

ILLICIT DRUGS MARKETS  
AND  
DIMENSIONS OF  
VIOLENCE  
IN GUATEMALA



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## Preface

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The idea for the Beckley Foundation's *Global Initiative for Drug Policy Reform* came to me while disseminating the Foundation's Global Cannabis Commission Report, *Cannabis Policy: Moving Beyond Stalemate*, in Washington, DC and Latin America in 2010.

In November 2011, following 18 months of preparation, the *Global Initiative* was launched at a Meeting at the House of Lords. It brought together high-level representatives from the *Global Commission on Drug Policy* and from 14 countries which had either introduced drug policy reform or were interested in learning about it from the experience of other countries. The launch was co-hosted by the All-Party Parliamentary Group on Drug Policy Reform, which had been set up in order to lend parliamentary support to the *Global Initiative*.

To coincide with the launch, the Foundation published a Public Letter calling for an end to the War on Drugs and for a thoroughgoing re-examination of the prohibitionist approach. The Letter was initially signed by seven former Presidents (among them President Jimmy Carter), twelve Nobel prizewinners and a host of international luminaries from the worlds of politics and diplomacy, academia, business and the arts.

In April 2012 I was invited by President Otto Pérez Molina to visit Guatemala in order to talk with him about drug policy reform. Since coming to power in January 2012, the President had been the leading global spokesman in favour of drug policy reform, drawing unprecedented international attention to the devastating effects of the current prohibitionist policies on Guatemala and other drug-producing and transit countries in the region.

At our meeting, the President requested that I establish the *Beckley Foundation Latin American Chapter* in Guatemala, in order to advise him and his key ministers on drug policy reform. The President requested that the Beckley Foundation should:

- develop a series of alternative drug policy options aimed at reducing the violence and corruption, and the harms to health and security, suffered by Guatemala and other countries as a result of the current policies based on the eradication and interception of supply
- produce a report analysing the impact of current prohibitionist drug policies on Guatemala and the wider region
- convene an Advisory Board of the world's leading experts to help in the development of proposals for reforming national and international drug policies
- raise Guatemalan and international public awareness of the urgent need for drug policy reform
- facilitate confidential, high-level drug-policy meetings among Heads of State and global leaders in other fields.

The *Beckley Foundation Latin American Chapter* was launched at a meeting at the Presidential Palace in July 2012, at which President Pérez Molina became the first incumbent Head of State to sign the Beckley Public Letter. Also in 2012, the Public Letter was signed by President Juan Manuel Santos of Colombia.

In January 2013, I presented to the President, his Foreign Minister and other key advisors our initial report: *Paths for Reform. Proposed Options for Alternative Drug Policies in Guatemala*. The President had requested this document in order to provide new ideas and inform his presentations at the World Economic Forum in Davos and other international meetings. A summary of the proposals contained in *Paths for Reform* appears at the end of the current Report.

The President and his advisors were enthusiastic about the Beckley's proposals, and announced them at Davos and other international fora. In June 2013, Guatemala hosts the General Assembly of the Organization of American States, which will conclude with a joint Declaration. We are honoured that in the draft Declaration prepared by the Guatemalan Government some of the Beckley Foundation's policy proposals were included, such as:

- legalising certain crops for medicinal purposes (e.g. the poppy crop to produce analgesic medication)
- learning from jurisdictions that have decriminalised drug possession and personal use
- involving local communities in order to raise public confidence in the new policies
- improving the procedures and the professionalism of state institutions responsible for drug policy implementation
- improving multinational cooperation on drug policy within the hemisphere.

Our second report is contained in this volume, *Illicit Drug Markets and Dimensions of Violence in Guatemala*, and analyses the effects of the present prohibitionist regime on the security and stability of the country. We hope that it will be a useful resource, collating publicly available information from sources such as the UN, the OAS and the WHO with novel data collected through interviews with key figures both within Guatemala and internationally by the Beckley Foundation's researcher on the ground, Dr Corina Giacomello, who is also lead author of this report.

At my meeting with President Pérez Molina in January 2013, I pointed out that we are really fiddling at the edges of the problems until we grasp the central issue of the illegal production, traffic and use of cocaine and its derivatives, which currently is responsible for most of the drug-related violence and corruption in the region and for the power of the criminal cartels. I suggested that our third report for Latin America should be on *Coca, Cocaine and its Derivatives: Harm Reduction through Decriminalisation and Regulation*, with the aim of opening up a space for debate around alternative policies, including regulatory options, in order to reduce the overall harms caused by cocaine and its derivatives, as well as by the current policies of prohibition. The President was keen to develop this idea, and I have recently started work on the project, which is due to be completed in 2014. While I was in Colombia for the ISSDP conference in April 2013, I discussed the project and invited the leading policy experts on Latin America to join me in grappling with this difficult problem. Amazingly, it has not been tackled before, as the thought of regulating cocaine is taboo. Real solutions are obviously impossible without international agreement, but at least one can start the process of visualising alternative approaches for each stage of the chain from production to transit to supply and consumption, and attempting to evaluate what their effects might be. Sadly, due to the strait-jacket of the international Drug Conventions of 1961, 1971 and 1988, experimentation with regulated markets – even locally – has been impossible, so that there is no base of information upon which to build the foundations of

the new structure. Hopefully in the future there will be a move towards greater flexibility within the Conventions so that alternative models of control can be carefully experimented with at a local level and evaluated.

Towards furthering high-level regional discussion and encouraging cooperation, in September 2012 I proposed the idea of convening a select gathering of Latin American Presidents, to be chaired by President Jimmy Carter. President Pérez Molina responded favourably to this idea and, speaking at Davos together with George Soros, he announced that a two-day summit would be held at the ancient Mayan temple of Tikal, Guatemala, in the second half of 2013. Following an initial, confidential meeting of Presidents, to be chaired by President Carter, there will be a meeting between the Heads of State and global business leaders, which will highlight the damage brought about by the current prohibitionist policies to the stability of the countries involved, and hence to inward investment and economic development. The Beckley Foundation is honoured to be working with President Otto Pérez Molina, his Foreign Minister Luis Fernando Carrera Castro and other key advisors on plans for the Tikal Summit and alternative approaches to drug policy reform.

Amanda Feilding  
Director, the Beckley Foundation  
May 2013



# Introduction

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## 1. THE INTERNATIONAL CONTEXT

- 1.1 The year 2012 witnessed a paradigm shift in terms of drug policy. The questioning of the prohibitionist system has witnessed huge steps forward. A Latin American country, Uruguay, has been the first to promote the legalisation of all uses of marijuana, and two States of the United States, Colorado and Washington, actually voted to legalise marijuana (within certain limits) in November 2012.<sup>1</sup> These decisions represent a major challenge to prohibition and, perhaps, the beginning of a domino effect that might lead to the gradual regulation of all uses of marijuana worldwide.<sup>2</sup> The policy shifts certainly represent a change in paradigm, and further increase the need for and the legitimacy of a thorough revision of international drug policy.<sup>3</sup>
- 1.2 One of the leading figures behind the advances of 2012 is Otto Pérez Molina, the President of Guatemala who, since the beginning of his mandate (2012–2016), has been playing a determinant role in pushing forward the idea that the current system must be questioned.
- 1.3 Since coming to power, in January 2012, President Otto Pérez Molina has attracted world attention with his statements about the urgent need to change the approach to drug policy. In March 2012, the President summoned a meeting in Antigua, Guatemala, called “New Routes against Drug Trafficking”. At this meeting, President Pérez Molina presented four possible regional strategies.<sup>4</sup>
- 1.4 On the same occasion, he pointed out that 15% of the prison population in the region is accused of drug consumption, and that the decriminalisation of consumption and possession could help relieve pressure on the penitentiary system. Although all Central American presidents initially accepted the invitation to Antigua, the Presidents of El Salvador, Honduras and Nicaragua subsequently cancelled – very likely as a result of US diplomatic pressure, including tours of the region by Vice-President Joe Biden and Secretary of State for Homeland Security Janet Napolitano.

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<sup>1</sup>For a detailed review of international cannabis policy, see the 2008 Report of the Beckley Foundation’s Global Cannabis Commission, *Cannabis Policy: Moving Beyond Stalemate* (re-published in 2010 by Beckley Foundation Press together with Oxford University Press). The Report includes a *Draft Framework Convention on Cannabis Control*, based on the WHO’s *Framework Convention for Tobacco Control*, which provides guidance on how an international agreement could be framed in order to allow greater flexibility than the current system. See <http://www.beckleyfoundation.org/Cannabis-Commission-Report.pdf>.

<sup>2</sup>In this context, the Beckley Foundation has commissioned and undertaken a *Cost Benefit Analysis of a Regulated and Taxed Cannabis Market in England and Wales*. This Report is due to be published in June 2013. While the analysis focuses on the UK, it is hoped that the methodology and the principles identified in the Report will also be valuable in the development of alternative cannabis policies in other countries.

<sup>3</sup>The Beckley Foundation Report *Roadmaps to Reforming the UN Drug Conventions* (2012) provides guidance on different ways of reforming the international drug-control regime in order to permit countries greater flexibility to experiment with alternative policies, including clear decriminalisation and/or the creation of strictly regulated, legal, non-medical markets. See [www.beckleyfoundation.org/Roadmaps-to-Reform.pdf](http://www.beckleyfoundation.org/Roadmaps-to-Reform.pdf).

<sup>4</sup>See Martin Jelsma, “Chronicle of a debate foretold”, April 2012, [www.tni.org](http://www.tni.org).



- 1.5 President Pérez Molina unleashed a debate that spread like wildfire. In April 2012, the sixth Summit of the Americas took place in Cartagena, Colombia. The host, President Santos, added to the agenda the issue of alternative strategies to address problems related to illicit drugs. At the conclusion of the summit, the Inter-American Drug Abuse Control Commission (CICAD) was tasked with the mission of investigating the current hemispheric situation in respect of illicit drugs and related phenomena, and elaborating possible future scenarios and alternative policies.
- 1.6 In September 2012, Otto Pérez Molina attended the 67th United Nations General Assembly in New York. On that occasion, he developed his thoughts on the international system of substance control and the inadequacy of the international conventions on illicit drugs and international traffic. He stated that 40% of the homicides occurring in Guatemala are a consequence of problems related to international traffic of illicit drugs. He emphasised that his Government is compelled to use scarce economic resources to fight transnational groups dedicated to the trafficking of drugs from the South American producing countries to the Northern consumer markets. He also acknowledged that Guatemala has become a producing country. President Molina said that the system of drug control devised 50 years ago has not had the expected results. The markets for illicit drugs have expanded and diversified. He invited the United Nations' member states to review the conventions and their outcomes. He also reassured the international community that, since drug policy is a transnational topic, Guatemala would not take unilateral action, but would seek to develop better and more effective strategies in consultation with the international community.
- 1.7 At the Assembly, the then President of Mexico, Felipe Calderón (2006–2012) proposed that the United Nations hold a Special Session to review current drug policy.
- 1.8 In early October 2012, Mexico, Guatemala and Colombia made public a joint declaration, in which they reassert their position *vis-à-vis* transnational crime and the limitations of the current international approach to drugs. Point 9 of the Declaration argued that nation states' fight against transnational crime should be implemented according to the principle of shared and differentiated responsibility. This, and much of the rest of the declaration, seems like an implicit call to the United States and the international community to give more support to producing and transit countries, and to acknowledge that many of these nations' problems in terms of violence are a consequence of a) the demand from the consumer markets, and b) the international interdiction system, which is based on combatting supply, thus placing most of the burden on the producing and transit countries, which also happen to be developing ones. Point 10 is perhaps the most interesting, since it invites the United Nations to analyse all the possible alternative drug policy options, including regulatory market measures.
- 1.9 In November 2012, a new Joint Declaration was presented, this time signed by Presidents Felipe Calderón of Mexico, Laura Chinchilla of Costa Rica, and Porfirio Lobo of Honduras, and Prime Minister Dean O. Barrow of Belize. President Pérez Molina also expressed support for the declaration, but could not attend its public

presentation in Mexico City, because of a recent earthquake which obliged him to stay in Guatemala. The Joint Declaration concerned the strengthening of cooperation against transnational organised crime, hence it placed less emphasis on drug policy – although it called on the UN to organise a General Assembly session by 2015 to discuss specifically and thoroughly the current drug policies and their impact.

- 1.10 At the end of November 2012, the 22nd Inter-American Forum took place in the Spanish city of Cadiz. President Molina cancelled his participation because his efforts were focused on the reconstruction of the areas affected by the earthquake. The representatives of Central American countries and Mexico emphasised that organised crime, drug trafficking, money-laundering and the trade of illegal weapons threatened the social and economic stability of their countries. These considerations were taken into account and included in the final Declaration, which reiterated the need to improve coordination in the fight against transnational organised crime (drug trafficking, human trafficking and the illegal arms trade).
- 1.11 A week later, the General Assembly of the United Nations approved Mexico's proposal, and announced that a Special Session on Drugs will take place in 2016.
- 1.12 In December, the Ambassadors of Guatemala, Honduras and El Salvador to Argentina stated that it is necessary to examine alternatives to the prohibitionist system, including differentiated regulation for different types of drugs.
- 1.13 2013 seems to be following and amplifying the trends of 2012. In January, Bolivia successfully re-acceded to the 1961 Single Convention with a reservation on coca-leaf.
- 1.14 At the World Economic Forum in Davos, on January 24, President Pérez Molina declared that drug policy must be reformed and that each drug should be treated differently under the umbrella of a regulated market. He also said that Guatemala may initiate the legal cultivation of poppy for medical purposes, which is one of the proposals that were presented by the Beckley Foundation to the President and to representatives of his Government a week before the forum. Since Davos, President Pérez Molina has mentioned the possibility of legalizing poppy crops in several fora and interviews with international media. Along with other Beckley Foundation proposals, the legalisation of certain illicit crops for medical purposes is reflected in the draft Declaration for the Organization of American States (OAS) General Assembly in June 2013.
- 1.15 In Colombia, President Juan Manuel Santos announced new measures that hopefully will improve the country's drug policy. Justice Minister Ruth Stella Correa announced that the Government of Colombia will present to Congress a bill that would reform the current drug law and that would include, among other things, the decriminalisation of possession of synthetic drugs such as ecstasy for personal consumption. The process of reform also includes the creation of an Advisory Commission on Drug Policy, consisting of prestigious and influential critics of the current repressive approach to drug policy, such as President César Gaviria (chair of the Commission), General Naranjo and the academics Daniel Mejía and Rodrigo

Uprimny. The task of the Commission is to analyse the last decade of drug policy in Colombia, evaluate it and advise what direction it should follow.

- 1.16 At the end of February, the Guatemalan Foreign Minister, Luis Fernando Carrera, presented to the OAS in Washington the main theme and the subtopics to be discussed at OAS General Assembly in Antigua, Guatemala, on 6–8 June. The leading theme is “Alternative Strategies to Fight Drugs” and the five subtopics are: a) strengthening the public health system for prevention and addiction; b) reducing homicides and crimes connected to drug trafficking; c) promotion of local economic development and legalization of crops; d) reduction of arms trafficking and of money laundering; and e) decriminalisation of consumption or of certain aspects of consumption, to reduce the prison population.
- 1.17 Since last year, President Pérez Molina’s speeches have materially contributed to the forward move in the international debate against prohibition. The proclamation of public declarations is also a good sign, as it demonstrates enhanced coordination and joint efforts between countries that share a similar burden. In this respect, it would be encouraging were Guatemala and its neighbours to combine their critique of the international system with local and regional initiatives in terms of drug policy reform.
- 1.18 The Beckley Foundation has had the honour to work closely with the Government of Guatemala. In July 2012, President Pérez Molina and the Beckley Foundation joined forces. In a public act at the Presidential Palace in Guatemala City on 3 July, the President officially inaugurated the Beckley Foundation Latin American Chapter in Guatemala. At the same event, the President became the first incumbent Head of State to sign the Beckley Foundation’s Public Letter, in which the failure of the current international drug prohibition system is acknowledged by former Heads of State, Nobel prizewinners a host of other international luminaries. In December 2012, the President of Colombia, Juan Manuel Santos, also signed the Public Letter.<sup>5</sup>
- 1.19 At the same event, the Beckley Foundation committed itself to develop two reports: this report and a second report containing proposals for drug policy reform.
- 1.20 This first report specifically analyses the characteristics and the effects of illicit drug markets (production, manufacture, traffic and consumption) and current prohibitionist drug policies in Guatemala. We approach the national context from an international and regional perspective. This report also sets the basis for the elaboration of alternative policies, whose aim is to help reduce the collateral effects of prohibitionist policies in Guatemala.
- 1.21 The second report, *Paths for Reform. Proposals for Alternative Drug Policies in Guatemala*, suggests alternative approaches to drug policy under five main headings. These proposals are tailored to the specific conditions of the country, taking into account

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<sup>5</sup>See [www.beckleyfoundation.org/public-letter](http://www.beckleyfoundation.org/public-letter).

cultural and institutional nuances that might foster, or impede, their approval and implementation.<sup>6</sup>

- 1.22 The first and second reports are two interlinked steps of public policy building, written for the Government of Guatemala and the international community, especially those individuals or organisations that operate in the sphere of drug policy.

## 2. GUATEMALA'S CURRENT CONTEXT

- 2.1 Guatemala is the largest Central American country. It has a population of about 14 million people, of whom about 50% live in rural areas.<sup>7</sup> Between 40% and 50% of the population belong to one of the more than twenty indigenous groups living in the country.
- 2.2 Guatemala is considered a lower-middle income country: the Gross National Income per capita is US\$ 4,650, much lower than the regional and the global averages (respectively US\$ 24,620 and 10,869). According to the World Bank,<sup>8</sup> Guatemala is the biggest economy in Central America but is among the Latin American countries with the highest levels of inequality. The country's social indicators often fall below those of countries with lower per capita incomes.
- 2.3 Guatemala belongs to the group of countries with a medium Human Development Index (HDI), ranking 133 out of 187 countries.<sup>9</sup> Between 1980 and 2011, the country's HDI rose by 34%. Nevertheless, Guatemala remains the Latin American country with the lowest HDI, together with Nicaragua. The HDI of non-indigenous, urban populations is high and medium, whereas indigenous people living in rural areas have a low and very low HDI.<sup>10</sup>
- 2.4 Poverty affects more than 50% of the population, and about 30% lives in extreme poverty. However, the index of extreme poverty is higher in the rural areas (49%) than in the urban settings (7%), and higher among indigenous (47%) than non-indigenous (18%) populations. Guatemala also has one of the highest gender inequality levels in the region, and women's extreme poverty is 80% higher than men's.
- 2.5 The levels of education are also precarious. Some 30% of the population has never had access to education and a similar percentage will probably not finish elementary school.

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<sup>6</sup>*Paths for Reform* was presented by Amanda Feilding to President Pérez Molina, Foreign Minister Fernando Carrera and other key Presidential advisors in January 2013. The document in both English and Spanish can be downloaded from <http://www.beckleyfoundation.org/paths-for-reform>.

<sup>7</sup>WHO, "Guatemala: health profile", 2010 a, [www.who.int](http://www.who.int).

<sup>8</sup>See [www.worldbank.org/en/country/guatemala/overview](http://www.worldbank.org/en/country/guatemala/overview).

<sup>9</sup>See [hdr.undp.org](http://hdr.undp.org).

