend that the Government continue to take a lead in promoting regional and hemispheric discussions on tackling the traffic of cocaine through Central America.

1: PUBLIC ENGAGEMENT

The Beckley Foundation recommends that the Government of Guatemala initiate a process of awareness-raising within Guatemalan society, in order to gain and expand popular support for the President's critiques of the international prohibitionist system. The process would entail the creation of a critical mass of influential opinion-formers, able to educate the public about the current system of international drug control, its effects on Guatemala and other countries in the region, and the range of alternative national policy options.

Rationale

Viewpoints on controlled substances are frequently influenced by moral positions that are often not founded on scientific evidence. Because of their strong appeal to society, these positions can act as an obstacle to change. One of the main goals of public engagement would be to reduce the impact of dogma and ideology behind the prohibitionist model, and increase the reliance on scientific evidence.

In order to help shape and improve the President's proposals for policy reform, and to promote their dissemination, public acceptance and endurance, it would, in our view, be desirable for the process of reform to involve a wide range of players within civil society. This inclusivity would allow diverse views to be channelled towards the common goal of policy improvement, and would foster trust and consensus, thereby helping to entrench the Government's reforms.

Process

- The Beckley Foundation recommends that HE Special Ambassador Gutiérrez be appointed as the leader of the reform in coöperation with the *Consejo Asesor de Seguridad* (CAS) (or if necessary for institutional reasons, a dedicated committee reporting to the CAS).
- We recommend that – if allowed by the process of election for CAS members – the membership of the Core Group be drawn up to include representatives of civil society including indigenous groups, the Church, business, academics and intellectuals, and experts in the fields of crime prevention, public health, human rights, justice and democratic security.
- The Government may consider it appropriate, and in our view it would be desirable, to convene a public meeting in order to launch its proposals for reform. The public event could be followed by a one- or two-day seminar at which national, regional and international drug policy experts would work together to develop and flesh out a series of options for reform. The seminar could initiate the process of raising public awareness, through the participation of national and international experts.
- We recommend that the CAS organise a series of round-table discussions, in order to create a network of bodies across the country who would share the tasks of raising knowledge and awareness, and of shaping and refining the Government's reform programme at the local level. We advise that these discussions should include

representatives of: the Catholic and Evangelical Churches; indigenous organisations (especially those based in areas where illicit crops are cultivated); the business sector; the armed forces; the health sector; a variety of NGOs with diverse political orientations; universities and academic institutions; the Attorney General and the judiciary; Congress; and the media.

Potential benefits and risks

Benefit	Risk
<ul style="list-style-type: none"> ♦ Make use of broad expertise to develop policy proposals and suggest improvements ♦ Foster the democratic process and generate better conditions for the acceptance, spread and promotion of the government’s reforms through public education and engagement 	<ul style="list-style-type: none"> ♦ Increased politicisation of the issues or a hardening of positions

In order to minimise possible risks, we recommend that:

- the process of engagement be as genuinely inclusive as possible;
- the media and public relations strategy around the President’s reforms emphasise the aims of reducing harms, improving public health and saving money.

2: LEGISLATIVE REFORM, INCLUDING REFORM OF MARIJUANA CONTROL

The Beckley Foundation recommends that the Government give serious consideration to reforms of the *Ley Contra La Narcoactividad* and associated legislation, with a view to moving towards a more health-oriented approach. The Foundation is of the view that reform, within the framework of international norms and precedents, could provide significant societal and public health gains.

Among the legislative reforms that the Beckley Foundation respectfully submits for the consideration of the President and the Government are the following:

- modifications to the Preamble of the *Ley Contra La Narcoactividad*, reinforcing its emphasis on public health and including an element on human rights;
- the full decriminalisation of drug possession for personal consumption, resulting in the removal of all penal or administrative sanctions; this would include the possession of a small number of cannabis plants when cultivated for personal consumption;
- a clearer differentiation between major and minor offences, taking account of the nature and impact of each offence. Minor offences might include, for example, possession, low-level commercial cultivation and transport, or retail sale;

- a clearer differentiation of offences in respect of international trafficking. We suggest that offences might usefully be differentiated according to at least four variables: the kind of substance involved; the amount; the modality of transport; and the degree of responsibility of the offender;
- a reduction in sentences for non-violent, secondary actors. Non-violent actors who play a secondary, disposable role in transnational networks are usually the main targets of enforcement. However, incarcerating them does little to stem the flow of drugs through and between nations, as mules are easily and rapidly substituted. The Government may conclude that alternatives to custody could provide substantial benefits in terms of both cost-effectiveness and public health;
- a relaxation of the regulations governing the medical use of opioids, so that *bona fide* access to necessary medicines, for example via prescription from general practitioners, is not impeded by burdensome controls.