<sup>10</sup>UNDP, *Guatemala: ¿un país de oportunidades para la juventud? Informe anual de desarrollo humano 2011-2012*, 2012, [www.undp.org.gt](http://www.undp.org.gt).

- 2.6** Total expenditure on health has been rising steadily for the past twenty years; however, the health system is still inadequate in terms of services and infrastructure, and 70% of the population does not have access to health coverage. Life expectancy at birth is 66 years for men and 73 for women, while the regional average is 73 years for males and 79 years for females.<sup>11</sup> A very sensitive issue is the health of children. 49.8% of children between 3 months and 5 years suffer from chronic malnutrition. Malnutrition irreversibly affects the development of the brain and is thus strongly related to the future of the county.
- 2.7** The level of mortality of children aged less than five is 32 per 1,000 live births. The regional average is 18 and the global rate is 57.
- 2.8** 40% of child deaths are attributed to malnutrition. The maternal mortality rate is 120 per 100,000 live births, which is almost double the regional average (63).
- 2.9** HIV prevalence in Guatemala is 8 per 1,000 people aged 15 to 64, whereas the corresponding rate at the regional level is 5 per 1,000. The adult mortality rate (214 per 1,000 of population) is considerably higher than the regional level (63) and somewhat higher than the global average (201). This rate could be related to the levels of violence.
- 2.10** The Guatemalan Government's income from taxes is very low: tax collection amounts to about 10% of national GDP,<sup>12</sup> which turns Guatemala into a chronically underfunded country. This reduces the capacity to finance social development programmes.
- 2.11** Besides severe socio-economic problems, Guatemala is also going through a spiral of violence, partly due to the dynamics of international drug traffic. The country lies between the areas of cocaine production (Colombia, Peru and Bolivia) and the main consumer market, the United States. Its geographical location turns the whole region, together with the Caribbean, into a transit area for this product. Local and international networks operate in the country. Guatemala is not only a storage and transit country for cocaine, but also a producing country of poppy and marijuana, a manufacturing country of methamphetamines and a port of arrival for chemical precursors diverted to illicit channels. Besides drugs, all sorts of goods are illicitly transported across the country – migrants, weapons and precious woods, among others.
- 2.12** One of the implications of illicit drug trafficking through the region is the strong pressure the United States exercises on the country's national agenda, through the promotion of national laws and policies focused on the interdiction of illegal traffic, in order to prevent drugs reaching the US market. United States agencies also intervene in criminal investigations, and their armed forces are allowed to carry out operations on Guatemalan territory.

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<sup>11</sup>WHO (2010 a).

<sup>12</sup>Jorge A. Restrepo and Alonso Tobón García (eds.), *Guatemala en la encrucijada. Panorama de una violencia transformada*, Bogotá: Geneva Declaration, 2011

- 2.13** Guatemala adheres to the international system of drug control, having signed all the UN agreements and treaties related to drug control and organised crime.<sup>13</sup> The current international hegemonic system is based on a distortion of market logic, as it aims at eliminating supply instead of focusing on demand. Producing and transit countries are those who pay the highest prices of this “war on drugs”, as they are expected to dedicate their limited economic resources and weak institutional capacity to preventing drugs from reaching the consumer markets, namely the United States and Europe. The costs of prohibitionist policies are huge not only in economic terms but also in terms of the loss of human life. Guatemala has one of the highest homicide rates in the world, together with El Salvador and Honduras, the other two Central American countries that form what is known as “The Northern Triangle”.
- 2.14** Drug-trafficking organisations compete with each other and fight against national security forces. The fierce competition over territory, transit routes and illicit substances generates high levels of violence. The more drugs are prohibited and their supply attacked, the more violent the market becomes. Drug-related violence and the wealth generated by illicit markets have multiple impacts on producing and transit countries. They undermine development and further weaken institutions, thus triggering a vicious circle and exacerbating inequality.
- 2.15** Despite the country’s efforts to overcome social inequalities and to accomplish the mandates of the Peace Process, Guatemala is still struggling with internal difficulties: international drug trafficking, economic and social inequality, corruption, weak institutions, underdevelopment, huge legal and illegal markets of weapons, the proliferation of gangs and illegal security groups, and lethal expressions of cultural violence, such as lynching and femicide that is, the killing of women out of hatred.
- 2.16** Because of the multiple forms of violence that devastate the country and their multiple causes, alternative drug policies cannot aspire to address all Guatemala’s multifaceted security problems. However, drug policies are part of the problem and thus can, and must, be part of the solution, within an integral framework of social development and democratic rule.

### **3. METHODOLOGY**

- 3.1** This report uses different sources: quantitative data, qualitative analysis and bibliographical research. Statistical data are mainly gathered through international, official information provided by the United Nations Office on Drugs and Crime (UNODC), the International Narcotics Control Board (INCB) and the Organisation of American States (OAS).

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<sup>13</sup>The *Single Convention on Narcotic Drugs* (1961) as amended by the *1972 Protocol*, the *Convention on Psychotropic Substances* (1972) and the *Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (1988); United Nations *Convention Against Transnational Organised Crime* (2000), and its protocols: *Protocol Against the Smuggling of Migrants by Land, Sea and Air*; *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*; and *Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition*.

- 3.2 Guatemala's governmental institutions have also provided useful data that are not available on official websites. The information was gathered through research in the country, by establishing direct contact with institutions.
- 3.3 The qualitative information was gathered through open interviews carried out in Guatemala by the Beckley Foundation's researcher in the field, Dr. Corina Giacomello. The contributions of national and international experts constitute the backbone of this research, as they make it possible to go beyond the data and deeper into the complexities of this beautiful, but violent country. Most of the interviews were recorded and are kept in the Beckley Foundation's files. All the people and institutions that made this report possible are listed in the Acknowledgments.

#### 4. STRUCTURE

The text consists of three sections. Section I, *Illicit Drug Markets in Guatemala*, describes the current status of Guatemala's drug markets, in terms of consumption, production, manufacture and traffic, and actors involved in illicit drugs markets. Section II, *The Legal Context of Punishment of Drug-Related Crimes*, analyses Guatemala's legal tools to face organised crime, and the way drug-related crimes are perceived and sanctioned. Given that one of the impacts of the UN Conventions is the promulgation of harsh national laws, it is of vital importance to analyse Guatemala's legislation and judicial practice. We adopt a Central American perspective, also taking into account Colombia's and Mexico's drug laws. The last section, Section III, *The Multiple Dimensions of Violence and Proposals for Alternative Drug Policy*, has a twofold objective. In the first place, it attempts to analyse the relationship between organised crime, prohibition and violence. We use the term *dimensions of violence* to analyse Guatemala's situation, as we consider it is more appropriate to define country's multifaceted manifestations of violence. Then we lay out the summary of the proposals that the Beckley Foundation presented to President Otto Pérez Molina in *Paths for Reform* in January 2013.

# Section I. Illicit drugs markets in Guatemala: substances, processes and actors

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## 1. INTRODUCTION

- 1.1 The purpose of this Section is to offer a *tour d'horizon* of illicit drug markets and identify where Guatemala stands. Global illicit drug markets, like all markets, can be divided into three broad processes: supply (i.e. production); transit; and demand (i.e. consumption). Distinctions among the different phases of the market chain are becoming blurred, as producing countries are becoming increasingly also consuming ones, and as consumer countries, such as the United States, are locally producing cannabis and methamphetamines. Nevertheless, the traditional main divisions still stand, especially in relation to cocaine: the Andean countries produce coca leaf and its derivatives; Central American countries and the Caribbean operate as transit countries; and the United States and Europe receive and consume most of the cocaine available worldwide.
- 1.2 The cocaine market is the most lucrative of the multiple activities of transnational crime. Guatemala has become one of the main transit points, as it is the bridge between South American countries and Mexico, which is the main point of entry of cocaine to the United States. Because of efforts carried out in Mexico against criminal organisations especially since 2006, Guatemala's prominence has increased both in terms of its relevance as a transit country and as a hub for the operations of Mexican and local cartels.
- 1.3 The exposition will be presented in the following order: first, we shall present estimates regarding the cocaine market, its value and income distribution along the market chain. Then, we shall proceed to analyse production and traffic. Finally, we will consider consumption. We will compare available data spatially (from the global to the local level), by type of substance, and according to the specific momentum of traffic. The main international official sources of information about consumption, production and traffic are the United Nations Office on Drugs and Crime (UNODC), the International Narcotics Control Board (INCB) and the Organization of American States' (OAS) Inter-American Drug Abuse Commission (CICAD).
- 1.4 Information on illegal markets is, by its nature, often incomplete or simply lacking. Even when data exist, they are not always verifiable or sufficiently disaggregated. Another difficulty related to the current system of data-gathering is that it relies upon the data that national governments are *willing* to give. The Count The Costs initiative the *Alternative World Drug Report*<sup>14</sup> (AWDR) points out that governments may be happy to provide data on seizures and eradications, but not on prevalence of HIV among injecting drug-users or drug-related mortality. Also, the focus of the information remains on process measures, such as seizures, rather than on outcomes.

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<sup>14</sup>Steve Rolles *et al.*, *Alternative World Drug Report*, 2012, [www.countthecosts.org](http://www.countthecosts.org).



- 1.5 Therefore, official information is biased according to the imperatives of prohibition, where the goal is to achieve supply-squeezing results (such as eradications, seizures, destruction of clandestine landing-strips and laboratories), leaving aside such important issues as violations of human rights, access to treatment, qualitative patterns of consumption by age and gender, profile of the prison population, etc.
- 1.6 Hence, data is implicitly skewed in both qualitative and quantitative terms. On top of that, at times data are hardly reliable, since they can readily be altered deliberately. For example, estimates can under-represent trends of consumption and production. Seizures can be counted twice and data on eradication can be inflated or mis-reported. When we can compare data from different sources, they often tend to present some degree of divergence, and are not always updated.
- 1.7 Guatemala, like most developing countries, lacks systematized information, which makes it difficult to obtain a clear, firm picture of the levels of consumption, production and traffic of illicit drugs in the country. As we shall see, national information on the use of cannabis differs markedly from international estimates, with prevalence of use being reported lower at the local level than in international estimates.
- 1.8 Nevertheless, a quantitative picture of illicit markets, their economic value and their global distribution can be drawn using the sources available and, although imperfect, incomplete and skewed, it can be useful to detect Guatemala's own drug-related issues and to point out what role Guatemala plays in the global chessboard of illicit drug markets.

## 2. ESTIMATED VALUE OF ILLICIT DRUG MARKETS AND DISTRIBUTION OF REVENUES AMONG REGIONS

- 2.1 Transnational crime networks operate globally, managing a wide number of illicit activities, some of which are often interwoven, such as drug-trafficking and trafficking of illegal weapons. The impact of transnational crime on societies manifests itself in many forms, and often treads the fine line that separates legal activities from illegal ones. For example, money-laundering of illicit profits in the licit financial system unbalances the economy and affects ordinary people's lives. Weapons that are bought legally in heavily civilian-armed societies, such as the United States, can be carried to other countries and sold to criminal organisations and then be used to commit crimes, as happens with the flows of weapons that go from the United States to Mexico and Central America.
- 2.2 According to a report on transnational crime,<sup>15</sup> from the of United Nations Office on Drugs and Crime (UNODC), the main activities of transnational organised crime are: cocaine-trafficking to North America (estimated annual value US\$38 billion) and to Europe (US\$34 billion); heroin-trafficking from Afghanistan to Europe (US\$20 billion) and to the Russian Federation (US\$13 billion); product-counterfeiting (US\$9.8 billion); smuggling of migrants (US\$6.6 billion from Latin America to North America and

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<sup>15</sup>UNODC, *The globalization of crime. A Transnational Organised Crime Threat Assessment*, 2010 a, [www.unodc.org](http://www.unodc.org).

US\$150 million from Africa to Europe); trafficking of natural resources (US\$3.575 billion); trafficking in persons (US\$3 billion); cybercrime (US\$1.25 billion); maritime piracy (US\$100 million) and trafficking of firearms (over US\$53 million).

- 2.3 Other activities of organised crime, such as marijuana-trafficking and gambling, are not listed in this report. However, the figures available give us an idea of the significance of the revenues generated by illicit drugs, especially cocaine. Altogether, illicit drug markets are “the largest illegal commodities markets the world has ever seen, with a turnover of \$330 billion a year”.<sup>16</sup>
- 2.4 The cocaine market generates approximately US\$85 billion annually, which is slightly more than 25% of all illicit drug-related profits. This money, however, is not evenly distributed. Because the price of cocaine rises exponentially as the substance gets closer to consumers, the largest profits are generated in the United States and Western Europe at the retail level. The flow of cocaine to the US market was valued at US\$38 billion in 2008. American mid-level dealers and consumers accounted for more than US\$24 billion or 70% of the total size of the US cocaine market. The European market is said to be worth US\$34 billion.
- 2.5 The following table shows how cocaine revenues are distributed at the retail level across regions.<sup>17</sup>

#### Estimates of the value of the cocaine consumed at retail level by region, 2009

Region	Value (US\$ bn)	Value (% of total)
Americas of which:	44	51
South America	3.4	4
Central America	0.2	0.2
Caribbean	0.2	0.2
North America	40 (USA 37)	47 (USA 44)
Europe of which:	36	42
West and Central Europe	33.4	39
East and South-East Europe	2.3	3
Africa of which:	1.8	2
West and Central Africa	0.8	0.9
Southern Africa	0.5	0.6
North Africa	0.1	0.1
East Africa	0.5	0.6
Asia	2.4	2
Oceania	1.7	2
<b>Total</b>	<b>85</b>	<b>100</b>

Source: UNODC, *The transatlantic cocaine market*, 2011, [www.unodc.org](http://www.unodc.org).

<sup>16</sup>Rolles (2012), 16.

<sup>17</sup>UNODC, *The transatlantic cocaine market*, 2011 a, [www.unodc.org](http://www.unodc.org).

- 2.6 Almost 50% of total revenues remain in the United States and more than 30% in Western and Central Europe.
- 2.7 The next chart shows how revenues are distributed among traffickers.

**Estimates of gross profits made by cocaine traffickers by region, 2009**

Region	Value (US\$ bn)
South America, Central America, Caribbean of which:	18
Local market	3
Export to North America	6
Export to Europe	9
North America (USA, Mexico, Canada)	34
West and Central Europe	23
West and Central Africa (local demand and export to Europe)	0.8
Other	8
<b>Total Trafficking Profits</b>	<b>84</b>

Source: UNODC, *The transatlantic cocaine market*, 2011, www.unodc.org.

- 2.8 The difference between the total size of the global cocaine market (US\$85 billion) and gross trafficking profits (US\$84 billion) is the income of farmers, which is only US\$1 billion. Local traffickers in Latin America receive little more than 20% of all profits, whereas European and North American traffickers retain most of the profits.
- 2.9 Although the values of the US and the European markets vary between the two sources and years of reference (2008 and 2009), both reports agree on the concentration of illicit wealth at destination.
- 2.10 According to the UNODC,<sup>18</sup> in 2010 almost 1,000 tonnes of cocaine went through Central America. This flow generates US\$8.135 billion, that is, less than 10% of the total market. 30% of the total flow, i.e. 300 tonnes, is said to go through Guatemala, which is the main trafficking country in the region, because of its proximity to Mexico. The value of cocaine trafficking in Guatemala amounts to US\$4 billion, which represents 10% of the national GDP.
- 2.11 The escalating market value of cocaine depends upon the increasing value of goods along the market chain, which is common to all commodities. However, the illegality of cocaine and the subsequent dynamics of the market further enhance the mark-up on the original value. The international system of drug control is focused on eliminating supply through interdiction and eradication. Supply-squeezing pushes up prices, as less cocaine is available for an ever-increasing market. According to data by the AWDR, a kilo of cocaine costs about US\$511 at the farm gate. Its value rises along the way to the European and the North American markets. Eventually, it is worth

<sup>18</sup>UNODC, *Transnational Organised Crime in Central America and the Caribbean. A Threat Assessment*, 2012a, www.unodc.org.

more than US\$80,000. Actually, the price can go up to more than US\$100,000 dollars when sold in the more expensive and exclusive markets of New York, London or Milan. Furthermore, a kilo of cocaine can be manipulated by adding to it other substances (such as aspirin, talcum powder, baking soda, etc.). This process of “cutting” the cocaine leads to the production of four kilos out of the original one. Levels of purity can vary substantially, and can also influence the final price of a gramme of cocaine.

- 2.12 Although most profits are generated at the consumer level, every link in the illicit trading chain of cocaine is profitable for the people who decide to join the market. For instance, women and men who work as mules for Drug Trafficking Organisations (DTOs) carrying drugs across countries or continents in their baggage or in their body, earn more in one trip than what they would earn in months with a regular wage in their country of origin, especially if they live in developing countries with limited opportunities and underpaid jobs.
- 2.13 Again, estimates are rough, as they depend upon the type and amount of substance, the mule’s years of experience, the country of origin and the destination. In general terms, a mule’s recompense can go from a few hundred dollars to several thousand for each trip.<sup>19</sup>

### 3. PRODUCTION

- 3.1 Illicit drug production is a global phenomenon, although with regional specializations. Asia is the predominant (though not exclusive) region for production of opiates, South America for cocaine, Asia and North America for synthetic drugs. Cannabis is produced worldwide.

#### *Cocaine*

- 3.2 South America remains the undisputed leader in the production of coca-leaf, the raw material from which cocaine derives. In 2009, Colombia accounted for approximately 43% of illicit cultivations, followed by Peru (37%) and Bolivia (20%). The following chart was built with data from the last Hemispheric Report<sup>20</sup> (corresponding to the Fifth Evaluation Round of the Multilateral Evaluation Mechanism (MEM), covering the years 2007–2009), published in 2011 by CICAD. Data for the year 2010 are taken from the UNODC *World Drug Report* (WDR)<sup>21</sup> published in 2012.
- 3.3 The following table chart provides data on hectares cultivated and on the potential production of pure cocaine.

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<sup>19</sup>Dirección Nacional de Estupefacientes (DNE) (*et. al.*), *Las mulas del eje cafetero*, 2002, [www.unodc.org](http://www.unodc.org); Sentencing Council, “Drug ‘mules’: twelve case studies”, 2011, [www.sentencingcouncil.gov.uk](http://www.sentencingcouncil.gov.uk).

<sup>20</sup>CICAD, *Hemispheric Report. Fifth Evaluation Round*, 2011 a, [www.cicad.oas.org](http://www.cicad.oas.org).

<sup>21</sup>UNODC, *World Drug Report 2012*, 2012, [www.unodc.org](http://www.unodc.org).

**Hectares under cultivation of coca in Bolivia, Colombia and Peru, 2006–2009;  
potential production of pure cocaine in metric tonnes**

	2006	2007	2008	2009	2010
<b>BOLIVIA</b>					
Area planted with coca	27,500	28,900	30,500	30,900	31,100
Potential production of pure cocaine	94	104	113	N/A	N/A
<b>COLOMBIA</b>					
Area planted with coca	77,870	98,899	80,953	68,025	57,000
Potential production of pure cocaine	610	600	430	410	350–400
<b>PERU</b>					
Area planted with coca	51,400	53,700	56,100	59,900	61,200
Potential production of pure cocaine	280	290	302	N/A	N/A
<b>TOTAL</b>					
Area planted with coca	156,770	181,499	167,553	158,825	149,300
Potential production of pure cocaine	984	994	845	N/A	N/A

Source: CICAD, *Hemispheric Report. Fifth Evaluation Round*, 2011, [www.cicad.oas.org](http://www.cicad.oas.org); UNODC, *World Drug Report 2012*, 2012, [www.unoc.org](http://www.unoc.org). N/A: not available.

- 3.4** According to the WDR, 2010 witnessed a decrease in global cocaine manufacture, mainly due to a decrease in cocaine manufacture in Colombia. However, the decline in Colombia’s cultivated area has been accompanied by an increase in that of Bolivia and Peru. Therefore, while Colombia still is the main producer of cocaine, in 2011 Peru’s cultivations were supposed to be almost as extensive as Colombia’s.

### *Poppy*

- 3.5** The illicit cultivation of poppy for the production of substances such as heroin and opium mainly takes place in Afghanistan and in South-East Asia (the Lao People’s Democratic Republic and Myanmar). Nonetheless, Mexico and Colombia also have poppy cultivations, with Mexico having become since 2005 the world’s third largest producer, after Afghanistan and Myanmar. Guatemala, Peru and Ecuador have reported eradications, but have not provided data to UNODC on the number of hectares under cultivation with this illicit crop.<sup>22</sup>
- 3.6** In the 2011 Report of the International Narcotics Control Board,<sup>23</sup> it is stated that the potential manufacture of heroin in Mexico could account for 9% of the global total. Colombia and Mexico supply the US demand for heroin, together with Afghanistan. In Guatemala, the area under cultivation appears to have increased, and the country

<sup>22</sup>*ibid.*

<sup>23</sup>INCB, *2011 Report*, 2012, [www.incb.org](http://www.incb.org).

may even have become the region's second biggest producer,<sup>24</sup> thus surpassing Colombia.

- 3.7 In the following table, we give data on eradications of illicit poppy cultivation in the main producing countries, including Guatemala.

**Hectares of opium poppy reported eradicated in selected countries, 2002–2011**

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Afghanistan	...	21,430	...	5,103	15,300	19,047	5,480	5,351	2,316	3,810
Pakistan	...	4,185	5,200	391	354	614	0	105	68	1,053
Lao PDR	...	4,134	3,556	2,575	1,518	779	575	651	579	662
Myanmar	7,469	638	2,820	3,907	3,970	3,598	4,820	4,087	8,268	7,058
India	219	494	167	12	247	8,000	624	2,420	1,022	...
Colombia	3,577	3,266	3,866	2,121	1,929	375	381	546	711	...
Mexico	19,157	20,034	15,926	21,609	16,890	11,046	13,095	14,753	15,484	...
<b>Guatemala</b>	...	...	..	<b>489</b>	<b>720</b>	<b>449</b>	<b>536</b>	<b>1,345</b>	<b>918</b>	<b>1,490</b>

Source: UNODC, *World Drug Report 2012*, 2012, www.unodc.org.

- 3.8 According to the MEM Country Report,<sup>25</sup> the Guatemalan Government eradicated 1,779.48 ha in 2007, 533.51 ha in 2008 and 1,083.09 ha in 2009. Quoting from the UNODC report on organised crime in Central America:<sup>26</sup>

According to the *Ministerio de Gobernación*, the eradication only represents 10% of the cultivation, which would suggest a total area of cultivation of approximately 15,000 hectares, close to the estimated opium poppy-growing area in Mexico. Lack of clarity around the cultivation area, yields, and quality makes any estimate highly dubious. It is also unclear where this output would be consumed. In the past, opium was trafficked across the border for processing, as evinced by the seizure of opium poppy capsules in transit. But today, it seems likely that some heroin is made in Guatemala, particularly given the increased seizures of precursor chemicals.

- 3.9 Poppy cultivations are mainly situated in the mountainous province of San Marcos, near the border with Mexico, although crops have also been found in the municipalities of Huehuetenango and Quetzaltenango. Local, poor farming communities grow poppy alongside other agricultural products for self-subsistence. As is the case with marijuana, the current illegal status of crops favours illegal groups who trade or manufacture poppy and its derivatives, and keeps local communities under the constant threat of repression by the State. Eradications undermine the economy and further increase poverty in contexts of social exclusion where there are no other options for subsistence. At the same time, they can damage the relationship

<sup>24</sup>Steven Dudley, "Drug Trafficking Organisations in Central America: Transportistas, Mexican Cartels and Maras", Woodrow Wilson International Centre for Scholars, May 2010, www.inisightcrime.org.

<sup>25</sup>CICAD, *Guatemala. Evaluation of Progress in Drug Control, 2007-2009*, 2011 b, www.cicad.oas.org.

<sup>26</sup>UNODC (2012 a), 39.

between local communities, who are trying to survive, and State agents who are doing their job.

**3.10** In *Paths for Reform* the Beckley Foundation attempts to address these issues by proposing a regulatory framework for the production of marijuana and poppy.

### *Cannabis*

**3.11** Cannabis is globally the most cultivated illicit plant, and it is grown in practically every corner of the world. Estimates of the expansion of cannabis production are hard to make, because of its widespread presence and the multiple forms of cultivation (from big outdoor crops to indoor cultivation, either for commercial purposes or for personal use). Most of the countries in Central America and the Caribbean produce cannabis herb. Jamaica is the largest producer and exporter of cannabis in the region. In other countries, production is mainly for internal consumption.

**3.12** In the United States Department of State's *International Narcotics Control Strategy Report 2012* (INCSR),<sup>27</sup> for example, Guatemala is pointed out as a producer of low-quality cannabis for local use. In the INCB 2010 Report,<sup>28</sup> it is stated that seizures in the region of cannabis produced in Guatemala have increased. In the World Drug Reports of 2008 and 2011,<sup>29</sup> Guatemala is identified as a major cannabis-producing country. However, specific data on Guatemala's cannabis production are poor.

**3.13** According to local sources, major production of marijuana takes place in the departments of Petén, San Marcos, Quiché and Jutiapa, that is, near the borders with Mexico, El Salvador and Belize. In 2009, the authorities in El Salvador stated that there was an increase in seizures of cannabis arriving from Guatemala.<sup>30</sup> Production for internal consumption is said to take place in the departments of Guatemala, Santa Rosa and Escuintla. The following map shows the main areas of illicit cultivations.

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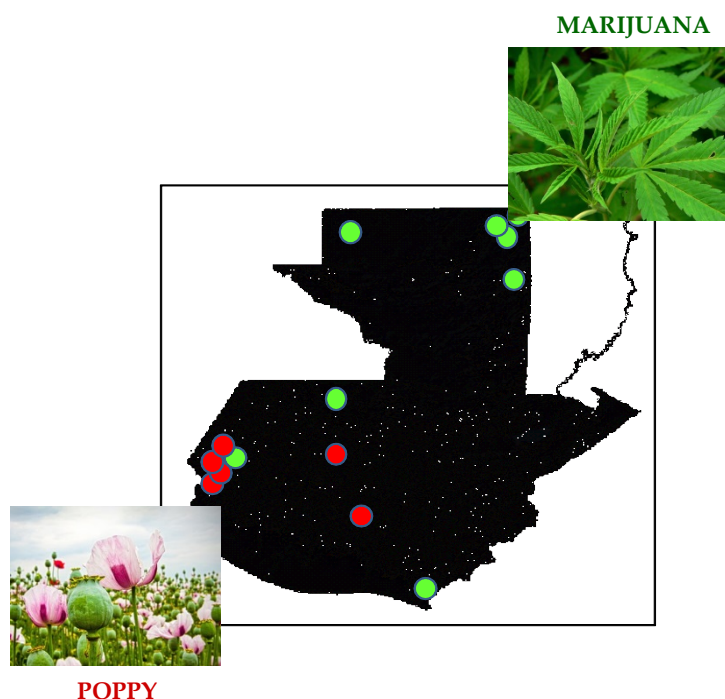
<sup>27</sup>United States Department of State, *International Narcotics Control Strategy Report 2012*, 2012, [www.state.gov](http://www.state.gov).

<sup>28</sup>INCB, *2010 Report*, 2011, [www.incb.org](http://www.incb.org).

<sup>29</sup>UNODC, *World Drug Report 2010*, 2010, [www.unodc.org](http://www.unodc.org); *World Drug Report 2008*, 2008, [www.unodc.org](http://www.unodc.org).

<sup>30</sup>INCB (2011).

## Illicit crops in Guatemala



3.14 Data on eradications seems to confirm that Guatemala's production of poppy and cannabis is increasing.

### *Amphetamine-type stimulants and diversion of chemical and pharmaceutical products*

3.15 The amphetamine-type stimulants (ATS) are the second most-used drugs worldwide and, as in the case of cannabis, production is widespread and often happens on a small scale.<sup>31</sup> Central American countries, including Guatemala, have become destinations for the international traffic of chemical precursors (mainly ephedrine and pseudoephedrine) which are used for the manufacture of such drugs. In this section we will mainly consider the existence of clandestine laboratories for the production of ATS in the region, whereas in the section on transnational traffic we will approach this topic from the perspective of seizures of chemical precursors. According to UNODC,<sup>32</sup> methamphetamines may be the second most-produced drug in Guatemala.

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<sup>31</sup>UNODC (2012).

<sup>32</sup>UNODC (2012 a).



- 3.16** First of all, attention must be drawn to the general acknowledgment<sup>33</sup> that the rising manufacture of methamphetamines and deviation of precursors originates as a consequence of the interdiction efforts carried out in the United States and Mexico in recent years, especially since 2008. In Mexico,<sup>34</sup> the manufacture of methamphetamines decreased sharply in 2007 and 2008, because of the legal measures adopted by the Government to ban the precursors necessary for the manufacture of these drugs. However, criminal organisations found their way around the prohibition on import of precursors, and methamphetamine production rose again in 2009. Part of the adaptation process has consisted of a) using new routes, such as through Central America and South America; b) smuggling precursors in the form of tablets rather than in bulk; c) shifting production to other countries; and d) using alternative manufacturing methods.
- 3.17** This phenomenon is usually referred to as “the balloon effect” – that is, the problem moves from one region or one country to another as a consequence of interdiction, but is not really erased. The balloon effect is another consequence of the current prohibitionist approach, which, in its effort to eliminate drugs and organised crime, ends up spreading production across regions.
- 3.18** In Guatemala, the first clandestine laboratory for the manufacture of methamphetamines was found in 2008. In the same year,<sup>35</sup> 990,300 tablets of pseudoephedrine were seized. In 2009, three other clandestine laboratories for manufacturing both amphetamine and MDMA were destroyed, and five more were dismantled in 2011.<sup>36</sup> They were all close to the border with Mexico.
- 3.19** Notwithstanding this shift of production or, as we should perhaps call it, the expansion of DTOs and the further trans-nationalization of ATS manufacture, it must be stressed that North America remains the major producing region for synthetic drugs in the hemisphere: in 2009 it accounted for 99%<sup>37</sup> of all laboratories for the production of methamphetamines dismantled worldwide.
- 3.20** The market for methamphetamines in the region is controlled by Mexican DTOs, specifically the Sinaloa Cartel, which has control of the market not only in Guatemala, but also in other countries of Central America.<sup>38</sup>

## 4. TRANSNATIONAL TRAFFIC

- 4.1** The routes of drug traffic *follow and shape* the flows of consumption. Drugs cross land, sea and air. Routes are designed to reach a threshold and cross it. They also respond to the moves of interdiction, and try to circumvent the obstacles that stand between

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<sup>33</sup>INCB (2011); Antonio Mazzitelli, “Mexican Cartels’ Influence in Central America”, Western Hemisphere Security Analysis Center, University of Florida, September 2011, [www.seguirdadydefensa.com](http://www.seguirdadydefensa.com); Elyssa Pachico, “Sinaloa Cartel Shifting Meth Production to Guatemala”, January 2012, [www.insightcrime.org](http://www.insightcrime.org).

<sup>34</sup>INCB (2011).

<sup>35</sup>United States Department of State (2012).

<sup>36</sup>CICAD (2011 a).

<sup>37</sup>INCB (2012).

<sup>38</sup>Mazzitelli (2011).

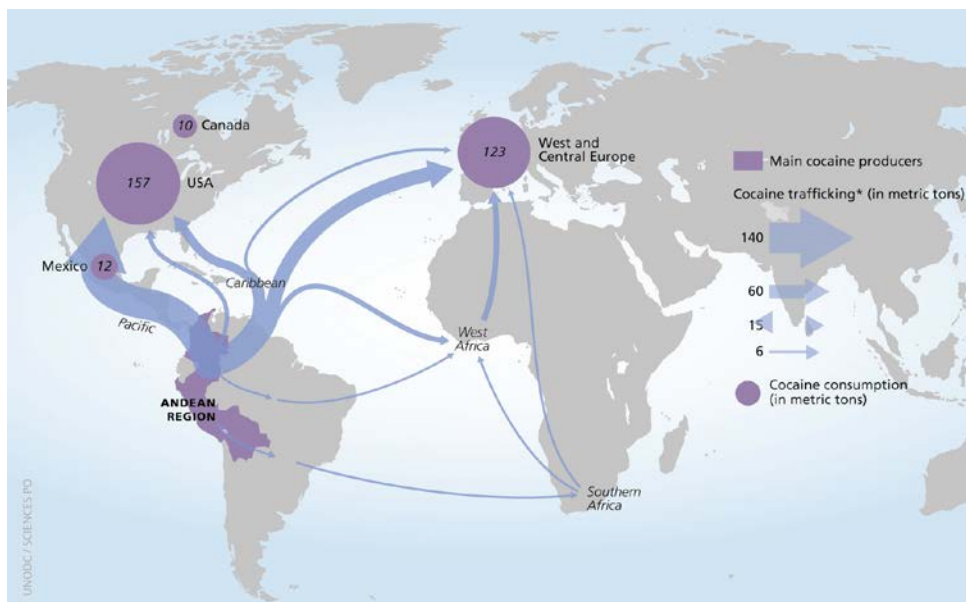
producing and consumer countries. Camouflage techniques, corruption of public officers, the use of human containers (mules) embarked on commercial flights, and the use of all types of vehicles (trucks, submarines, airplanes, boats, etc.) weave the threads that link a farmer in Colombia to a cocaine-consumer in New York City.

4.2 Generally speaking, in order to reach the main consumer markets, cocaine flows from south to north, as does heroin, from the Latin American fields to the streets of US cities, villages and neighbourhoods. Afghanistan’s illicit drugs cross the neighbouring countries, Eastern Europe or the Balkans to reach the beating heart of Western Europe and the United States. What lies between the two poles of the market, and the role different countries play, varies according to the strategic needs of DTOs and the way they react to the efforts of the national forces responsible for fighting them.

4.3 Cocaine is distributed in about 174 countries around the world, and the European and North American markets are the main destinations of cocaine flows. A report by EUROPOL and the European Monitoring Centre for Drugs and Drug Addiction,<sup>39</sup> released in January 2013, shows that the largest quantities of cocaine are transported from South America to Europe by sea through three principal routes:

- i) the northern route, which passes through the Caribbean and continues through the Azores, Portugal and Spain
- ii) the central route, which departs from South American countries, such as Argentina, Brazil, Chile, Ecuador, Colombia, Peru and Venezuela
- iii) the African route, which departs from South America to West Africa, and then on to Europe.

4.4 The following map offers a general overview of the routes of cocaine traffic.



Source: UNODC, *The transatlantic cocaine market*, 2011, [www.unodc.org](http://www.unodc.org).

<sup>39</sup>European Monitoring Centre for Drugs and Drug Addiction, EUROPOL, *EU Drug Markets Report. A Strategic Analysis*, January 2013, [www.europolitics.info](http://www.europolitics.info).

- 4.5 West Africa is a crucial region for cocaine trans-shipment from South America to European countries.<sup>40</sup> Between 2004 and 2007, the number of seizures of cocaine proceeding from Colombia increased steadily, only to lose importance in 2008, apparently as a result of the successful interdiction efforts carried out in the region. However, this illusion of success was short-lived, since the region is still used as an important route towards Europe. What changed were transportation and camouflage techniques. Colombian DTOs had previously carried the cocaine in big mother ships before unloading it into smaller, locally owned vessels. Nowadays, the drug finds its way to the Old Continent hidden in containers. What had at first appeared to be a triumph for the “stop-the-drugs” method was later revealed to be a successful shift in criminal strategy.
- 4.6 Sources agree that 90 to 95% of the cocaine entering the US crosses the border with Mexico. Prior to that, however, cocaine makes its way through Central America. In the *International Narcotics Control Strategy Report 2012* (INCSR) of the US Government, it is argued that 95% of cocaine leaving South America for the United States moves through Mexico and the Central American corridor, and that of this “an increasing amount – nearly 80% – stops first in a Central American country before onward shipment to Mexico.”<sup>41</sup> Central America’s Pacific, Caribbean and Atlantic coasts attract DTOs to settle and use them as hubs for storage and traffic. Furthermore, the countries’ porous borders, the availability of legal and illegal weapons, and a climate of general impunity permit the proliferation of illicit markets and related activities, such as money-laundering.
- 4.7 Traffic of drugs and other goods has been occurring in Central America since the 1960s. Nevertheless, the increasing importance of the region dates from the late 1990s, and has rapidly increased since the beginning of the 21st century. In the mid-1980s, over 75% of the cocaine seized between South America and the United States was taken in the Caribbean, and very little was seized in Central America. Thirty years later, the opposite is true, and nowadays over 80% of cocaine is seized in Central America and less than 10% in the Caribbean. Most of the cocaine seized in the Caribbean is taken in the Dominican Republic, which is a transit country for the European market and a main source of mules to European destinations.<sup>42</sup>
- 4.8 The following table shows the distribution of seizures among regions, and underscores that most of the cocaine taken in transit is now taken in Central America, surpassing the levels of seizures taking place in the Caribbean and Africa, the other two main transit regions.

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<sup>40</sup>INCB (2012) and (2011).

<sup>41</sup>United States Department of State (2012), 233.

<sup>42</sup>UNODC (2012 a).

## Distribution of cocaine seizures by region, 2009

Regions and Countries	Seizures as Reported	
	(tonnes)	(%)
Americas, of which:	694	93
South America	463	62
Central America	91	12
Caribbean	8	1
North America	132	18
Europe, of which:	55	7
West and Central Europe	53	7.10
East and South-East Europe	2	0.30
Africa, of which:	1	0.10
West and Central Africa	0.5	
Southern Africa	0.3	
North Africa	0.08	
East Africa	0.02	
Asia	0.7	0.10
Oceania	0.3	0.04
<b>Total</b>	<b>750</b>	<b>100</b>

UNODC, *The transatlantic cocaine market*, 2011, [www.unodc.org](http://www.unodc.org).

- 4.9 According to another study by UNODC,<sup>43</sup> in 2011 80 tonnes of cocaine were seized in Central America, which would correspond to about 10% of the estimated cocaine passing through the region (between 750 and 1,000 tonnes).
- 4.10 As has already been pointed out, about 30%, or 300 tonnes, of the total cocaine that goes through Central America is estimated to pass through Guatemala, due to its geographical position as contiguous with Mexico and as a zone of convergence for the cargos that previously passed through the other countries. It is estimated 260 tonnes pass through Honduras, 140 through Nicaragua, 128 through Costa Rica, 80 through Panama, 10 through Belize and 5 through El Salvador. However, when looking at seizures, which is supposed to be a measure of success in the fight against narco-traffic, the order changes. Panama usually accounts for the majority of seizures, followed by Honduras, Costa Rica, Nicaragua, Guatemala, Belize and El Salvador. According to official data reported to CICAD,<sup>44</sup> Guatemalan authorities seized less than 7 tonnes in 2009, which would correspond approximately to somewhat less than 2.5% of the total amount of cocaine that is estimated to go through the country. However, as has already been pointed out, data must be treated with caution. The same CICAD study reports for the same year seizures of almost 7 tonnes of crack-cocaine which, if considered as part of the total flow of cocaine, would increase the

<sup>43</sup>UNODC (2012 a).