We further recommend that efforts be made to strengthen the focus on public health in drug policy insofar as it relates to individual users, for example by:

- continuing to promote and monitor the existing minimum standards of care (*Reglamento de Normas Mínimas*) for centres that provide treatment services for drug misuse;
- strengthening coördination between the criminal justice system and the Ministry of Public Health and Social Welfare over the treatment of problem drug users;
- working to make effective treatment for problem drug use widely available in the penitentiary system.

Finally, we recommend that Guatemala begin the process of considering how it might move towards a regulated market in cannabis, subject to the addressing of tensions and potential breaches in respect of the current system of international treaties.

Rationale

One of the implications of the current prohibitionist approach enshrined in the United Nations Conventions on illicit drugs and transnational traffic is the promulgation of national laws that create harsh, punitive systems based on incarceration.

Most Central American countries, with the exception of Costa Rica, criminalise drug possession for personal consumption and apply prison sentences which, it may be argued, often cause more harm than the offending. Poverty and social exclusion frequently underlie the involvement of low-level players in domestic distribution and international traffic. Many of these low-level traffickers could be regarded primarily as victims of both social circumstances and the transnational criminal organisations that exploit them. Contact with the criminal justice system, and the experience of incarceration (which has long-lasting effects on the individual and his or her family, as well as on the community) tend to erode social cohesion, reinforce exclusion, and generate violence and crime.

There are persuasive economic arguments for reform. Arresting, prosecuting and incarcerating people for minor drug-related offences consumes economic and human resources that could be re-allocated to dealing with national priorities such as homicide and transnational organised crime. Moreover, criminalisation of possession for personal use not only makes a public health approach more difficult by deterring users from seeking treatment, but also opens up negative spaces of negotiation between users and law-enforcement agencies, creating the risk of petty corruption and extortion. The Government may take the view that legislative reforms that would reduce this risk would be in the national interest, particularly against a background where stability and governance in the region are constantly threatened by transnational organised crime.

There are also public health arguments in favour of reform. Prisons everywhere in the world are a risky environment and a market for illicit drugs. Problematic drug-use and related health problems (such as the transmission of HIV) are prevalent inside the penitentiary system, and are exacerbated by the criminalisation of consumption. We would advise that harm-reduction policies be implemented within prisons as well as outside.

The Beckley Foundation's view is that meaningful reform is possible without overstepping international norms and obligations. Decriminalisation and harm-reduction measures have been adopted in a number of countries in Latin America, Europe and elsewhere. Sixteen US States and the District of Columbia have created regulated markets in medical cannabis.

The evidence coming from those territories that have experimented with decriminalisation is broadly positive. In both Portugal and the Czech Republic, the possession of limited quantities of drugs for personal use is subject to administrative, rather than criminal penalties. In the Netherlands, the use of cannabis is tolerated in 'coffee shops'. All three countries have seen a decline in problematic drug-use, along with an improvement in cost-effectiveness. Similarly, analyses of harm-reduction strategies (substitution treatment, needle exchange, etc.) in Portugal and Switzerland have shown them to be effective in reducing drug-related death and infection.

However, such reforms are not without risk, and therefore both the legislative provisions themselves and the details of their implementation require careful consideration and ongoing review. In particular:

- the decision to prosecute relies on a determination as to whether possession is for personal use or for commercial gain. This determination relies either on legal thresholds or on judicial discretion in each individual case. Where quantitative thresholds are determined in law, it is important that they be not set so low that users and small-scale farmers, mules and dealers are misclassified as major dealers or traffickers (as tends to happen under Mexico's current legislation). On the other hand, where the determination is made by judges or the police on a case-by-case basis, the system is open to serious inconsistencies and the risk of corruption;
- where administrative fines are imposed instead of criminal sanctions, there are risks of "net-widening", as well as of corruption and extortion, particularly if law-enforcement officers lack adequate training, or are unsupportive of the reform measures;

- excessive fines can create problems of additional prosecutions and incarcerations for non-payment;
- decriminalisation should not be implemented in isolation, but in parallel with harm-reducing, health-oriented measures including programmes of education and treatment.