<sup>44</sup>CICAD (2011 b).

amount of cocaine seized in the country. Nevertheless, the total of cocaine and cocaine derivatives seized is a small proportion of the total flow through the country. In 2011<sup>45</sup> total seizures of crack-cocaine, cocaine-salts and cocaine-base also amounted to less than 7 tonnes (6,493 kg).

- 4.11** Air corridors, land and maritime routes all play a significant role, and are generally combined. Cocaine leaves Colombia and its neighbours mainly by air and sea, and the amount making final landfall grows as the flow moves northward. Panama serves as both a storage and a re-shipment zone, with large shipments proceeding from Venezuela and Ecuador passing through its waters.<sup>46</sup> Panama usually makes some of the largest cocaine seizures in the world. In 2009, for example, it ranked fourth in the world in terms of the quantity of cocaine seized, approximately 53,000 kg. Over 11 million containers pass through the Panama Canal each year, thus turning Panama into a very attractive transit zone.<sup>47</sup> In Costa Rica, cocaine moves primarily by air, then by land and finally by sea. Nicaragua is mainly used for maritime and land trafficking. Flights departing from Venezuela or Colombia mainly head for Honduras, which is also the number one point of entry to Guatemala.
- 4.12** As the UNODC 2012 report on Central America says, “when it comes to Central American cocaine trafficking, all roads lead to Guatemala.”<sup>48</sup> Guatemala has 1,687 km of land borders (of which 266 are shared with Belize, 203 with El Salvador, 256 with Honduras and 962 with Mexico). In addition, the country has about 400 km of coastline. Cocaine cargos arrive at and depart from Guatemala in various forms and by different means, including: fast speedboats, fishing vessels, freighters, self-propelled semi-submersible vessels, trucks (mainly with a false bottom or simulating the transportation of fuel) and light aircraft. Maritime, land and air transport routes can be combined.
- 4.13** Planes fly from Colombia or Venezuela, and either land first in Honduras and continue to Guatemala, or land in one of the several available landing strips in the departments of Petén, Alta Verapaz, Baja Verapaz and Zacapa, among others.<sup>49</sup> Cargos landing in Guatemala are then transported by land or by boat to the border with Mexico. On 21 August 2012,<sup>50</sup> for example, a light aircraft was found abandoned in a private estate in Champerico, in the department of Retalhuleu, on the Pacific coast. The aircraft was supposed to have been used for drug-transport, proceeding from Venezuela. 200 yards from the plane, the authorities also found a truck. The truck carried fuel, which possibly was to be used to burn the plane and erase all evidence.

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<sup>45</sup>INCB (2012).

<sup>46</sup>*ibid.*

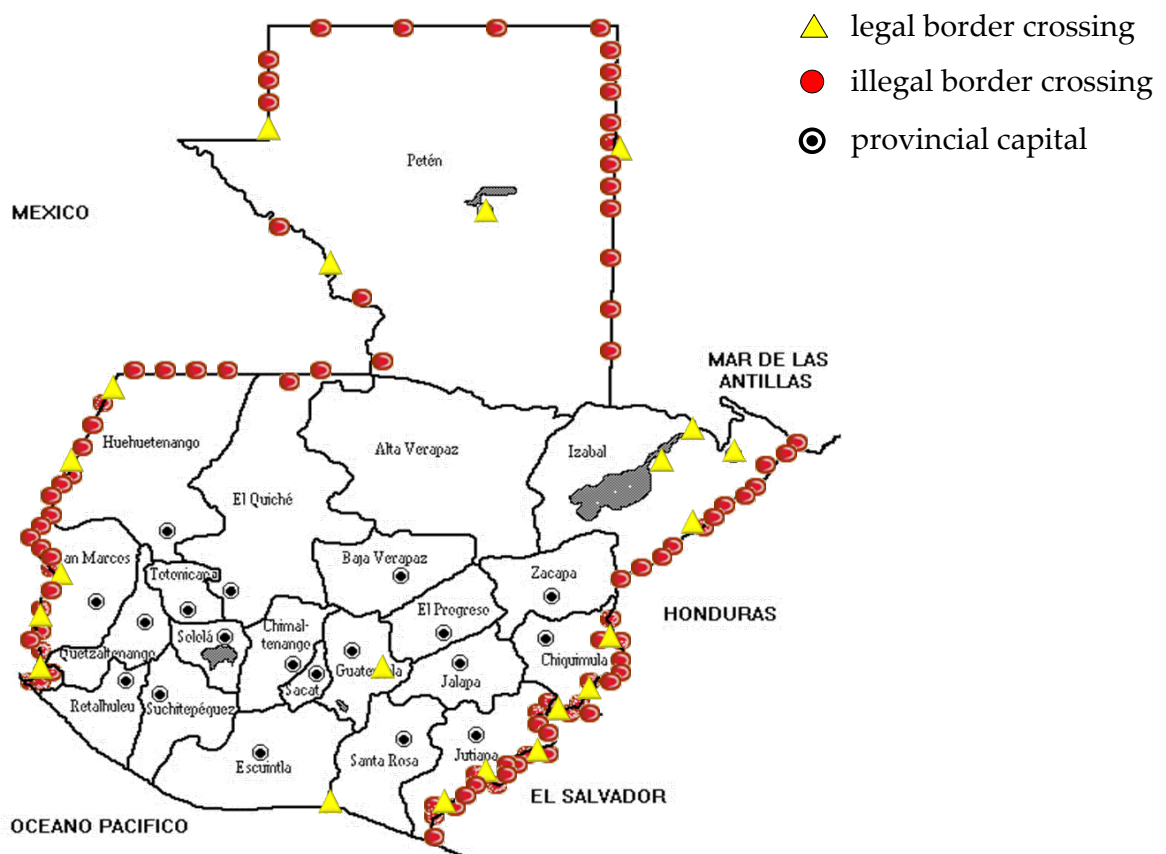
<sup>47</sup>CICAD (2011 a).

<sup>48</sup>UNODC (2012 a), 39.

<sup>49</sup>According to *Infopress Centroamericana*, about 1,600 landing strips would exist in the country. This information is provided by Edgar Gutiérrez, “Guatemala: Hábitat del narcotráfico”, University of Florida, May 2010.

<sup>50</sup>Jorge Tizol, “Localizan avioneta presuntamente usada para traslado de drogas”, 21 August 2012, *Prensa Libre*, [www.prensalibre.com.gt](http://www.prensalibre.com.gt).

- 4.14 Planes also drop the cargo in the sea, off both the Atlantic coast (for instance off Punta de Manabique, and off nearby Livingstone), and off the Pacific coast (off the beaches stretching from Sicapate in the Escuintla province, to Ocos in San Marcos). Local fishermen are hired by DTOs to retrieve the drugs from the sea and to carry them to the coast.
- 4.15 Ports also play a role in international drug-trafficking. Cocaine cargos can travel hidden in containers and stop at Puerto Quetzal, on the Pacific coast (San Marcos province), and at Puerto Santo Tomás Castilla and Puerto Barrios, on the Atlantic coast. The Guatemala City airport, *La Aurora*, is also a transit point for drugs.
- 4.16 Despite multiple possibilities and combinations of transport methods and routes, cocaine passes through Guatemala mainly by land, entering the country from different points. Illicit drugs are transported along the Pan-American Highway, and can enter Guatemala via Zacapa Province, situated near the border with Honduras, or via the department of Jutiapa, which lies near El Salvador. The porosity of Guatemalan borders certainly facilitates the crossings. Numerous illegal crossing points are distributed along its frontiers with Belize, Honduras, El Salvador and Mexico. They are called *pasos ciegos* in Spanish, literally “blind crossings”. The map below shows their distribution around the perimeter of the country.



- 4.17 Cocaine-trafficking is certainly the most profitable illicit activity taking place in Guatemala. It also reputed to be a relevant factor in the increase of homicide levels

and in the proliferation of illicit groups. Quoting from the UNODC report on transnational crime in Central America:<sup>51</sup>

Three seismic shifts appear to have precipitated the present crisis. One is downward pressure from the Mexican security strategy, which has virtually suspended direct shipments to Mexico and forced as much as 90% of the cocaine to flow into the bottleneck of Guatemala. The second was the breakaway of the Zetas from its parent, the Gulf Cartel. And the third was the massive increase in direct shipments to Honduras. Suddenly, dramatically increased volumes of cocaine were crossing the border between Honduras and Guatemala, greatly increasing the importance of the reigning crime families there.

**4.18** Besides cocaine, another major source of illicit trafficking is the diversion of chemical precursors to illicit channels for the production of methamphetamines. The following table shows the evolution of seizures carried out in the country between 2006 and 2009.<sup>52</sup>

**Quantity of drugs seized by type of drug, 2006–2009**

Type of Illicit Drug	Unit	2006	2007	2008	2009
Poppy Plants	units	376,720,987	241,537,661	278,804,353	692,284,166
Poppy Seeds	kg	13.24	4.53	0	1.58
Heroin	kg	0	0	9	0
Cocaine HCl	kg	281.46	718.07	2,214.28	6,936.13
Crack cocaine	gr	6,781.50	7,287.37	6,538.50	6,759.25
Cannabis Plants	units	156362	1006822	10817497	4296107
Cannabis Grass	kg	353.85	274.62	709.01	2052.94
Cannabis Seeds	kg	13.24	264.31	10.66	41.82
Pseudoephedrine	kg	16.84	5311.67	5919.26	12946.25
Ephedrine	kg	0	0	0	6.81

Source: CICAD, Guatemala. *Evaluation of Progress in Drug Control, 2007–2009*, 2011, [www.cicad.oas.org](http://www.cicad.oas.org).

**4.19** Guatemala recently reported astonishingly increasing levels of seizures of chemical precursors. According to the INCB *Report* for 2010,<sup>53</sup> trafficking of precursors is one of the main problems faced by the Guatemalan authorities. Cargos of ephedrine and pseudoephedrine travel hidden in containers from the countries of South Asia (such as India, China and Bangladesh) and of South-East Asia (such as Vietnam) to Guatemala, Belize and Mexico. For instance, in 2009,<sup>54</sup> 700,000 pills of pseudoephedrine preparation proceeding from Bangladesh were reported in Guatemala. In the same year, over two million such pills were seized in Honduras.

<sup>51</sup>UNODC (2012 a), 39.

<sup>52</sup>CICAD (2011 b).

<sup>53</sup>INCB (2011).

<sup>54</sup>UNODC, *Amphetamines and Ecstasy. 2011 Global ATS Assessment*, 2011 b, [www.unodc.org](http://www.unodc.org).



- 4.20 Chemical precursors are reshipped to European countries, such as Germany, the Netherlands, Spain and the United Kingdom. Therefore, Guatemala is not only a growing manufacturing country of ATS, but also a transit country for chemical precursors, mainly in containers and entering the country through the ports.
- 4.21 The following table shows that in 2006–2007 Guatemala reported the highest levels of seizure of pseudoephedrine in the American hemisphere.

**Seizures of Ephedrine and Pseudoephedrine, 2006–2007**

Country	Ephedrine (kg)	Pseudoephedrine (kg)
Argentina	14824	–
Bolivia	1	–
Brazil	–	47
Canada	708	195
Chile	1187	–
Costa Rica	–	462
Dominican Republic	–	222
El Salvador	3	101
Guatemala	7	18258
Mexico	7721	18229
Panama	10127	–
Paraguay	137	–
Peru	–	108
USA	5278	7019
Venezuela	–	371

Source: CICAD, *Hemispheric Report. Fifth Evaluation Round*, 2011, [www.cicad.oas.org](http://www.cicad.oas.org).

- 4.22 In 2009, the Guatemalan Government decided to ban the import of ephedrine, pseudoephedrine and pharmaceutical products containing these chemicals. In 2011, the Governments of Guatemala, Nicaragua and El Salvador strengthened their controls over phenylacetic acid, which is also used for the production of methamphetamines. Despite these efforts to stop illicit trafficking through prohibition, Guatemala remains a target for transnational traffickers of precursors and methamphetamines, and seizures are increasing rather than diminishing. For example, in July 2010, Guatemalan police reportedly seized over half a million capsules containing ephedrine close to the Honduran border.<sup>55</sup>
- 4.23 As we pointed out before, *drug-trafficking criminal organisations always find their way around prohibition*. Not only do they improve their camouflage and trafficking techniques, they also reallocate production to other areas, thus expanding their

<sup>55</sup>*Ibid.*



power. Furthermore, prohibition fosters corruption, which is a factor of social erosion hard to calculate and even harder to reverse.

- 4.24 For example, in September 2012 the head of security of Puerto Quetzal, Yuni Enríquez, was arrested. This man, who began as a lighterman, ascended in the port's trade union. When he was arrested, he was one of the most powerful and untouchable directors of the union, and the head of security of the port. His alternative activity was to participate in the illicit traffic of tonnes of chemical precursors used for the manufacture of synthetic drugs.
- 4.25 The head of a Mexican cell was also linked to the case and, in November of the same year, two other people originally from Mexico were arrested for supposedly belonging to the same group.<sup>56</sup>
- 4.26 To conclude, evidence shows that Guatemala is increasingly involved in the production, manufacture and, especially, in the trafficking of illicit drugs. We now consider which criminal organisations operate in Guatemala.

## 5. CONVERGING ACTORS: *FAMILIAS*, DTOS AND SECURITY FORCES

- 5.1 We now attempt to describe the actors participating in international drug traffic in Guatemala.<sup>57</sup> Criminal organisations have existed in Guatemala, with a certain prominence, at latest since the 1960s, being involved in theft, kidnapping, contraband, etc. According to Edgar Gutiérrez, cocaine-trafficking in Guatemala dates back to the same era. Back then, the cocaine business was mainly controlled by Cuban exiles living in Guatemala and Miami. Thereafter, Colombians took over and, between the late 1970s and the 1990s, they were the main trafficking organisations operating in the region, keeping control until the two main cartels, Medellín and the Cali's, were dismantled.
- 5.2 In 1993 the Sinaloa Cartel's leader, Joaquín Guzmán Loera, best known as *El Chapo Guzmán*, was arrested in Guatemala, this being the evidence that the Sinaloa, which is linked to the international production and smuggling of poppy and methamphetamines, as well as to the trafficking of cocaine and chemical precursors, has been operating in this country for more than twenty years. *El Chapo* has been reported to be travelling to Cobán, in the province of Alta Verapaz, in recent years.<sup>58</sup> It seems that Guatemala was and still is a place where he feels safe.

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<sup>56</sup>CICIG, "Capturan a otros dos presuntos narcotraficantes", 15 November 2012, [www.cicig.org](http://www.cicig.org).

<sup>57</sup>This section is based on information taken from the following sources: Bruce Bagley, "Drug trafficking and organised crime in the Americas: major trends in the twenty-first century", Woodrow Wilson International Centre for Scholars, August 2012, [www.wilsoncenter.org](http://www.wilsoncenter.org); Dudley (2010); Steven Dudley, "The Zetas in Guatemala", September 2011, [www.inisightcrime.org](http://www.inisightcrime.org) and "Guatemala: cuandollegaron los Zetas", September 2011 a, Proceso, [www.proceso.com.mx](http://www.proceso.com.mx); Julie López, "Guatemala's Crossroads: Democratization of Violence and Second Chances", Woodrow Wilson International Centre for Scholars, December 2010; Gutiérrez (2010); UNODC (2012 a); UNODC and Theodore Leggett, *Crime and Development in Central America. Caught in the crossfire*, 2007, [www.unodc.org](http://www.unodc.org).

<sup>58</sup>UNODC (2012 a).

- 5.3 Generally speaking, Guatemala currently has a highly fragmented presence of groups dedicated to a wide range of criminal activities (traffic of weapons, smuggling of migrants, human trafficking, kidnapping and extortion). Illicit drug markets are handled by local groups with international connections, Mexican cartels and street gangs, although the latter are not involved in international trafficking, but only in the distribution of drugs at the local level.
- 5.4 The two traditional *modi operandi* of local criminal groups involved in international drug-trafficking are either as territory-bound families with a mafia-like way of controlling territory, or as *transportistas*, that is smugglers who work for international cartels passing drugs through Guatemala. Criminal organisations of the first type are not only involved in drug-trafficking, but also carry out other illicit (and licit) activities as well. Generally, they are related to local political groups and representatives, and can share economic interests with the country's elite, especially in the agricultural sector and mining. *Transportistas*, on the other hand, are mainly responsible for storing drugs and conveying them through the borders.
- 5.5 The traditional Guatemalan criminal groups are i) the Mendozas, who are engaged in both licit and illicit activities, and have influence in the provinces of Izabal and Petén, on the borders with Honduras and Mexico; ii) the Lorenzanas, who operate as *transportistas*; and iii) the León family, who have almost disappeared, and were mainly known as *tumbadores*, which means that they robbed other criminal groups of their cargos, a practice known as *tumbe*.
- 5.6 In Guatemala, these groups are usually referred to as *familias*, and they are patriarchal criminal groups. The head of the Lorenzana family, Waldemar Lorenzana, is actually called "The Patriarch", and was arrested in 2011. He was said to control the provinces of Zacapa, Chiquimula, Izabal, El Progreso and Jalapa and to have close connections to *El Chapo* Guzmán. In August of the same year his son, Elio, was also arrested.
- 5.7 The Mendozas are a territory-bound criminal group with a large economic, social, political and cultural influence in the territory under their control. They were formerly allied to the Gulf Cartel, and are currently allies of the Sinaloa Cartel.
- 5.8 The León family has almost disappeared. This group's business originally mainly consisted of robbing the Lorenzana and the Mendoza families of cargos travelling through the Zacapa province. These two families allied against the León family. However, its leader, Juan José León Ardón, known as Juancho León, supposedly married Marta Lorenzana, the daughter of Waldemar Lorenzana, and strengthened the link between the two families. Juancho's power rose fast but soon evaporated. In March 2008, he was killed by a *Zetas* commando. Ten bodyguards died with him, some of them belonging to the National Civilian Police. Three years later, in May 2011, his brother, Haroldo León Ardón, was also killed by the *Zetas* who, in the same month, also killed 28 farmhands in one of Guatemala's most shocking events since the armed conflict.
- 5.9 Another prominent national criminal, Horst Walther Overdick ("The Tiger"), was an ally of the *Zetas* since the beginning of their penetration into the country in 2007.

Overdick was arrested in April 2012, and extradited to the United States in December of the same year.