Although the current illicit cannabis market is not as serious a problem as the transit of cocaine, in the light of regional trends, the Guatemalan Government may wish to consider how it would move towards a regulatory model for marijuana. The focus would be mainly preventive, that is, aimed at preventing potential growth in the illicit market and reducing the burden on the criminal justice apparatus in terms of eradication, prosecution and imprisonment.

In our view, the absence of a significant marijuana problem in Guatemala puts the country in a particularly strong position to experiment with cautious policy reform in the direction of state regulation of production and supply of cannabis.

The global consensus that sees the prohibitionist approach as immutable and unassailable is under severe strain. The proposal currently before Congress in Uruguay to create a regulated cannabis market, and the votes to legalise cannabis in Colorado and Washington, are symptomatic of a growing recognition that the UN Drug Conventions are not fit for purpose. Clearly the full implementation of a legally regulated, non-medical market in cannabis would create tensions in the current international treaty system, which would need to be addressed. The Beckley Foundation's Report *Roadmaps to Reforming the UN Drug Conventions* is intended to assist governments and policy-makers with this process. Our respectful advice to the President and the Government is that, as new paradigms are developed to replace universal prohibitionism, it would be to Guatemala's advantage to consolidate its existing position as a world leader in drug-policy reform leading to the adoption of health-oriented, harm-reducing, cost-effective and humane drug policies.

Process

- We recommend that the Government of Guatemala initiate a review of international precedents for drug-policy reform, examining: i) the range of reforms that have been attempted; ii) the international legal difficulties, if any, faced by countries where reform has been implemented; and iii) the available evidence on the efficacy of each programme of reform in terms of public health, the prevalence of problem drug-use, etc. Several reviews of this kind have already been undertaken and the OAS process may add further useful material. The Beckley Foundation would be happy to act as consultant to the Government in this process. The Foundation has an eminent Advisory Board for Latin America, including leading regional and international experts in the fields of health, economics, criminal justice, development and drug policy. We would draw on their expertise in the evaluation of policy reforms in other countries, and in the development of suggestions for legislative reforms that the Government may wish to consider.
- We recommend that H.E. Special Ambassador Gutiérrez, together with the CAS, work on the development of specific legislative proposals in the light of the review's findings. In parallel, we strongly recommend the formulation of systems of education, health-

promotion and harm-reduction to discourage consumption and treat problem users, both outside and within the prison system.

- We respectfully recommend that policy on marijuana be softened. A relaxation of prohibition could begin with a cessation of eradications of small crops and with the promulgation of guidelines specifying that users and small-scale growers and dealers should not be prosecuted if no other crime is committed. We suggest that there is little impediment to an immediate relaxation of marijuana prohibition along these lines, which would support the parallel process of decriminalising possession and cultivation for personal use. While we would advocate a complete removal of penal and administrative sanctions for possession of marijuana for personal use, we also note that decriminalisation may in principle include several alternative, non-criminal ways of penalising possession.
- We recommend that regulations governing the legal handling and prescription of opioid medicines be relaxed in order to improve public access, and that health professionals be supported in using opioids where medically indicated.
- It would be desirable in our view for the legislative reforms to be presented as the product of a national agreement. We therefore recommend that, so far as possible, public consensus be sought for the legislative proposals before a bill is presented to Congress. The proposed reforms have as their principal goals the amelioration of public health and human rights, and an improvement in cost-effectiveness. We recommend that H.E. Special Ambassador Gutiérrez, the Core Group and its network of key players in civil society contribute to a discussion of the initiative that emphasises its aims and principles in terms of public health and security.
- We recommend that the system of public education, engagement and involvement surrounding the proposed reforms include an element aimed specifically at gaining the support and co-operation of the police and the justice system. This recommendation is elaborated as Proposal 3.
- We recommend that the Government give consideration to the development of proposals for a regulated market in medical marijuana along the lines operating in several States of the USA, and investigate what institutional apparatus would be required to create such a market.
- We recommend that the Government explore, where possible in collaboration with international partners, the legal and practical logistics of working towards the creation of a regulated, non-medical market in cannabis.
- We suggest that the discussion be taken forward in Congress with the support of the Board of Security and Justice of the Congress of the Republic.

Potential benefits and risks

Benefit	Risk
<ul style="list-style-type: none"> ♦ Become a regional leader in the design and implementation of drug policies in transit and other countries ♦ Relieve pressure on the police, judiciary and prison system ♦ Reduce the societal impact of criminalising and incarcerating users and low-level farmers, dealers and mules ♦ Improve public health, particularly by creating a separation between the market in cannabis and those in hard drugs ♦ Strengthen the growing international trend in favour of cannabis policy reform ♦ (In the eventuality of a regulated market) provide a sustainable livelihood for farmers in the formal economy ♦ (In the eventuality of a regulated market) raise revenues through State monopoly control of medical, and potentially other, regulated cannabis markets 	<ul style="list-style-type: none"> ♦ “Net-widening” and inappropriate classification of minor offenders as traffickers ♦ Corruption ♦ Increased willingness of users to be exploited by organised criminals, if they know that they do not face severe penalties ♦ Frictions between the Government of Guatemala and international agencies responsible for verifying UN treaty compliance

In order to minimise possible risks, we recommend that:

- legislative reforms be designed so that they can be i) kept under constant review and evaluation, and ii) easily modified or reversed if necessary;
- measures of efficacy be adopted that emphasise public health and harm reduction, availability of treatment, and cost effectiveness, in place of the current system which measures success according to the numbers of convictions or the quantities of drugs seized;
- incentives be put in place so far as is possible to encourage the support and coöperation of the police and the judicial system;
- international partners be sought for discussions on legislative reform, with a view to the cultivation of strategic multinational alliances that command a degree of leverage on the international stage;
- reassurances be given, where appropriate, that parties are acting with due regard to their obligations under the 1961, 1971 and 1988 UN Drug Conventions (though this should not preclude the judicious consideration of policy options that may create tensions with the current international treaty system).

3: DEVELOPMENT OF PROTOCOLS FOR POLICE AND PROSECUTORS

The Beckley Foundation recommends the adoption of guidelines for the *Policía Nacional Civil* (PNC) and for the *Fiscalía General de Guatemala*. The protocols would:

- prioritise the prevention and detection of violent and serious crime;
- provide guidance on the prosecution of minor drug offences on the basis that such offences are afforded a lower judicial priority and that the response should be guided by principles of harm-reduction;
- advise law-enforcement agencies that *bona fide* medical use of controlled drugs, including opioid analgesics and cannabis, should never be prosecuted.

We suggest that the Government may wish to draw up and promulgate these guidelines with a degree of urgency.

Rationale

As we have argued, the success of the Government's reforms will depend significantly on their implementation. We therefore recommend that legislative change be accompanied by guidance on how the new laws are to work in practice. In the meantime, we suggest that the process of reform can begin immediately through the development of new guidelines on the implementation of the existing law.

Explicit guidelines can improve public confidence in the agencies of law-enforcement by i) contributing to improved consistency in the planning and execution of enforcement activities; and ii) regulating the relationship between public officers and offenders.

Process

- We suggest that the development of the guidelines could be led by appointed experts in coöperation with the *Instituto de Estudios Comparados en Ciencias Penales* and the *Instituto Nacional de Estudios Estratégicos en Seguridad*. The Government may find it useful to consult representatives of countries where similar guidelines are already in existence; the Beckley Foundation is happy to facilitate contacts between Guatemalan officials and their counterparts in other countries.
- We recommend a process of training for the officials who will be using the guidelines in their daily work.
- The process of developing and applying the protocols does not need to be public. However, in our view it would be desirable for President Pérez Molina and his senior officials to introduce the main points of the guidelines, and the rationale behind them, into their speeches and other communications in both national and international fora. In that way, the gradual implementation of the protocols and the subsequent legislative reforms would be part of a larger scheme, in which national and international dynamics are interwoven. The reforms could thus be presented as part of a strategy to reduce the negative side-effects of the international drug control system on Guatemala.