- 5.10** Juan Ortíz López, *alias Chamalé*, is another renowned figure, and he is considered to be the linkman of the Sinaloa Cartel in Guatemala. He was arrested in March 2011. *Chamalé* is supposed to work with his brother Roni and Mauro Salomón Ramírez. They also are a territory-bound group and they operate in the San Marcos province near the border with Mexico. The province of San Marcos and the Pacific route are mainly under the control of the Sinaloa groups, and *Chamalé* and his partners are their allies.
- 5.11** Other groups operating in the country are the Sayxaché (in south Petén and north Verapaz provinces), the Brothers Sosa (in San Marcos and Guatemala City), and several other smaller groups.
- 5.12** The *Zetas* are usually considered to be the most problematic group, not only in their country of origin, Mexico, but in Guatemala. Their penetration in Guatemala was favoured by their alliance with local groups, especially after their separation from the cartel that created them, namely the Gulf Cartel. The links between the *Zetas* and Guatemala have been known at least since 2005, when the first evidence was found of recruitment of former members of Guatemala's elite counter-insurgency group, the *Kaibiles*, by the *Zetas*. According to declarations of President Pérez Molina, himself an ex-*Kaibil*, the *Zetas* are continuing to expand their presence in the country, and are still recruiting former *Kaibiles*.<sup>59</sup> Since their arrival, they have contributed largely to the rising levels of violence in the country, through acts carried out with heavy weaponry and brutality in full daylight.
- 5.13** As we shall see with more detail in Section III, drug-related violence is particularly prevalent near the borders and in the provinces where criminal groups predominantly operate, such as Izabal, Petenthe, the two Verapaz provinces and Zacapa, among others. However, Guatemala City is also becoming the scene of constantly escalating episodes of violence related to fights between rival DTOs. On 22 November 2012, for instance, a commando entered a private medical clinic, pursuing Jairo Orellana Morales, *alias El Pelón*. Orellana is said to control the Zacapa province, and to have fathered a child with Marta Lorenzano, Juancho's widow. He is also supposed to be tied to the Overdick-*Zetas* alliance. The killers entered the building at 1 p.m., and shot seven people dead. Supposedly, the killers were all *El Pelón's* bodyguards, and one of them used to work in the police, but was dismissed in 2008. Jairo Orellana managed to leave the building a few minutes after the attack ended.<sup>60</sup>
- 5.14** Street gangs, commonly known as *maras*, undoubtedly represent a delicate issue in Central America. Made up mainly of young males from disadvantaged social sectors, *maras* have turned into a serious source of violence. In Guatemala, there are

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<sup>59</sup>Miriam Wells and Hannah Stone, "Zetas fight Sinaloa Cartel for Guatemala Drug Routes: Pérez", 14 January 2013, [www.inisightcrime.org](http://www.inisightcrime.org).

<sup>60</sup>Gerson Ortiz, "Lucha por control de territorio, causa de atentado en zona 15", 24 November 2012, *El Periódico*, [www.elperiodico.com.gt](http://www.elperiodico.com.gt).

approximately 20,000 *mareros*; 5,000 belong to the street gang *Mara Salvatrucha* (MS-13), and between 14,000 and 17,000 to *Mara 18* (M-18). *Maras* are very violent groups mainly involved in contract killing (*sicariato*), theft, drug-dealing in local markets and extortions, especially targeting urban bus companies. Despite their involvement in the drug-trade and their occasional contacts with transnational drug-trafficking organisations, they are not involved in international drug-trafficking.

- 5.15 Besides the *Familias*, the cartels and *maras* (gangs), other actors play a role in international drug-trafficking. We are referring to public officers who, through corruption, allow criminal groups to operate with impunity. The corruption of security forces is generally acknowledged by all bibliographical and first-hand sources. Considering that the army had full control of the country when drug-trafficking arose, it is reasonable to believe that some of its members were involved. This, however, by no means reflects an integral and systematic involvement of the army as an institution.
- 5.16 The same situation pertains when considering political parties. Despite the tendency to look at local authorities as the most corrupt, sources from the Attorney-General's office stated that the highest levels of the political class also receive illegal funding from organised crime, and are the subject of investigation.
- 5.17 Gutiérrez<sup>61</sup> also states that some policemen steal drugs from narco-traffickers and then sell them to other groups, a practice known as *tumbe*. Although this can be a common practice in the criminal underworld, as seen in the case of Juancho León, the authorities are obviously not expected to pursue it.
- 5.18 Customs officers, airport police, prison guards, migration officers – all can be involved in corrupt practices. As we saw above, ports are seductive places to bribe and be bribed. One of the sources interviewed for this report, who asked to remain anonymous, and whom we shall call D, was appointed years ago to a port as expert on security. When he worked there, the levels of seizures of precursors were very low, both in Puerto Quetzal (Pacific Coast) and Puerto Barrios (Atlantic Coast). All of a sudden, seizures in Puerto Quetzal started to rise astonishingly. The general belief had been that precursors were mainly traded along the Pacific coast, not through the port. The truth was that the authorities in Puerto Quetzal had begun to do their job, and were actually seizing what was not supposed to enter the country or navigate on its waters.
- 5.19 D and his team refused to be bribed. They received threats, but never felt that their lives or those of their families were in danger, so they kept working honestly and seizing precursors and illicit drugs. However, that was not sufficient, since the corruption network spreads like capillaries. Containers can be made to “disappear” by never registering them on the system. Other complications arise when chemical tests are carried out. On one occasion, our source told us, several hundred kilos of heroin arrived hidden in a container. The substance was tested several times and always gave the same result: heroin. However, a national institution, which is

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<sup>61</sup>Gutiérrez (2010).

responsible for chemical expert evidence, stated that the substance was not heroin but Vitamin C. The drug thus entered the country as a vitamin.

5.20 These anecdotes help to explain the variations of the quantities seized, which do not necessarily reflect how much is actually trafficked, but rather how effective corruption and impunity are. Corruption is a *sine qua non* for the successful outcome of illicit operations. DTOs certainly have an unprecedented capacity to corrupt public officers, because of their enormous economic strength and persuasive power to kill. However, bribing is not an invention nor an ineluctable *result* of organised crime, but rather, one of its ingredients. In 2012, Guatemala was ranked as the 113th most corrupt country in the world (out of 176) in the Corruption Perceptions Index.<sup>62</sup> Corruption in Guatemala has existed since long before the recent changes in the configuration of transnational illicit drug-flows, and is generally acknowledged to pervade to some extent all levels and areas of institutional interactions.

## 6. CONSUMPTION

6.1 As was pointed out at the beginning of this chapter, statistical data on drug-related issues are not very reliable; they are intrinsically skewed, and very often they are incomplete or even totally lacking. Official data can give an idea of consumption trends in terms of what is more consumed and where, but they will hardly tell us how many consumers there are and what their consumption habits are.

6.2 The criminalisation and stigmatization of drug-consumption does not encourage the development of up-to-date and objective surveys. Added to that, economic limits, structural deficiencies and lack of institutional capacity also constrain the compilation of quantitative and qualitative data on drug consumption. Therefore, the following figures should be seen as a partial, general description of the *tendencies*, rather than the *reality*, of drug-consumption.

6.3 According to the UNODC *World Drug Report 2012* (WDR 2012),<sup>63</sup> between 153 and 300 million people – between 3.4 and 6.6% of the world’s adult population (aged 15–64 years) – are estimated to have used an illicit drug at least once in 2010. 27 million people, who represent 0.6% of the global adult population, have been identified by UNODC as “problem users”. The World Health Organisation (WHO) definition of “problematic drug use” is “harmful drug-use” and “drug-dependence”.

6.4 Cannabis is the most consumed drug (prevalence ranging from 2.6–5% of the adult population): there are between 119 million and 224 million cannabis-users worldwide, and consumption is stable. *The cannabis market alone comprises around 80% of all consumers of illicit drugs.*

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<sup>62</sup>The Index can be consulted at [www.transparency.org](http://www.transparency.org).

<sup>63</sup>UNODC (2012).

6.5 The second largest illicit drug-market is that for ATS (excluding MDMA), which accounts for between 14 million and 52.5 million adults (prevalence 0.3–1.2%), and the third is for MDMA or Ecstasy (about 20 million).

6.6 In 2010, there were an estimated 26–36 million users of opioids worldwide, about 50% of whom were thought to be using opiates, especially heroin. Opiates are consumed by some 13–21 million people (prevalence ranging from 0.3–0.5%), and heroin by approximately 13 million. The number of cocaine users is estimated to be between 13.2 million and 19.5 million, with prevalence between 0.3 and 0.4% of the population aged 15–64 – roughly comparable with the levels of MDMA-use.

6.7 Most illicit drug consumers are young men living in urban contexts. The United States remains firm in its position as the largest consumer market for illicit drugs, although consumption is a globally spread phenomenon. It must be stressed that the use of *licit* drugs is much higher than consumption of illicit ones:

Global estimates suggest that past-month prevalence of tobacco use (25 per cent of the population aged 15 and above) is 10 times higher than past-month prevalence of illicit drug use (2.5 per cent). Annual prevalence of the use of alcohol is 42 per cent (the use of alcohol being legal in most countries), which is eight times higher than annual prevalence of illicit drug use (5.0 per cent).<sup>64</sup>

6.8 The prevalence of alcohol-use disorders is significantly higher than the prevalence of drug-use disorders. “Globally, some 39 deaths per 100,000 population are attributable to alcohol and illicit drug use, out of which 35 deaths are attributable to alcohol use and four are attributable to illicit drug use”.<sup>65</sup> Both alcohol and illicit drug use disorders are more common among males than among females.

6.9 An issue of growing concern is the non-medical use of prescription drugs.<sup>66</sup> Although data is scarcely available, this phenomenon is increasing, and can have serious implications for health, especially if combined with other licit or illicit substances, in what is known as polydrug use. The online, unregulated market and the expansion of “legal highs” (synthetic drugs that reproduce the effects of substances like ecstasy, cannabis, cocaine and hallucinogenic plants) also raise health risks and difficulties for legislators.<sup>67</sup>

6.10 In relation to South and Central America, the *World Drug Report 2012* states:<sup>68</sup>

The prevalence of cocaine use in South America, Central America and the Caribbean remains high (0.7 per cent, 0.5 per cent and 0.7 per cent, respectively). In Central America, annual prevalence of ATS use has been reported to be higher than the global

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<sup>64</sup>*Ibid.*, 4.

<sup>65</sup>WHO, *ATLAS on substance use. Resources for the prevention and treatment of substance use disorders*, 2010, [www.who.int](http://www.who.int), X.

<sup>66</sup>Louisa Degenhardt, “Prescription drugs: a painful problem”, October 30, 2012, ABC News, [www.abc.net.au](http://www.abc.net.au); Ed Pilkington, “Painkiller addiction: the plague that is sweeping the US”, 28 November 2012, *Guardian*, [www.guardian.co.uk](http://www.guardian.co.uk).

<sup>67</sup>UNODC (2012); Carole Guirado-Cailleau, “Portugal cracks down on legal highs”, 29 November 2012, AFP, [www.afp.com](http://www.afp.com); Chris Wilkins and Adam Winstock, “Legal Highs”. The challenge of new psychoactive substances”, October 2011, [www.tni.org](http://www.tni.org).

<sup>68</sup>UNODC (2012), 19.

average, particularly in El Salvador (3.3 per cent), Belize (1.3 per cent), Costa Rica (1.3 per cent) and Panama (1.2 per cent). The misuse of pharmaceutical preparations containing opioids, stimulants and prescription stimulants also remains of concern in Central America and South America.

- 6.11** In order to place Central America's and Guatemala's levels of consumption in a hemispheric perspective, we will use the comparative information provided by the Inter-American Drug Abuse Control Commission (CICAD) *Report on Drug Abuse in the Americas 2011*.<sup>69</sup> The report comprises the period 2001–2009 (depending on surveys carried out by nation states), and focuses on the general population (age 12 to 64) and on high school students (approximate age 13 to 17).
- 6.12** Before outlining the data, it must be noted that information for Guatemala corresponds to the years 2003 and 2005. Since then, data have not been up-dated. The 2005 household survey estimated an overall life-time prevalence of illicit drug use at 3.16% which, compared to the 2003 survey (carried out among secondary school students only), reflected increases in use of 40% for cocaine, 55% for marijuana, 230% for stimulants, and 380% for tranquilizers.

### *Cocaine*

- 6.13** Countries in North America, Central and Western Europe and Oceania have a high prevalence of cocaine-use.<sup>70</sup> The following table shows tendencies in prevalence by country and by gender in the American hemisphere.<sup>71</sup>

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<sup>69</sup>CICAD, *Report on Drug Abuse in the Americas 2011*, 2011, [www.cicad.oas.org](http://www.cicad.oas.org).

<sup>70</sup>UNODC (2012).

<sup>71</sup>CICAD (2011).

### Past year cocaine prevalence among the general population aged 12–64 (%)

Country	Total Past Year	Males	Females	Ratio Male/Female
Argentina	1.06	1.89	0.24	7.7
Barbados	0.14	0.3	0.03	10
Belize	0.71	0.69	0.73	0.95
Bolivia	0.55	0.46	0.62	0.74
Brazil	0.73	1.45	0.21	6.9
Canada	1.9	2.7	1.1	2.5
Chile	1.8	3.15	0.55	5.72
Colombia	0.72	1.28	0.22	5.82
Costa Rica	0.2	0.4	0	–
Ecuador	0.1	0.6	0	–
El Salvador	0.24	0.52	0	–
Guatemala	0.11	0.25	0.03	8.33
Nicaragua	0.34	0.46	0.09	5.11
Mexico	0.44	0.76	0.14	5.43
Panama	1.2	0.22	0.17	1.29
Paraguay	0.19	0.43	0.15	2.87
Peru	0.27	0.56	0.1	5.6
Uruguay	1.44	2.31	0.66	3.5
USA	1.9	2.51	1.33	1.89

Source: CICAD, *Report on Drug Abuse in the Americas 2011*, 2011, [www.cicad.oas.org](http://www.cicad.oas.org).

- 6.14** Similarly to other illicit drugs and to alcohol, the highest prevalence of cocaine-users is found in the population aged 18–34 years in nearly every country in the American hemisphere, and the consumers are mainly males.
- 6.15** The countries with the highest lifetime prevalence of cocaine-use among the high school population are the United States, Argentina, Guyana, Canada and Chile. The lowest prevalence is found in St. Vincent and Grenadines, followed by Venezuela, Dominica, Suriname and the Bahamas. Countries with highest and lowest prevalence may vary according to age. The countries that tend to have high prevalence in all age groups are North American countries (mainly the US and Canada) and South American ones (especially Argentina, Chile and Uruguay). Panama has the highest adult prevalence use in Central America. By contrast, the prevalence of cocaine-use in Guatemala is low compared with worldwide prevalence. The best available estimates put past-year prevalence at around 0.1%, representing about 0.25% of males and 0.03% of females. However, according to the *World Drug Report 2010*,<sup>72</sup> cocaine-use is increasing. One of the factors that can lead to an increase in consumption is payment in kind by transnational DTOs to local *transportistas* and distributors. The illicit trafficking of cocaine in a prohibitionist context often leads to an increase in local

<sup>72</sup>UNODC (2010).



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.

## *Opioids*

**6.16** The market for opioids does not seem to concern the region here studied in terms of consumption. Opioids are most used in North America (3.8 – 4.2%), Oceania (2.3 – 3.4%) and Eastern and South-Eastern Europe (1.2 – 1.3%). In North America and Oceania, prescription opioids are used more than heroin. In Western Europe opioids consumption seems to be declining, although the use of heroin is still problematic in some countries, especially Italy, France and the United Kingdom.<sup>73</sup>

## *Cannabis*

**6.17** Marijuana is the most frequently used illicit drug in nearly every country in the Americas. According to CICAD's Hemispheric Report on drug use,<sup>74</sup> past-year prevalence of use of marijuana among the general population (age 12 to 64) was 11.3% in the United States (information corresponding to the year 2009), with the following breakdown by age group: 13.56% (age 12–17), 23.26% (age 18–34) and 7.43% (age 35–64). In 2008, Canada's marijuana-use prevalence was 13.6% (25.2% age 12–17; 24% age 18–34; and 7.1% age 35–64). Belize is the only Central American country with a prevalence of use higher than the global average. According to the Hemispheric Report, Belize's past-year prevalence among the general population was 8.45% in 2005 (5.28% age 12–17; 13.25% age 18–34; and 5.03% age 35–64). South American countries stand out, especially Uruguay, Bolivia, Chile and Argentina.

**6.18** The data reported for Guatemala come from the 2005 survey, which puts past-year prevalence at 0.13% and does not provide information disaggregated by age group. However, studies by UNODC<sup>75</sup> rank Guatemala as one of the Central American countries with higher prevalence. The WDR 2012 states that between 4% and 6% of Guatemala's population consume cannabis. The WDR 2010 gives the following data on prevalence of use of cannabis in Central America: Belize, 8.5%; Guatemala, 4.8%; Panama, 3.6%; Nicaragua, 1.1%; Costa Rica 1.0%; Honduras, 0.8%; El Salvador, 0.4%. The WDR 2011 highlights how:

As observed in other regions, the prevalence of cannabis use in Central and South America tends to be higher among youth than in the general population. One exception is Guatemala, where the prevalence of cannabis use is higher in the adult population aged 15–64 (4.8%) than in the 12–19 age group (1%).<sup>76</sup>

**6.19** As has been emphasised several times already, scarcity and unreliability of data, especially when it comes from national sources, lead to discrepancies, which are

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<sup>73</sup>European Monitoring Centre for Drugs and Drug Addiction, EUROPOOL (2013); UNODC (2012).

<sup>74</sup>CICAD (2011).

<sup>75</sup>UNODC (2010) and (2012) and UNODC and Theodore Leggett (2007).

<sup>76</sup>UNODC, *World Drug Report 2011*, 2011, www.unodc.org, 181.

hardly resolvable unless a new survey is carried out according to an internationally unified methodology.

### *Prescription medicine and injecting drugs*

**6.20** A particularly sensitive issue in the region is the use of controlled medical products. The CICAD report asserts<sup>77</sup> that:

One of the substance abuse issues gaining greater attention is the non-medical use of pharmaceutical drugs and the use of prescription drugs without a medical prescription. Misuse of pharmaceuticals may be due to self-medication, or they may be taken with the intention of getting high. Either case may result in eventual abuse or dependence.

**6.21** Data on the prevalence of use of stimulants and tranquilizers without medical prescription among secondary students in the Americas show that Haiti has by far the highest prevalence for lifetime, past-year and past-month use. However, Bolivia, Paraguay, Guatemala, Colombia and the Dominican Republic also have a past-year prevalence above 6%. In both cases female consumers outnumber males.

**6.22** Another sensitive issue, but with very little information available, is the use of injecting drugs. According to the WDR 2012, Guatemala reported that more than 20% of its cocaine-users inject the drug, and also reported injecting drug-use to be widespread among heroin users. This may be related to the levels of HIV in the country;<sup>78</sup> HIV-prevalence in Guatemala is 8 per 1,000 adults aged 15 to 64, whereas the corresponding rate at the regional level is 5 per 1,000. However, lack of information prevents us from drawing firm conclusions, and this is an issue that should definitely be addressed.

**6.23** As available data show, the Guatemalan population does not consume significant amounts of illicit substances. Legal drugs, by contrast, represent a higher health concern. Nevertheless, all the sources agree that there has been an increase in consumption of illicit drugs and in the misuse of prescription drugs. According to information available<sup>79</sup> and the sources consulted, prevention and treatment of dependent use of legal and illegal drugs are scarce, and could definitely be improved.