Potential benefits and risks

Benefit	Risk
<ul style="list-style-type: none">♦ Facilitate the adoption and implementation of subsequent measures, including legislative reform♦ Allow systematic record-keeping and monitoring of progress♦ Improve consistency in implementation and thereby increase public confidence and improve the relationship between enforcement officials and the public	<ul style="list-style-type: none">♦ Expenditure of resources on the development and dissemination of the protocols♦ Lack of support and coöperation from law enforcement officials

In order to minimise possible risks, we recommend that:

- as part of the programme of public engagement, the State's security and law enforcement agencies be fully engaged in programmes to educate the public about the purposes and value of the reforms

4: LEGALISATION OF THE CURRENTLY ILLICIT POPPY CROP

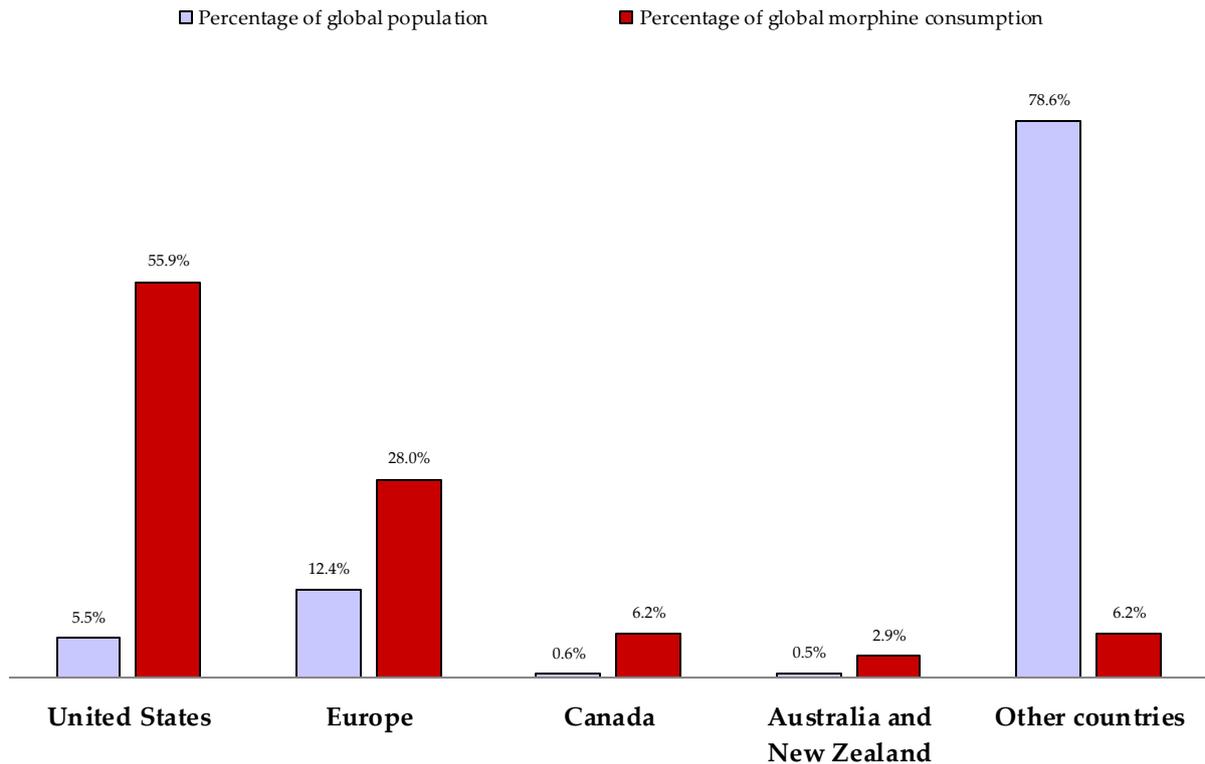
Considering the growing presence of *illicit* poppy crops in Guatemalan territory, we respectfully recommend that the Government of Guatemala consider permitting *licit* poppy cultivation for medicinal use, initially for domestic purposes. The government should start with a pilot project and keep the International Narcotics Control Board (INCB) informed of these activities.

Rationale

The Single Convention on Narcotic Drugs declares that it is born out of a concern for the health and welfare of mankind. In order to promote these aims, it pursues two complementary goals: to reduce drug dependence and to guarantee universal access to indispensable opioid medicines.