## **7. CONCLUSIONS**

**7.1** Guatemala has an integrated presence of illicit drugs markets: production, manufacture, traffic and consumption. Trafficking of cocaine and of precursors is, however, a far more alarming issue, insofar as it is related to increasing violence and corruption. Both these elements are factors of social erosion and cause deep and lasting social harm, which are very hard to reverse. Trafficking can also lead to an increase of illicit drug-use.

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<sup>77</sup>CICAD (2011), 56.

<sup>78</sup>WHO, "Guatemala: health profile", 2010, who.org.

<sup>79</sup>CICAD (2011 b).

- 7.2 The importance of cocaine-trafficking in Central America as a region, and of Guatemala as one of its northern countries, arises from a combination of factors. The first factor is market logic. Central America lies between the countries that produce cocaine and those that consume it, mainly the United States, and is thus an obvious corridor for transit.
- 7.3 The second factor is the implementation of prohibitionist policies: effective interdiction efforts in one area, aimed at preventing supply from reaching consumer markets, push production and trafficking to another area, in what is known as the balloon effect.
- 7.4 Supply-reduction through seizures can increase levels of violence – as more competitors fight among each other for the control, trafficking and distribution of a decreasing quantity of cocaine – and can foster the expansion of criminal organisations.
- 7.5 Organised crime in Guatemala has a two-fold origin. On the one hand, local groups have been engaged in different criminal activities for decades in an environment of general impunity and complicity by the authorities. On the other, international groups specializing in drug-trafficking have been penetrating the country and expanding their presence. The expansion of groups such as *Los Zetas* and the Sinaloa Cartel can be partly seen as a consequence of the interdiction efforts carried out in Mexico. This phenomenon is sometimes labelled as the “cockroach effect”,<sup>80</sup> which refers to the displacement of criminal organisations from one area to another. However, it would be more appropriate to consider it as a business expansion into Central America by transnational organisations that originated in Mexico and that spread thanks to favourable local conditions and the previous presence of criminal groups.

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<sup>80</sup>Bagley (2012).

## Section II. The legal context for punishment of drug-related crimes

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### 1. INTRODUCTION

1.1 In the previous section, we analysed the status of illicit drug markets worldwide, looking in more depth at the nuances of Latin American and Central American markets and at the participation of Guatemala in illicit drug traffic. The purpose of this section is to analyse Guatemala's position within the international system of drug control. First, we describe the prohibition regime and the UN Conventions on Drugs and Organised Crime. Then we present Guatemala's legal tools, which derive from the UN system but also reflect the influence of the United States. Then we describe the drug laws of all Central American countries in order to identify a regional pattern, and we also describe the cases of Mexico, Colombia and examples from other countries in the region, in order to expand our basis for comparison.

### 2. THE INTERNATIONAL SYSTEM OF DRUG CONTROL

2.1 The pillars of the international framework of drug control are the three United Nations Conventions: the 1961 *Single Convention on Narcotic Drugs* (as amended by the 1972 *Protocol*); the 1971 *Convention on Psychotropic Substances*; and the 1988 *Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*. Together they form what can be called the global drug prohibition regime, and almost all nations are party to the conventions.<sup>81</sup>

2.2 Prohibition was initiated in February 1909,<sup>82</sup> when twelve countries met in Shanghai to discuss the control of the opium trade under the umbrella of the International Opium Commission. In subsequent decades, similar conferences were convened and international conventions signed by a growing number of countries. The 1961 *Single Convention* consolidated the main elements of the previous treaties into a new text. It also contained new provisions that were absent in the previous treaties, creating a more prohibitive system of control and creating the model which is still in force.

2.3 Broadly speaking, the 1961 *Convention* laid down the basis for the strict, implicit prohibition (the *Convention* does not require countries to "prohibit", nor does it differentiate between legal and illegal drugs<sup>83</sup>) of certain substances through the obligation of Parties to penalise their cultivation, production, trade, distribution and

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<sup>81</sup>David R. Bewley-Taylor, "Towards revision of the UN drug control conventions: Harnessing like-mindedness", *International Journal of Drug Policy*, Volume 24, Issue 1, pages 60-68, January 2013, [www.ijdp.org](http://www.ijdp.org).

<sup>82</sup>Martin Jelsma, "The Development of International Drug Control. Lessons learned and strategic challenges for the future", February 2010, [www.tni.org](http://www.tni.org).

<sup>83</sup>David R. Bewley-Taylor and Martin Jelsma, "The Limits of Latitude", March 2012, [www.tni.org](http://www.tni.org).

possession, unless they are destined for scientific and medical use, in which case production and trade would be legally controlled nationally under the supervision of the International Narcotics Control Board (INCB). For example, opium and poppy derivatives are simultaneously regulated for medical use and prohibited for the production of heroin and for any use other than for medical purposes. The Convention also strengthened the focus on producing countries, rather than on consuming ones, creating the basis for the squeezing-the-supply approach as a way to eliminate drug use and drug dependence.

2.4 Subsequently, the 1971 *Convention on Psychotropic Substances* introduced control of more than a hundred “psychotropic” drugs,<sup>84</sup> and was created in response to the diversification of drug use. The expansion of drug markets during the 1970s and 1980s, and the proliferation and expansion of criminal groups, led the UN to convene another conference which resulted in the promulgation of the 1988 *Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*. This convention reinforces the obligation of states to prosecute all the aspects of drug possession, production and trafficking, and represents the culmination of the construction of a system based on prohibition and penal prosecution. The countries that adhere to these conventions, therefore, are obliged to stop by all means the production and trafficking of drugs and to prosecute and preferably incarcerate people who are found to be cultivating, producing, manufacturing, importing, exporting, distributing, selling or supplying controlled substances which are not for medical or scientific purpose, and to establish sanctions against those people who are in possession of such substances for personal consumption. States must incorporate the treaties’ provisions within domestic law. Some countries, such as Guatemala, have a specific drug law, others, as Mexico, define and sanction drug-related crimes in the penal code and in the Health Law, and other countries, such as Costa Rica, include drug offences and money-laundering in a single legal text. The national policies which are usually implemented to fulfil such obligations are the eradication and fumigation of crops, interdiction, seizure and destruction of seized drugs, searching of vehicles and people, police investigations and operations and, in some countries and to different extents, the use of the military in anti-narcotics tasks.

2.5 The prohibition model is based on an inverted market logic, whereby demand is reduced by targeting supply. The damage caused by prohibition is devastating, especially in producing and transit countries.<sup>85</sup> In Section I we referred to the balloon effect, the cockroach effect, the increase in consumption as a consequence of payment in kind, corruption and money-laundering. However, these are only some of the effects. The incarceration of secondary subjects, violations of human rights, environmental damage, criminalisation of users and especially of ethnic and racial minorities and marginalised groups, health-related issues associated with unsafe drug use (such as the spread of HIV among injecting drug-users) and gradual loss of civil liberties (mainly freedom of expression) as a consequence of crime and of the fight

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<sup>84</sup>Jelsma (2010).

<sup>85</sup>Rolles (2012); UNODC (2008).

against it, are some of the euphemistically named “collateral damages” of the current system.

- 2.6 Half a century after the promulgation of the Single Convention, its inadequacy is an open topic of discussion. Recent years have seen several nationally or locally based reversals of the dogma of prohibition, especially in Europe and in the United States. Consumer countries are increasingly adopting harm-reduction policies, decriminalising consumption and cultivation for personal consumption, and regulating the production and use of marijuana for medical purposes. Such a gradual shift from a prohibitive system to a regulatory one, and the increasing focus on public health and human rights, rather than on crime and punishment, are signs of the growing uneasiness of some countries regarding strict adherence to the model of blind and undisputable prohibition, and signs also of the limits of flexibility of the UN drug conventions, which leave some margin for policy reform.<sup>86</sup> Nevertheless, the opportunity to take advantage of room for reform does not apply equally to all countries. For example, Central American countries are still highly subjugated to the influence and undisguised interference of the United States, which is very much against any form of regulation, especially in those countries which are under its influence. As we shall see, Central American countries’ conceptions of drugs and drug-offences reflect both national and regional *mores*, but also their dependence on the political, economic and military role of the US in the region.
- 2.7 As we saw in Section I, drug-trafficking is one of the multiple activities of organised crime, and is rarely an isolated one. In order to be successful, transnational trafficking requires several criminal activities which are usually interlinked, such as weapons-trafficking, corruption and murder. Furthermore, whereas some criminal groups are specialized in drug-trafficking, such as the Sinaloa Cartel, others, for example the *Zetas* or the main Italian mafias (*Camorra*, *Ndrangheta* and *Cosa Nostra*), are engaged in other criminal activities, such as smuggling of migrants, human trafficking, extortions, kidnappings, counterfeiting, etc. In response to the development of organised crime in the era of globalization, the international community has devised other tools which must be taken into account, namely the *Convention against Transnational Organised Crime* and its protocols, which was adopted in 2000 and entered into force in 2003, and the United Nations *Convention against Corruption*, approved in 2003.
- 2.8 Guatemala has ratified the following international treaties in this field:
- the *Inter-American Convention on Mutual Assistance in Criminal Matters*, 1992
  - the *Inter-American Convention against Corruption*, 1996
  - the *Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and other Related Materials (CIFTA)*, 1997
  - the *UN Single Convention on Narcotic Drugs*, 1961, as amended by the *1972 Protocol*
  - the *UN Convention on Psychotropic Substances*, 1971

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<sup>86</sup>Bewley-Taylor and Jelsma (2012).

- the UN *Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances*, 1988
- the UN *Convention against Transnational Organised Crime*, 2000, and its protocols: the *Protocol against the Smuggling of Migrants by Land, Sea and Air*; the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*; and the *Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition*
- the UN *Convention against Corruption*, 2003.

These instruments are reflected in Guatemala's laws.

### 3. LEY CONTRA LA NARCOACTIVIDAD

- 3.1 The national tool that determines drug-related crimes and establishes the corresponding sanctions is the *Ley contra la narcoactividad* (Law against Narcoactivity), approved in 1992.
- 3.2 The bases underlying the elaboration and promulgation of this law are expressed in the preamble to the law itself and can be summarized as follows:
- The Political Constitution of Guatemala guarantees life, integrity and the development of people; it considers the health of human beings a *public good* and declares actions against addiction a matter of social interest
  - The law responds to the ratification of several international treaties concerning narcotraffic and all related activities
  - The country has become a victim of narcotraffic and therefore requires a legal instrument adequate to combat it.
- 3.3 Article 1 declares as a matter of public interest and in the pursuit of health the adoption by the State of all necessary measures aiming to prevent, control, investigate, avoid and penalise every activity related to production, manufacture, use, possession, traffic and trade of narcotic drugs, psychotropic substances and medications that can alter or transform the nervous system and generate dependence.
- 3.4 It is important to stress that the aims of the law go even beyond the limits of the international conventions, which "do not oblige any penalty (criminal or administrative) to be imposed for consumption *per se*".<sup>87</sup>
- 3.5 Article 12 lists the applicable sentences. The most relevant are the first ones, that is, death, imprisonment, fine and perpetual disqualification.
- 3.6 Chapter VII of the law, *On crimes and their sentences*, establishes the criminal offences and how they are to be punished. The chapter comprises articles 35 to 52. The following table organises the information corresponding to articles 35 to 49.

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<sup>87</sup>*Ibid.*, 7.

Article	Offence	Sentence	Fine (Quetzales)	Fine (US\$)
35	International traffic	12–25 years	50,000–1,000,000	6,400– 128,000
36	Sowing and cultivation	5–20 years	10,000–100,000	1,280–12,800
37	Production and manufacture	8–20 years	50,000–1,000,000	6,400–128,000
38	Trade, traffic & illicit storage	12–20 years	50,000–1,000,000	6,400–128,000
39	Possession for personal consumption	4 months–2 years	200–10,000	25–1,280
40	Promotion and fostering	6–10 years	10,000–100,000	1,280–12,800
41	Provision of means	5–10 years	10,000–100,000	1,280–12,800
42	Alteration	4 months–2 years and (aggravating factor) 3–6 years	200–10,000 and (aggravating factor) 5,000–100,000	25–1,280 and (aggravating factor) 640–12,800
43	Illicit retailing	3–5 years	2,000–100,000	255–12,800
44	Prescription or supply	3–5 years	200–10,000	25–1,280
45	Illicit investments and transactions	6–20 years	50,000–5,000,000	6,400–640,000
47	Criminal association	6–10 years and (aggravating factor) 10–20 years	1,500–3,000 and (aggravating factor) 3,000–6,000	191–383 and (aggravating factor) 383–767
48	Assistance in evading justice	6–15 years and perpetual disqualification	50,000–1,300,000	6,400–166,300
49	Promotion or encouragement to addiction	2–5 years	5,000–100,000	640–12,800

3.7 Article 52 establishes that if, as a consequence of the offence, the death of one or more people is caused, the person accused should be sentenced to death or to thirty years of prison. So sentences for drug-related crimes range from four months' prison to death, although the latter is no longer applied in the country.

3.8 Guatemalan drug law is highly punitive and anachronistic. It reflects the core principles of prohibition, and punishes with prison all drug-related activities, including consumption. Despite health being announced as a priority of state policy,



the law does not include harm-reduction policies. The body in charge of designing the policies to be implemented in terms of prevention, treatment and criminal offences is the *Comisión Contra las Adicciones y el Tráfico Ilícito de Drogas* (Commission against Addictions and Traffic of Illicit Drugs), CCATID, created under Article 70 of the law under analysis. The Commission is attached to the Vice-Presidency, and its members are Secretaries of State from different ministries, and the Attorney-General. The executive office for the implementation of policies is the *Secretaría Ejecutiva, Comisión Contra las Adicciones y el Tráfico Ilícito de Drogas* (SECCATID). The Commission includes an Observatory of Drugs (*Observatorio de Drogas*). SECCATID has developed some prevention programmes in schools, but it does not appear to play any relevant part in the development of drug policy, partly because of the limited budget assigned to it. SECCATID currently lacks funds and personnel. The Observatory of Drugs, for example, consists of just one person. Also, the task of designing drug policy should be undertaken by an interdisciplinary body of professionals, whereas the people currently working in SECCATID do not have the professional profile to undertake that task. The Commission has mainly been used as the representative of CICAD and the agency responsible for prevention programmes, rather than as the executive arm for the implementation of drug policy.

#### 4. LEY DE RÉGIMEN PENITENCIARIO

- 4.1 The *Ley del Régimen Penitenciario* (Law on the Penitentiary Regime) was approved in 2006, after ten years of negotiation. It is based on the respect of human rights and international treaties, and guarantees the right of inmates to a sentence-reduction if they actively participate in the education and labour programmes inside the prison. That right, however, is precluded for certain crimes, such as those related to drugs.
- 4.2 The text is a mixture of more progressive principles and anachronistic concepts. For instance, it stresses the importance of international treaties and conventions as a matrix for the development of the penitentiary system, and the duty of the state to guarantee to the prison population the minimum conditions in terms of health, education, communication with the external world, among other factors that can foster reinsertion into society. However, it uses a clinical terminology, which is common in South and Central American penitentiary laws, whereby the inmate is seen as a “sick” person who needs treatment and “re-education” for society.
- 4.3 The long process that led to the approval of the law, however, did not conclude with its enactment. It took five more years to approve the Regulation of the law (December 2011), which is the instrument by which authorities are told how to actually implement the legal text.
- 4.4 When looking at the daily conditions and practices of prisons in Guatemala, the gap between the text and reality increases. All those interviewed, including the governmental authorities responsible for the penitentiary system, agree that there are basic deficiencies in the system, including insufficient and poor infrastructure, lack of services and widespread corruption, and violence and drug-trafficking inside prisons.

In some prisons, there prevails a real sense of self-government by the inmates, and most of the *extorsiones* in Guatemala, that is, racketeering, is organised, led and ordered from inside prisons. Once again, this is not exclusive to Guatemala, but is quite a common trait of the region's prisons.

- 4.5 The prison system is controlled by the Vice-Ministry of Security, subordinate to the Ministry of Governance. The institution which is directly responsible for the daily functioning of the prison system is the General Direction of the Penitentiary System. As is common for other institutions in the country, the person in charge, the Director-General, changes frequently, usually more than once a year, thus making it difficult for projects to be conceived and implemented with any continuity, as the general tendency is to erase what has been done by a previous Director-General. This common practice increases the weakness of the country's institutions, and is particularly pronounced in the case of the prison system, which is the weakest and least well-managed link in the chain of justice.
- 4.6 In February 2013, for example, the then Director-General Luis Alberto González Pérez was dismissed only one year after being appointed. He was said to be implicated in the privileges which an inmate, Byron Lima, enjoys in the male prison of Pavoncito, in Guatemala City. Lima is an *ex-Kaibil*, accused of participating in the murder of Bishop Gerardi in 1998, and is known to be an influential figure in the prison system, with much power and extensive networks of corruption.

## 5. PEOPLE IN PRISON FOR DRUGS-RELATED CRIMES

- 5.1 One of the usual impacts of prohibitionist drug policies is the mass incarceration of people accused of minor offences, such as possession for personal consumption, and of secondary subjects, such as mules, who are a disposable workforce for transnational DTOs, and are usually non-violent actors. Nevertheless, these people become the main target of the penal system, and represent a large percentage of the prison population. The United States is a clear example of the first point.
- 5.2 According to the World Prison Population List 2011,<sup>88</sup> the global average prison population rate is 146 inmates per 100,000 inhabitants. 54% of countries have rates below 150 per 100,000. The United States has the highest rate worldwide: 743 per 100,000 of the national population, followed by Rwanda (595), Russia (568), Georgia (547), the U.S. Virgin Islands (539), Seychelles (507), St Kitts & Nevis (495), the British Virgin Islands (468), Belize (439), Dominica (431), Bermuda (428), Grenada (423) and Curaçao (422). The prison population rate of the United States is directed related to its punitive drugs policy.<sup>89</sup>

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<sup>88</sup>Roy Walsmsley, "World Prison Population List 2011", 2011, [www.idcr.org.uk](http://www.idcr.org.uk).

<sup>89</sup>Ernest Drucker, *A plague of prisons. The epidemiology of mass incarceration in America*, New York: The New Press, 2011.

- 5.3 The median rate of incarceration for South American countries is 175, whereas for Caribbean countries it is 357.5. The table below shows the prison population rates for Central American countries, and Mexico.

#### Central America's prison population

Country	Prison Population Total	Prison Population Rate per 100,000
Belize	1,396	439
Costa Rica	11,635	249
El Salvador	24,283	391
Guatemala	11,140	77
Honduras	11,846	154
Mexico	222,330	200
Nicaragua	6,803	119
Panama	12,293	349

Source: Roy Walsmsley, "World Prison Population List 2011", 2011, [www.idcr.org.uk](http://www.idcr.org.uk).

- 5.4 The majority of Central American countries and Mexico have higher rates of incarceration than the global average. Guatemala, on the contrary, has a very low one. The next table shows the evolution of Guatemala's prison population from January 2011 to July 2012 (last data available). The right to sentence-reduction under the new penitentiary law is certainly helping to depressurise the prison system. The information presented in this section is not available on public websites, but was kindly provided by ex-Director González.

#### Guatemala's prison population, January 2011–July 2012

Month	Men (sentenced)	Women (sentenced)	Men (remand)	Women (remand)	Total prison population
Jan 2011	4,798	294	5,809	491	11,392
Jan 2012	5,920	382	5,988	560	12,850
Jul 2012	6,454	442	6,529	165	13,590

Source: Dirección General del Sistema Penitenciario, July 2012.