The total global consumption of legal opioids increased significantly after 1986, when the World Health Organization (WHO) introduced the Analgesic Ladder for cancer pain relief. However, the increase in consumption occurred principally in a limited number of mainly industrialised countries that represent only a small part of the world's population. More than 90% of the global consumption of opioid analgesics occurs in Australia, Canada, New Zealand, the United States of America and several European countries. By contrast, 79% of the world's population live in countries with low or non-existent access to controlled medicines and have inadequate access to treatment for moderate to severe pain.

MORPHINE CONSUMPTION, 2009



Source: WHO, *Ensuring balance in national policies on controlled substances. Guidance for availability and accessibility of controlled medicines*, 2011, www.who.org, p 15.

The INCB uses a system of estimation to evaluate countries' levels of consumption of opioid analgesics. The unit of measurements is the S-DDD, which stands for "defined daily doses for statistical purposes". This value is used for statistical analysis and does not represent a recommended prescription dose. Consumption of opioid analgesics in quantities between 100 and 200 S-DDD per million inhabitants per day is considered inadequate. Consumption of opioid analgesics in quantities equal to or less than 100 S-DDD is considered very inadequate. According to this definition, 21 countries have inadequate consumption levels and more than 100 other countries have very inadequate consumption levels – among them Guatemala and many of its neighbours.

Consumption of opioid analgesics(S-DDD/million inhabitants/day)

Global ranking	Country	Consumption
72	Costa Rica	281
89	Panama	149
95	El Salvador	116
116	Guatemala	59
124	Dominica	50
126	Nicaragua	48
132	Honduras	34
136	Dominican Republic	25
156	Haiti	8
Regional Average		75

Source: INCB, *Report of the International Narcotics Control Board on the Availability of Internationally Controlled Drugs: Ensuring Adequate Access for Medical and Scientific Purposes*, 2010, www.incb.org.

Poppy is legally cultivated in eighteen countries: the five largest producers are Australia, France, Turkey, India and Hungary. The others (in alphabetical order) are Austria, China, Germany, Japan, Macedonia, the Netherlands, New Zealand, Poland, Romania, Slovakia, Spain, Ukraine and the United Kingdom. Illicit crops are concentrated in Afghanistan, Myanmar, Mexico, the Lao People's Democratic Republic, Colombia and a few other countries. Interdiction efforts based on eradication have not only proved to be unsuccessful in limiting the spread of illicit crops (because of the 'balloon effect'), but have also led to the criminalisation of poverty through the prosecution and incarceration of farmers. Local communities find themselves trapped between ruthless criminal networks and the repressive forces of the State. Children participating, together with their families, in the harvesting of poppy plants, grow up in an implicitly illegal environment, not because their families are criminals, but because the rural activity they carry out for subsistence is criminalised under the current system.

Currently, many developing countries lack access to essential medicines. The possibility of cultivating a licit poppy crop without infringing international obligations represents a valuable untapped potential.

The Government of Guatemala could join those countries that licitly cultivate poppy, and do so within the limits of the Single Convention and in close consultancy with countries and industries already experienced in this market, informing the INCB, as required under the conventions. Cultivation and production of opioids would be carried out under State

control, according to the principles established in the Single Convention. The objectives of the reform would be i) to improve access to opioid medication in Guatemala and (in due course) other countries in the region; ii) to provide a sustainable alternative for farmers currently involved in illicit poppy cultivation; iii) to generate a revenue stream for the country; and iv) to deprive criminal cartels of a source of illicit products. We submit that security resources currently deployed in eradication might be more usefully used to secure a licit crop that could provide significant public health benefits.