- 5.5 Between January 2011 and July 2012, the prison population has risen by almost 20%, with the pre-trial population representing more than 50% of the total population, and women representing between 5 and 7%.
- 5.6 As for the types of crime for which people are imprisoned, it must be pointed out that drug-related crimes are not one of the main causes of incarceration, as might be the

case for other countries that play a major role in international drug-trafficking, such as Ecuador, Venezuela, Colombia or Mexico, among others.

- 5.7 According to information provided by the General Direction of the Penitentiary System of Guatemala (updated to October 2012), drugs offences represent less than 5% of all offences, and inmates incarcerated for drug-crime are less than 10% of the total prison population. The offences most committed by men are aggravated robbery, homicide, murder, illegal carrying of a weapon, illicit association, racketeering, kidnapping and crimes against women (rape or violence). In the case of women, most offences are related to their gender role as partners of members of criminal groups, as they are mostly incarcerated for racketeering, criminal association and kidnapping, where they act as secondary actors, supporting the male leading figure to whom they are sentimentally related. The next chart gives specific information on drugs offences.

#### Prison population (drugs offenders)

Offence	Sentenced prisoners		Remand prisoners	
	Men	Women	Men	Women
Trade, trafficking and illicit storage	145	27	199	41
Possession for consumption	87	6	120	5
Promotion/encouragement of addiction	90	12	74	24
Promotion and fostering	34	8	39	13
International traffic	39	22	52	10
Sowing and cultivation	14	1	24	2
Production and manufacture			3	
Sub-totals	409	76	511	95
<b>Total</b>	<b>1091</b>			

Source: *Dirección General del Sistema Penitenciario*, July 2012.

- 5.8 Pre-trial inmates are little more than 50% of the total. Women are more than 15% of the total population incarcerated for drug crimes. That would confirm the worldwide tendency, that women have a growing participation in drug-related crimes, acting especially as occasional mules or getting involved in small scale trade.<sup>90</sup> Men are mostly accused of trade, trafficking and illicit storage (under Article 38 of the Law against narcoactivity) and of possession for consumption. Women are incarcerated mainly for trade, trafficking and illicit storage, followed by promotion or encouragement to addiction (Article 49) and international trafficking. It would appear that traffickers and medium- or small-scale dealers are the main targets of prosecution.
- 5.9 Once again, statistical information must be treated cautiously. Data are often not gathered systematically, and may be deliberately altered. Although the Beckley Foundation was made welcome by local authorities and given all the support it requested, including a visit to two prison centres, that does not exclude the possibility

<sup>90</sup>UNODC, *Handbook for prison managers and policymakers on women and imprisonment*, 2008 a, www.unodc.org.

that the data supplied may contain some degree of error. For instance, we were provided with the years of sentence for people accused of drug-related offences. Some people accused of consumption were sentenced to more than 90 years of jail. According to Guatemala's expert on penal justice Marco Antonio Canteo, official statistical information is very unreliable.

- 5.10** Police statistics on detention would confirm the small number of people arrested for drug-offences:<sup>91</sup> less than 3% of people arrested (a total of 32,344 in 2012) were accused of drugs offences. Of them, 724 were arrested for possession, 7 for sowing and cultivation and 230 for trafficking. A senior officer of the Attorney-General's office confirmed to the Beckley Foundation in an interview that the cases of people arrested for consumption are generally dismissed when they arrive at the prosecutor's offices. All sources agree that very few people nowadays are in prison for possession of drugs for personal consumption. However, years ago, they say, policemen used to specifically target consumers and even "plant" drugs on them in order to arrest them. Every policeman is given an economic bonus for a certain number of detentions, and consumers were very easy targets.
- 5.11** During a visit to a female prison in Guatemala City, the Beckley Foundation was told by its Director that most women are in prison for drug-related crimes, mostly possession. However, she then said that the majority of them were given sentences of about 4 to 6 years, which does not correspond to the punishment given for possession, but would seem to be related to small trafficking or retail sale.
- 5.12** The unverifiability of data and, at times, the confusion that exists around drug issues, even among professionals, compel us to handle data with a certain caution, and it is difficult to draw conclusions and develop recommendations on the basis of such poor information. More qualitative research on the penitentiary system is needed, in order to deepen understanding of the specific impact of repressive drug policy in prisons.

## 6. OTHER LAWS

- 6.1** In this section, we consider other legal tools which are related to the fight against organised crime. The laws are presented in chronological order of approval.
- 6.2** The law against money-laundering and illicit assets was approved in 2001, in consequence of the international treaties signed and ratified by Guatemala. It creates a new body, the *Intendencia de Verificación Especial* (IVA), responsible for collecting information, analysing it and, if necessary, assisting the Attorney-General to prosecute the case. Unfortunately, insufficient human and economic resources hinder the effectiveness of the institution. According to the report *Siguiendo la ruta del dinero en Centro América*,<sup>92</sup> IVA has only 84 employees. Together with institutional weakness,

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<sup>91</sup>Police statistics on detention for the years 2011 and 2012, generously provided by Sandino Asturias, Centro de Estudios de Guatemala.

<sup>92</sup>Lorena Escobar, Annette Schwarzbauer and Eduardo Stein (Eds.), *Siguiendo la ruta del dinero en Centro América*, Guatemala: Fundación Konrad Adenauer, 2012.

lack of personnel is another issue that prevents the full implementation of the law. Money-laundering can take several forms, and illicit money is trafficked through borders in innumerable forms, including the use of mules.

- 6.3 In 2005, the Congress of Guatemala approved the *Ley Para Prevenir y Reprimir el Financiamiento del Terrorismo* (Law against the Funding of Terrorism). According to local analysts, this is a clear example of the influence of the United States on the country, as the bill has nothing to do with the country's reality, since terrorism is not an issue in Guatemala.
- 6.4 The Law against organised crime was approved in 2006, and reformed in 2009 by Decree number 17–2009. This law fulfils Guatemala's obligations under the Convention of Palermo against organised crime. Again, it is an example of a law that attempts to comply with external pressures, even if it simultaneously reflects a necessity of the country, considering the growing presence of both local and international criminal groups. It covers one of the main expressions of organised crime affecting the urban population, such as kidnappings, especially "express kidnappings" – and racketeering.
- 6.5 A law which deserves particular attention is the *Ley de Armas y Municiones*, that is, the Law on Weapons and Munitions, which was passed by the Congress in 2009. The Law was declared to be urgent by the Peace Agreements, but nevertheless was not enacted for a further thirteen years. The process for its approval began in 1999 and lasted ten years. The law responds to the pacts signed in the Peace Process, and also fulfils Guatemala's international commitments in terms of preventing and sanctioning illegal production, manufacture and trade of weapons. According to a report<sup>93</sup> by the International Commission against Impunity in Guatemala (*Comisión Internacional Contra la Impunidad en Guatemala*; CICIG), the ownership and carrying regime for weapons in Guatemala has historically been lax. Article 38 of the Constitution affirms the right to possess weapons for personal use. Carrying them, however, is regulated by the law under analysis.
- 6.6 Before the publication of the Law, it was legal to buy up to 500 rounds of ammunition per weapon per day. Under the Law, only 200 rounds are permitted for each weapon per month. It took thirteen years of debate to achieve this amendment. The Law hardly better regulates the legal market of weapons, however, as the number of licenses to which an individual is entitled was not reduced, so everybody can still possess an almost unlimited number of firearms and amount of ammunition. This fact is striking in a country where about 84% of the homicides are committed with a firearm, and which has one of the highest homicide rates in the world. Actually, despite the general tendency to point out at the illegal market of weapons as one of the causes of violence in the country, the CICIG's report highlights that many crimes are committed with legal weapons.
- 6.7 Guatemala is the sixth largest buyer of weapons in Latin America, and imports 42% of the total value of weapons imported by Central American countries. Between 1994

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<sup>93</sup>CICIG, *Armas de fuego y municiones en Guatemala. Mercado legal y tráfico ilícito*, December 2009, [www.cicig.org](http://www.cicig.org).

and 2009, Guatemala spent about US\$94 million on weapons, ammunition and war material.

- 6.8** At the same time, in Guatemala there is a wide and variegated market of illicit weapons, and the line between the licit and illicit market is easily crossed, mainly because of a lack of effective controls. Routes of illicit arms traffic can vary. However, the main ones are: United States – Mexico – Guatemala (by land); United States – Guatemala (by sea); Nicaragua – El Salvador – Guatemala; Honduras – Guatemala; Guatemala – Mexico; Mexico – Belize – Guatemala; and Mexico – Guatemala – Mexico (which is used for trafficking weapons from one Mexican state to another).
- 6.9** Most sources argue that Guatemala needs as a priority a stricter regulation of its legal arms trade, and of its firearms-ownership and -carrying regime. However, businessmen involved in the firearms industry constitute a very powerful group within the congress of Guatemala and reform would, therefore, probably meet with strong resistance.
- 6.10** The forfeiture law, the *Ley de Extinción de Dominio*, was enacted in 2010, after years of intense debate between the Congress, civil society organisations and international bodies. This law intends to attack the enormous wealth illicitly accumulated by perpetrators of organised crime and to deprive them of their capital and assets. According to our sources, for the first year or so, the Law was mainly used to seize money, especially in the international airport of *La Aurora*, in Guatemala City. The first judicial process carried out in accordance with the forfeiture Law began in 2012, and regarded a *finca* (estate) which belonged to a narcotrafficker, and which was confiscated by the Government in January 2013. In the same month, the *Consejo Nacional de Administración de Bienes en Extinción de Dominio* (the National Council which is responsible for the administration of the goods seized under the forfeiture law) announced that US\$1.3 million would be distributed among several government agencies, among them the Ministry of Internal Affairs, the Judicial Power, and the Attorney-General.
- 6.11** In October 2012, Congress approved the Law against illicit self-enrichment, dubbed by the media the “Law against Corruption”, after ten years of debate and in fulfilment of Guatemala’s international commitments. The approval of the Law was applauded by civil society and CICIG. This instrument will set the framework for the prosecution of public officers who accept bribes, gain illicit commissions on public tenders, and accumulate wealth through the illicit use of public funds.
- 6.12** The current legal apparatus in Guatemala attempts to respond to international commitments and requirements, while facing national problems related to the expansion of organised crime and its power to penetrate and corrupt national institutions. To a certain extent, some laws reflect the US agenda both in their content and form, since they calibrate the fines imposable in US dollars as well as in the national currency. The Law on Weapons and Munitions is generally pointed out as insufficient to handle the country’s homicide levels and the legal and illegal markets of weapons. The Law on Narcoactivity is based on highly repressive perceptions of drug-related crimes, and severely punishes the actors involved, without

differentiating between drugs and between levels of participation and leadership. As we shall see in future sections, these characteristics are not exclusive to Guatemala. Actually, they are shared by other Central American countries, and other states such as Mexico, Venezuela and Ecuador. Most of the laws analysed in this section have been passed after ten years of heated debate. Unfortunately, internal divisions among social groups and political factions hinder legislation, and so can delay the democratic process. A positive note is that civil society is often included in the legislative process together with relevant international actors, such as CICIG and the United Nations High Commissioner on Human Rights, through the Board of Justice and the Congress of Guatemala. However, this mechanism can be used by Congressmen to delay the process of approval of a law, as an initiative can be sent back and forth between the Board and the Congress before consensus is reached.

## 7. OTHER CENTRAL AMERICAN COUNTRIES

7.1 In the following paragraphs we describe the sentences laid down in the other Central American countries for offences related to illicit drugs. The aim of this section is to offer a general regional panorama, in order to better understand Guatemala's legal context.

### *Honduras*

7.2 The Honduran law on drugs is called *Ley sobre Uso Indebido y Tráfico Ilícito de Drogas y Sustancias Psicotrópicas* (Law on Undue Use and Illicit Traffic of Drugs and Psychotropic Substances), and was enacted in 1989. The law is based on considerations of a moralistic nature, and tends to characterize narcotraffic and the use of illicit drugs as social evils, from which the state is responsible for protecting the population. Production, traffic and use of drugs are said to cause irreparable damage to Honduran youth, this being the pillar of the country's future and the sector most susceptible to falling into the vice of consumption; and the use of drugs is said to be the fruit of clandestine activities, carried on by pitiless individuals that shamelessly act outside the borders of the law.

7.3 This language is a reproduction of the preamble of the 1961 Single Convention, which declares that the Parties to the Convention are "concerned with the health and welfare of mankind", recognizes that "addiction to narcotic drugs constitutes a serious evil for the individual and is fraught with social and economic danger to mankind" and are "conscious of their duty to prevent and combat this evil".

7.4 Honduran law punishes very harshly all drug-related conducts, and sanctions possession for personal consumption with a prison sentence and forced treatment. Consumption and possession fall into the category of illicit activities the law is meant to control, regulate and punish. The law does not establish what amounts are to be considered as for personal consumption, thus leaving room for arbitrariness and extortion from the criminal justice apparatus. In the following table, we list the main offences and corresponding prison sentences.



Article	Offence	Sentence
16	Sowing and cultivation	9–12 years
17	Production and manufacture	9–15 years
18	Traffic	15–20 years
20	Induction of consumption	9–12 years
26	Possession for personal consumption: if the substance possessed exceeds what is considered to be for personal consumption, possession shall be considered as traffic (article 18)	1st time: up to 30 days of internment 2nd time: 30 to 90 days of internment – people with drug dependence will be interned and submitted to a rehabilitation treatment

### *El Salvador*

- 7.5 In El Salvador, the first law for the regulation of illicit drugs was approved in 1991. In 2003 a new law was approved, based on the consideration that the previous one had become obsolete. It is entitled *Ley Reguladora de las Actividades Relativas a las Drogas* (Law Regulating Drugs-related Activities), and has been amended several times since 2003.
- 7.6 Public health is considered a responsibility of the State, and the persecution of drug-related crimes a way to guarantee it. Drug dependence is defined as a phenomenon that degrades the mental and physical health of inhabitants of the Republic, and as a criminogenic factor, and controlling and fighting drugs-related activities is considered a way to prevent drug dependence.
- 7.7 Chapter V specifies the offences and the respective sentences. As is the case for both Honduras and Guatemala, imprisonment and fines are the main forms of punishment. The table shows the main offences and how they are sentenced.

Article	Offence	Sentence
31	Sowing and cultivation	5–10 years
32	Manufacture or transformation	10–15 years
33	Illicit traffic b) International variable	10–15 years b) previous sentence increased by 1/3
34	Possession	less than 2g: 1–3 years 2g or more: 3–6 years possession intending to commit article 33 activities: 6–10 years

7.8 Sentences are usually high, and consumers are at risk of being jailed for at least one year for possessing a minimal quantity of drugs. There is no differentiation according to the type of drug. Secondary actors, such as occasional mules, can receive a sentence of at least ten years.

### *Costa Rica*

7.9 Two laws regulate illicit drugs and related activities in Costa Rica: the *Ley de Salud* (Health Law) and Law 8204: *Ley sobre Estupefacientes, Sustancias Psicotrópicas, Drogas de Uso no Autorizado, Legitimación de Capitales y Actividades Conexas* (Law on Narcotic and Psychotropic Substances, Unauthorized Use of Drugs, Money-Laundering and Related Activities). We will focus on the second Law, in which offences and sentences are laid down.

7.10 Costa Rican law regulates and penalises offences related to illegal substances and to money-laundering in a single text. In relation to consumption, Article 3 states that it is a duty of the state to prevent the use of narcotic and psychotropic substances capable of causing physical or psychological dependence, and to provide treatment, rehabilitation and education, guaranteeing the existence of sufficient economic means for rehabilitation programmes. In contrast to the previous examples, Costa Rica's law is based on a health-related approach to drug use.

7.11 Article 58 establishes a sentence between 8 and 15 years for anyone who illegally distributes, trades, provides, manufactures, grows, extracts, prepares, transforms, carries, stores or sells substances, plants and products that the Law is concerned with. The same sentence is applied to anyone who possesses drugs for those ends. Consumption and simple possession are not included in the law, and there is no definition on how they should be regulated.

### *Nicaragua*

7.12 Nicaragua's definition and penalisation of drug-related activities can be found in the Penal Code (Law 641) and in the national law on drugs, Law 285, which is called *Ley de Estupefacientes, Psicotrópicos y Otras Sustancias Controladas; Lavado de Dinero y Activos Provenientes de Actividades Ilícitas*, which includes clauses on controlled substances, precursors and money-laundering. Law 285 lays down the following offences and sentences:

Article	Offence	Sentence
51	Internal traffic	5–20 years
52	International traffic	20–30 years
53	Manufacture	20–25 years
54	Illegal transportation	10–15 years
55	Production (sowing, cultivation and harvest)	5–15 years
56	Storage	6–12 years
57	Production/traffic of precursors	5–10 years
67	Possession (no more than 5 g of marijuana, 1 g of cocaine or any other controlled substance)	1st time: up to 30 days of incommutable arrest Relapse: 30 to 90 days of incommutable arrest If under the effect of drugs or dependent on them: internment for rehabilitation. The person's family can assume the responsibility to take care of the rehabilitation in a private or public treatment centre

**7.13** Article 561 of Nicaragua's penal code establishes the penalties to be applied in the case of minor possession. People found with less than five grammes of marijuana or one gramme of cocaine or any other controlled substance will receive a fine and 30 to 60 days of community work (at two hours per day). The amount of drugs a person can carry without fear of arrest are below a reasonable quantity intended for personal consumption. Other offences are punished with high sentences, especially international trafficking and possession of substances in quantities higher than those established in Article 67.

### ***Belize***

**7.14** Illicit drugs-related activities are outlined in the Misuse of Drugs Act, enacted in 1990 and amended on several occasions. This Act stipulates the definition of offences and their sentences and fines. It must be stressed that both possession and *consumption* are considered illicit activities, the second being sanctioned with the sentences of the first, unless possession is with the purpose of supply or narcotrafficking. The Act is divided into sections and subsections, the combination of which leads to the relation between offence, type of trial and sentence. According to the last National Report corresponding to the 5th Evaluation Round of MEM<sup>94</sup>, the country has a First-Time Offenders Programme which provides alternative sentencing measures for illicit drug possession. However, there is no information as to the number of persons to whom

<sup>94</sup>CICAD, *Belize. Evaluation of Progress in Drug Control, 2007-2009*, 2011 c, www.cicad.oas.org.

the programme has been applied, and there is no extant evaluation of this programme. The table below lists the main offences and related sentences.