Process

- The Beckley Foundation proposes the establishment of a Poppy Commission to i) estimate the extent of the current illicit crop; ii) monitor current prices of poppy on the illegal market; iii) identify the key actors involved in cultivation; iv) study the operation of the licit poppy crop in countries where it operates; and v) engage in dialogues with local farmers concerning the legalisation of the crop. In particular, the Commission could seek advice on how to carry out the process of legalisation, and on the security that would be needed in order to minimise diversion of the crop into the illicit market. We recommend that the Commission should include academics, security personnel, agriculturalists, environmental scientists and representatives of indigenous and church organisations operating in San Marcos province.
- We recommend that UN advice be sought on the contribution that a legal poppy crop in Guatemala could make – and on the assistance available from the UN – with respect to: i) Millennium Development Goal 5 (Improve Maternal Health); ii) Millennium Development Goal 8, Target 8E (In cooperation with pharmaceutical companies, provide access to affordable essential drugs in developing countries); iii) the Universal Declaration of Human Rights, Art. 25 (Right to Health); and iv) the International Covenant on Economic, Social and Cultural Rights, Art. 12 (Right to Health).
- While the ultimate aim of the reform would be to convert the whole of the current illicit cultivation into a licit production for medicinal purposes, we recommend that this conversion should be regarded as a long-term goal. We also take the view that cultivation for use within Guatemala is logistically and legally simpler in the first instance than cultivation for export. We therefore recommend that the Government start with a pilot project involving the growth of a limited quantity of poppy, for national use, at a single site (or a small number of sites) which can be relatively easily secured. The evaluation of this project would include i) an assessment of the price that the State would be able to offer farmers for a licit crop, and of how that compares with the price available on the illicit market; ii) an analysis of the logistics of securing the licit crop, and of how to minimise the risks of corruption among those charged with safeguarding the crop; and iii) an analysis of how the licit market functions alongside the illicit market: in particular, we recommend that the Government assess ways of mitigating the risk that new illicit farms might be created as some of the existing farms are converted to legal production.
- Subject to satisfactory evaluation and monitoring by the Guatemalan Government and the INCB, we recommend that the pilot project be expanded with a view to the gradual

conversion of the current, illicit crop for legal production. The Government may also wish to consider working towards the creation of an export market – initially, we would suggest, to Guatemala’s close neighbours.

Potential benefits and risks

Benefit	Risk
<ul style="list-style-type: none"> ♦ Provide a sustainable livelihood for farmers in the formal economy ♦ Provide a new revenue source for Guatemala, some of which could be directed towards prevention and treatment as part of an integrated, health-oriented national policy ♦ Improve access to medication in Guatemala and potentially the region ♦ Free resources currently consumed on eradication, and divert them into securing the licit crop 	<ul style="list-style-type: none"> ♦ Tensions with the INCB based on i) the current illegal status of the crop and ii) a perceived shortage of institutional capacity to prevent diversion of the crop to illicit channels ♦ Spread of the illicit crop to other areas

In order to minimise possible risks, we recommend that:

- mechanisms to secure the crop and prevent its diversion into the illicit market be carefully considered, adequately resourced and transparently monitored;
- the initial pilot project take place in an area where a good collaboration with the local community can be reached, leading to an element of social control to prevent diversion.

5: REGIONAL DISCUSSIONS ON THE TRAFFICKING OF COCAINE

The major drug problem faced by Guatemala is the traffic of cocaine. Given that this grave and pernicious problem cannot be tackled without international coöperation, we commend the lead being taken by the Guatemalan President and Government in promoting regional dialogue on this matter, and recommend that the Government continue this process, using every appropriate avenue of diplomatic communication and negotiation.

Rationale

Approximately 85% of cocaine entering the US is said to go through Central America.

After the dismantling of the cartels of Cali and Medellín in the 1990s, the region has witnessed the gradual penetration of Mexican groups: the Gulf Cartel, the Sinaloa Cartel and the Zetas, the latter being the main security concern. Data from the UNODC show that, since the late 1990s, the stricter interdiction efforts on the Caribbean routes have led criminal organisations to intensify the use of the Central American corridor.

The illicit trafficking of cocaine in a prohibitionist context often leads to an increase in local consumption. Local groups can be paid in kind by transnational networks, and then be responsible for distributing the drugs in local markets. Although it would be simplistic to argue that demand is driven primarily by supply, it is clearly the case that where a supply is readily available, new demand can be fostered. This problem could arguably be mitigated if the transit of drugs did not depend on underground networks.

Similarly, the illicit market fosters competition over access to drugs, territories and trafficking routes, which in turn leads to increased violence and traffic in illicit arms.

The problems arising from cocaine production and traffic cannot be tackled by any one country acting alone. If these serious challenges are to have any hope of solution, then regional and international collaboration is not just an ideal but a necessity.

Process

- The Beckley Foundation recommends that ongoing regional and hemispheric discussions concerning the international traffic of cocaine be continued and promoted. We suggest that H.E. Special Ambassador Gutiérrez be given the necessary resources to lead and coördinate this effort.
- We submit that it could be immensely valuable if a regional concordat of some kind could be reached. The currently ongoing OAS process will hopefully provide pointers to such a concordat. This should ideally be implemented and evaluated in preliminary form in time for UNGASS 2016.
- We recommend that participants in regional discussions be encouraged to explore all possible policy options, even if those options may currently be impermissible under the UN Drug Conventions – as would be the creation of a *legal, regulated* market in a currently controlled substance. Options for harm-reduction on the supply-side need to be investigated, including prioritising violence-reduction over interdiction efforts (as also appears to be President Peña Nieto’s intention). President Pérez Molina has suggested the possible decriminalisation of regional trafficking as one option worthy of consideration. However, this would clearly be impossible without regional agreement. Moreover, there is a risk that any relaxation of enforcement by the State’s security apparatus would be taken as an invitation to criminal networks to consolidate their power.
- Should a group of parties decide that it would be in their shared national interests to pursue policy options that may create tensions within the international prohibitionist regime, we respectfully recommend that judicious but determined efforts be made to address these tensions. The Beckley Foundation’s Report *Roadmaps to Reforming the UN Drug Conventions* is intended to assist policy makers and governments with this process. The Foundation’s Advisory Board for Latin America may also be able to contribute analysis of the potential benefits and risks of given proposals.

Potential benefits and risks

Benefit	Risk
<ul style="list-style-type: none">♦ Reduce violence related to the international traffic of cocaine♦ Reduce profits of criminal cartels♦ Reinforce regional alliances♦ Demonstrate the value of regional initiatives, and the benefit of challenging the constraints imposed by the UN Drug Conventions where the challenge is in the national interest	<ul style="list-style-type: none">♦ Perception of relinquishing control to transnational organised criminal networks♦ Perception of challenging the UN drug control regime

In order to minimise possible risks, we recommend that:

- regional discussions on the traffic of cocaine be separated where appropriate from other diplomatic communications, so that any political differences that may exist in other policy areas do not inhibit the formation of strategic multinational alliances that command a degree of leverage on the international stage;
- reassurances be given, where appropriate, that parties are acting with due regard to their obligations under the 1961, 1971 and 1988 UN Drug Conventions (though this should not preclude the judicious consideration of policy options that may create tensions with the current international treaty system);
- any relaxation of enforcement be meticulously planned, clearly circumscribed and carefully monitored.

CONCLUDING REMARKS

The proposals presented in this document could for the most part be undertaken under the provisions of the UN Drug Conventions, to which Guatemala is a party. The creation of a regulated non-medical market in marijuana would create legal tensions with the existing treaty obligations that would need to be addressed. However, in the light of recent international developments, such a change may now be within the realm of possibility.

The Beckley Foundation recognises that, despite the potential benefits of drug policy reform, fostering consensus on the necessity for change is not easy. The Foundation welcomes the vanguard role that Guatemala is playing on the world stage, under the leadership of President Pérez Molina, in promoting national and international awareness of the high costs of the current global prohibitionist regime and of the urgent need for a new approach.

In order to help shape, refine and promote the President's reform proposals, the Beckley Foundation recommends that a national debate on drug policy reform, involving all sectors of society – the Government, civil society, the Church, indigenous groups, the judiciary, health professionals, security experts, business, academia and the public in general – be initiated. The national debate can simultaneously move outwards to Guatemala's

neighbours and beyond, with a view to exploring the potential for multinational understandings and collaborations.

Further informal intergovernmental meetings will be essential to explore potential policy options and the alliances that could be built around them in the region. The continuing engagement in Latin America of the Global Commission; the OAS study and scenario planning exercise; the regional conferences organised by Intercambios; the informal policy dialogue series organised by the Transnational Institute and the Washington Office on Latin America; the proposal of the Beckley Foundation to convene a meeting of Latin American Presidents, potentially to be hosted by President Jimmy Carter; and the development of this proposal to include key global business leaders at a Tikkal summit – all represent relevant processes that may help bring Latin American dynamics to a turning point in global drug policy history.

11 January 2013