Section	Offence	Sentence
18 (drug trafficking offences)	Drug-trafficking (import, export, transportation, storage, cultivation, possession with the purpose of drug-trafficking, supply or offer to supply and production) (Possession of more than: 2 g of heroine, 1 g of cocaine, 30 g of opium, 3 g of morphine or 60 g of cannabis or cannabis resin can be considered possession with intent to supply)	Summary conviction: 3–10 years; but, if the quantity is less than: 1 kg of heroin or cocaine, 2 kg of opium, 3 kg of morphine or 5 kg of cannabis or cannabis resin the court can order the convicted person to pay a fine. Conviction on indictment: 5–14 years (same conditions in terms of quantities)
28	Possession of a controlled substance (other than for drug trafficking)	2–5 years If the convicted person is a first-time offender and is proved to be addicted to drugs, the sentence can be suspended and the person shall be referred to a drug rehabilitation centre for treatment
12 (subject to section 51)	Smoking or use of controlled drugs; being in possession of utensils adapted for the use of drugs	Not specified, see previous offence

### *Panama*

7.15 Panama defines offences and sentences in its Penal Code. They are reproduced in the following table.

Article	Offence	Sentence
313	International traffic	10–15 years; If for local distribution the sentence is increased by 1/3; Small quantity, meant for personal use: 1–3 years, fine or rehabilitation measure
314	Cultivation, manufacture and production	10–15 years
316	Buying, selling, storing, import or export of chemical substances and precursors for the production of drugs	8–15 years
318	Buying, selling, storing, transferring	8–15 years
320	Buying or possession of drugs in small quantity for personal consumption	Fine/ weekend detention/community work
321	Possession other than for consumption	5–10 years

**7.16** Generally speaking, the tables show that Central American countries, with the exception of Costa Rica, criminalise drug-related activities on a series of principles that can be summarized as follows: a) drugs are an evil than can pollute society; b) prosecution and incarceration can reduce consumption; c) consumption is a health issue that is dealt with through imprisonment; and d) the state is responsible for protecting society from the spread of organised crime and of illicit substances.

**7.17** The systems follow an inherently contradictory approach, whereby public good and the preservation of health are maintained by the state through the imposition of a penal sanction. Yet prisons are often the cause, rather than the cure, of criminality, especially in countries with deficient, overcrowded and under-funded penitentiary systems, where human rights are systematically violated and the offender's ties with society further diminished or broken. Sentences in the region are high. Belize has lesser sentences for international drug trafficking, but punishes consumption very harshly. Except in Costa Rica, possession is criminalised with some sort of punishment, generally prison. In Nicaragua, minor possession is punished with an administrative sanction, namely a fine and community work. Guatemala includes the death penalty as a possible consequence of a drug-related activity and has, together with Nicaragua, among the highest maximum sentences for sowing and cultivation, international drug trafficking, production and storage.

## 8. OTHER COUNTRIES IN LATIN AMERICA

### Mexico

- 8.1 In Mexico, drug-related activities are legally defined as “crimes against health” (*delitos contra la salud*) and they are listed in two texts: the *Ley General de Salud* (General Health Law) and the Penal Code. In the former, conduct related to consumption, retail sale and commerce are defined and penalised. The Penal Code deals with criminal conduct related to the international market. The main line of division is determined by the combination of the type and quantity of the illicit drug concerned.
- 8.2 Before entering into the details of both laws, it must be stressed that differentiation between *narcomenudeo* (small-scale drug-dealing) and general trafficking, as well as the decriminalisation of consumption on the basis of substance and quantity, is new in Mexico. It is the product of a Presidential Decree approved and promulgated in 2009, usually known in the national and international literature as *Ley del Narcomenudeo* (Law on Retail of Narcotics), a term actually coined by the media. Before the decree, all drug-related activities were defined and penalised according to the Penal Code.
- 8.3 Chapter VIII of the General Health Law concerns illicit substances and related offences at the retail level. Article 479 contains a chart whose values serve as the basis of definition of criminal conduct and, when applicable, sentences. When equal to or lower than the amount defined in the table, possession is considered to be for personal consumption, and therefore not prosecutable (Article 478).
- 8.4 The values in the table not only determine the limits of possession for personal consumption, but also the scope of action of this ‘drug retail’ law. Quantities of drugs involved must not exceed those included in the chart multiplied by a thousand – for instance, 5 kilos of marijuana. If the amount of the illicit drug is higher than this limit, the offence will be punished according to the Penal Code.

#### Guideline table of maximum quantities for personal and immediate consumption

Drug	Maximum amount for personal and immediate use	
Opium	2 g	
Diacetylmorphine or heroin	50 mg	
<i>Cannabis sativa</i> , <i>C. indica</i> or marijuana	5 g	
Cocaine	500 mg	
LSD	0.015 mg	
	<b>Powder, granules or crystal</b>	<b>tablets or capsule</b>
MDA	40 mg	One unit weighing no more than 200 mg
MDMA	40 mg	One unit weighing no more than 200 mg
Methamphetamine	40 mg	One unit weighing no more than 200 mg

8.5 The next chart shows what offences are prosecutable under the General Health Law.

Article	Offence	Sentence
475	Sell or supply. The amount must not exceed that established in the table multiplied by 1,000.	4 to 8 years
	If the victim or the person used to commit the offence is less than 18 or unable to resist the agent or understand the conduct	7 to 15 years
	If the offence is carried out public officers, by personnel related to the health sector or near schools, prisons, etc.	Sentence increased by ½
476	Possession with intent to supply or sell. The amount must not exceed that established in the table multiplied by 1,000	3 to 6 years
477	Possession. The quantity of the illicit substance must range from those indicated in the table to their amount multiplied by 1,000	10 months to 3 years

8.6 The criminal activities mentioned above, if prosecutable, are the responsibility of local authorities (i.e. the States), unless other circumstances determine that certain cases must be dealt with by the Federal Attorney-General.

8.7 The Penal Code outlines those criminal conducts and sentences which are exclusively within Federal jurisdiction.

Article	Offence	Sentence
194	Production, manufacture, buying, selling, prescription, import, export, transportation, support, promotion, etc.	10 to 25 years
195	Possession with intent to commit any of activities included in article 194	5 to 15 years
195 bis	Possession without intent to commit acts included in article 194	4 to 6 years
	Possession of prescription medicines for treatment; possession of peyote or other substances for traditional use	No prosecution
196	If the victim or the person used to commit the offence is less than 18 or unable to resist the agent or understand the conduct, or if the offence is carried out by public officers, personnel related to the health sector or near schools, prisons, or if other aggravating circumstances take place	Sentence for Article 194 increased by ½
198	Sowing and cultivation	1 to 6 years

- 8.8 The reform of 2009 has been internationally welcomed, as it is seen as an example of decriminalisation of consumption. However, experts from the Mexican NGO *Colectivo para una Política Integral Hacia las Drogas* (CuPIHD)<sup>95</sup> have drawn attention to the negative aspects of the decree. On the one hand, they argue, the reform represents a positive step forwards toward the possibility of developing consumers' rights, insofar as it makes a distinction between user, addict and dealer, which tended to be blurred in the previous legislation. "Equally important", they state,<sup>96</sup> "is the law's inclusion of harm-reduction as a state policy, which guarantees obtaining resources for the implementation of the policies." In spite of the above, the authors affirm that the new legal framework creates more problems than it solves. One of the negative aspects, they point out, is that the reform creates more room for corruption of and extortion by the police, when people are allegedly caught with higher quantities than those established by the table. Furthermore, sentences for small-scale drug dealing are said to have been increased.
- 8.9 This last point can be debated, as the reform has implied lower sentences (at least potentially) for a certain group of small-scale mules, namely those who smuggle drugs into prisons. If we review the available data – bulletins from the Attorney-General (*Procuraduría General de la República*), we find that such mules share the following characteristics:
- they are mostly women
  - the illicit drugs most commonly found are, first, marijuana, then cocaine, followed by prescription medicines used as psychotropics
  - they carry less than a kilo, the amounts ranging from 200 to 600/700 grammes
  - they mainly attempt to introduce drugs to male prisons.
- 8.10 Women who correspond to this profile are usually referred to with the nickname of *aguacateras*, from the name of the vegetable *aguacate*, that is, avocado, because the package of drugs they usually hide inside their vagina has the shape of that fruit.
- 8.11 Before the reform, they were sentenced according to Article 196, which required (and still does) that sentences for Article 194 be increased by one-half, which corresponded to 15 years of prison with no right of parole. Under the new scheme, their offence can be punished according to article 475 of the Health Law, which is more lenient, since the quantities they carry are usually lower than the values established in the Health Law multiplied by one thousand.
- 8.12 Despite some positive aspects, the 2009 Decree is an example of a poorly designed and counterproductive decriminalisation law.<sup>97</sup>

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<sup>95</sup>Jorge Hernández Tinajero and Carlos Alberto Zamudio Angles, "Mexico: the law against small-scale drug dealing. A doubtful venture", October 2009, [www.tni.org](http://www.tni.org).

<sup>96</sup>*Ibid.*, 1.

<sup>97</sup>Niamh Eastwood and Ari Rosmarin, *A quiet revolution: drug decriminalisation policies in practice across the globe*, June 2011, [www.release.org.ok](http://www.release.org.ok).



## Colombia

**8.13** The national law that regulates illicit substances, defines offences and establishes sentences is Law 30 of 1986, amended on several occasions and the object of rulings by the Supreme Court.

**8.14** In Article 2, Section J, the law defines the doses for personal use. These correspond to 20 g of marijuana, 1 g of cocaine, 5 g of hashish and 2 g of methaqualone. Those found in possession of quantities up to this level cannot be prosecuted, as they are deemed to be for personal consumption. Chapter 5, “On crimes”, describes the offences and the corresponding penalties, as shown in the chart below.

Article	Offence	Sentence
32	Sowing, cultivation, financing or taking care of illicit crops	4–12 years
	If the number of plants is between 20 and 100	1–3 years
33	Import, export, sell, buy, transport, storage, traffic, supply, etc.	6–20 years
	If the amount is above the doses for personal use but less than 1,000 g of marijuana, 200 g of hashish or methaqualone: and 100 g of cocaine	1–3 years
	If the amount is more than the above quantities but less than: 10,000 g of marijuana, 3,000 g of hashish, 2,000 g of cocaine, 60 g of poppy derivative, 4,000 g of synthetic drug	4–12 years

**8.15** The Law contemplates punishment for possession for personal use in Article 51. However, by a 1994 resolution, the Constitutional Court of Colombia declared that article to be contrary to the Constitution, and it has not been applied since, thus decriminalising consumption in the country. Even so, there is an ongoing debate on the matter. During his mandates (2002–2006 and 2006–2010), ex-President Uribe attempted on several occasions to make possession for personal consumption a criminal offence. Since the 1994 judgment prevented him from legally prohibiting possession for personal consumption, he circumvented this limit by proposing reforms of the Constitution. In 2009, a bill was passed by the Congress, approving the reform of Article 49 of the Constitution. The new article establishes that carrying and consuming narcotic drugs is prohibited. However, it does not establish sanctions, but mere prophylactic measures that depend on the consumer’s consent.

**8.16** In June 2012, another decision by the Supreme Court asserted that carrying drugs for personal consumption and using them cannot be punished. Furthermore, although the Law establishes the quantities which determine the offence (possession for personal consumption *versus* sale, supply or trafficking), more elements are required to prosecute someone as a dealer than the mere possession of illicit substances in quantities higher than those for personal consumption.

**8.17** Although both Colombia and Mexico have been affected by DTOs and related crimes for decades, they have developed quite different legal tools to deal with them.

Although Colombian legislation is also repressive and highly influenced by the international legal framework,<sup>98</sup> it includes more criteria than Mexican law. The latter more closely resembles that of Central American countries. Moreover, the Mexican attempt to decriminalise consumption resulted in a failed law which is likely to foster corruption.

8.18 In January 2013, the President of Colombia, Juan Manuel Santos, announced new measures intended to improve the country's drug policy. Justice Minister Ruth Stella Correa announced that the Government of Colombia will present to Congress a bill which would reform the current drug law and that would include, among other things, the decriminalisation of possession of ecstasy for personal consumption. The process of reform also includes the creation of an Advisory Commission on Drug Policy, made up of prestigious and influential critics of the current repressive approach to drug policy, including President César Gaviria (Chair of the Commission), General Naranjo and the academics Daniel Mejía and Rodrigo Uprimny. The task of the Commission is to analyse the last decade of drug policy in Colombia, to evaluate it, and to recommend what direction it should follow. The Commission's initial report was published in May 2013.

## 9. CONCLUSIONS

- 9.1 In the first part of this section, we described Guatemala's current legal apparatus to fight organised crime and related activities. Guatemalan laws appear to respond to four major inputs: a) the commitment to fulfil the agreements reached in the Peace Process; b) the need for national tools that adequately deal with a complex range of criminal activities; c) international commitments; and d) pressure from the United States.
- 9.2 It is important to notice how difficult it has been for the country to achieve consensus around sensitive issues, such as the Decree on Weapons.
- 9.3 When specifically looking at drug laws, we find that the implementation of the UN conventions on drugs varies across continents and regions. Europe has been adopting a more liberal, harm-reductionist approach for decades, although with variations among countries. The experiments in decriminalisation and harm-reduction in countries such as the Netherlands, Portugal, Spain and Switzerland have been successful. The Czech Republic decriminalised possession of controlled drugs in 2009 (with effect from 2010), and medical marijuana may soon be legally sold and available there via doctors' prescriptions.
- 9.4 In November 2012 the US States of Washington and Colorado voted to legalise the possession (and, in Colorado, the cultivation) of limited quantities of marijuana for personal use, and to regulate its production and distribution and the growth of a licit domestic industry.

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<sup>98</sup>Pien Metaal and Coletta Youngers (Eds.), *Systems Overload. Drug Laws and Prisons in Latin America*, March 2011, [www.tni.org](http://www.tni.org).

- 9.5 In Latin America, too, we can identify a plurality of laws and policies. In this section we described the cases of Mexico, which is an example of “bad” decriminalisation legislation and Colombia, where possession for personal consumption has been allowed for almost twenty years, and whose government is open to debate and reform.
- 9.6 It is important to stress that part of the debate is taking place in the courts. Argentina, for instance, has been debating decriminalisation of possession since 2009, when the Supreme Court ruled it unconstitutional to punish people for personal use of drugs.
- 9.7 Uruguay attracted world-wide attention when its President declared that the country would legalize and regulate the marijuana market, putting it under the control of the state. José Mujica, the *ex-guerrillero* left-wing President, announced that the country would undertake this path in order to limit the negative side-effects of the prohibitionist system, such as the spread of violence and crime, which are both rising in Uruguay. 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 Convention with effect from 1 January 2012.
- 9.8 Central American countries have designed legislation that goes even beyond the UN Conventions, criminalising use and severely punishing possession for personal consumption. In Section I, we pointed out that consumption is not a major issue in these countries and that, even if the levels of drug-use are increasing, this should be approached from a public health perspective and not a criminal one. Even so, possession of illicit substances for personal consumption is considered a serious criminal act that requires imprisonment or forced treatment for rehabilitation. The influence of the United States is one of the reasons why these countries’ codes go beyond the UN Conventions, as the United States’ government is the agent that puts most pressure puts on weaker countries to adopt the prohibition system.
- 9.9 Certainly there is room for ameliorating Guatemalan drug laws and incorporating new principles and policies into them, such as decriminalisation and harm-reduction. As in Colombia, the Government of Guatemala could appoint an interdisciplinary group of experts to initiate a process of reform which would form part of a wider effort aimed at tackling the collateral damage caused by the application of the prohibitionist system. As we mention at the end of Section III, the appointment of a group of experts to draw up a legislative reform is one of the proposals that were presented in January 2013 by the Beckley Foundation to the Government of Guatemala.
- 9.10 An independent commission would probably work better than a government institution. However, SECCATID could be involved in such a commission, and could help to gather quantitative and qualitative information for the elaboration of a new national drug policy under the supervision of a Special Commission.

## Section III. The Multiple Dimensions of Violence and Proposals for Alternative Drug Policy

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### 1. INTRODUCTION

- 1.1 Organised crime and its multiple activities usually imply the use of violence, including its lethal form. Guatemala is known globally for its skyrocketing levels of homicide and for being one of the most dangerous countries in the world. Lack of security is the main concern of the Guatemalan people, and tackling it is one of the biggest challenges for any government.
- 1.2 As we shall see in this section, “violence” cannot be reduced to a single definition and manifestation, but is rather a multifactorial phenomenon. Some of its forms maintain a pattern of continuity with the violence experienced during the civil conflict. Others are relatively new, such as violence related to narcotraffic. Bibliographical sources and experts consulted on this topic generally agree on two basic assumptions: i) the difficulty in tracking down the origins and manifestations of today’s violence in Guatemala; and ii) the role played by narcotrafficking in the rising levels of violence. In fact, the highest levels of homicide are found in those departments and municipalities that lie closer to the borders or along trafficking routes. However, it is widely acknowledged that identifying specific causes or actors that perpetrate violence is neither an easy nor a straightforward task.
- 1.3 In the first part of this section, we attempt to describe the main trends of lethal violence by looking at the evolution of homicide levels, their territorial distribution and the percentages of homicides committed using a firearm. Then we present different reports and experts’ analyses on violence, in order to identify who are the victims and the perpetrators, and in order to understand the weight of drug-trafficking-related violence. After this analysis, we summarise the proposals that the Beckley Foundation presented to President Otto Pérez Molina in February 2013. The proposals are not intended to address and solve the complexity of the phenomenon of violence in Guatemala, but are seen as ingredients that can contribute to reducing violence, generating policies based on human rights, regulation and international cooperation in the pursuit of the wellbeing of the Guatemalan people.

### 2. HOMICIDES

- 2.1 Guatemala went through more than thirty years of civil war. Almost twenty years after the signature of the Peace Agreements in 1996, the country is far from experiencing stability. Instead, post-conflict Guatemala is characterised by growing levels of lethal violence. The increase in crime is a feature in all Latin America and the region is today the most dangerous in the world. However, violence is not distributed homogeneously: some regions present particularly violent scenarios. The Northern Triangle (Guatemala, Honduras, El Salvador) is undoubtedly the area with higher

levels of homicide. According to data from the United Nations Office on Drugs and Crime (UNODC),<sup>99</sup> Honduras's homicide rate was 91.6 per 100,000 of population in 2011. However, what is most remarkable is the rapid increase from 42 per 100,000 in 1999 to the current level. In contrast to El Salvador and Guatemala, which have a history of armed conflict, Honduras's levels of violence seem to be clearly related to its increasing role as a drug-transit country, especially since the coup that overthrew President Zelaya in 2009. As we saw in Section I, Honduras is the main landing ground for flights originating in Colombia and Venezuela, and most cocaine cargos arriving by land in Guatemala do so through the border with Honduras. The Guatemalan/Honduran border is said to be one of the most violent areas in the world. Criminal networks are not only engaged in cocaine traffic, but also in other criminal activities, such as extortion and migrant-smuggling.<sup>100</sup> El Salvador is considered to be the second-most violent state in the region, with a homicide rate rising from 60 to 69.9 per 100,000 between the mid-1990s and 2011. In 2012, the homicide rate fell by 40%, due to a gang truce that began in March 2012. Little cocaine is said to transit through El Salvador, and violence is mainly associated with gangs.

**2.2** In 1996, when the Peace Agreements were signed, Guatemala had a yearly homicide level of 35.3 per 100,000 of population. It fell to 30 in 1998 and 24 in 1999, and was 25 in 2000 and 28 in 2001. Then it began to rise significantly again. In the last ten years, Guatemala's homicide rate has averaged 42 per 100,000 of population. According to the report *Guatemala en la encrucijada*,<sup>101</sup> which analyses violence in Guatemala in depth, 2009 exhibited the highest number of homicides since 1986: 6,498 in total, which corresponds to 48 homicides per 100,000 of population. The homicide rate registered in the period 1999–2009 was 75% higher than the homicide rate which characterized the country during the decade before the Peace Agreements. The following table shows the evolution of the homicide levels in the countries of the Northern Triangle and Belize.

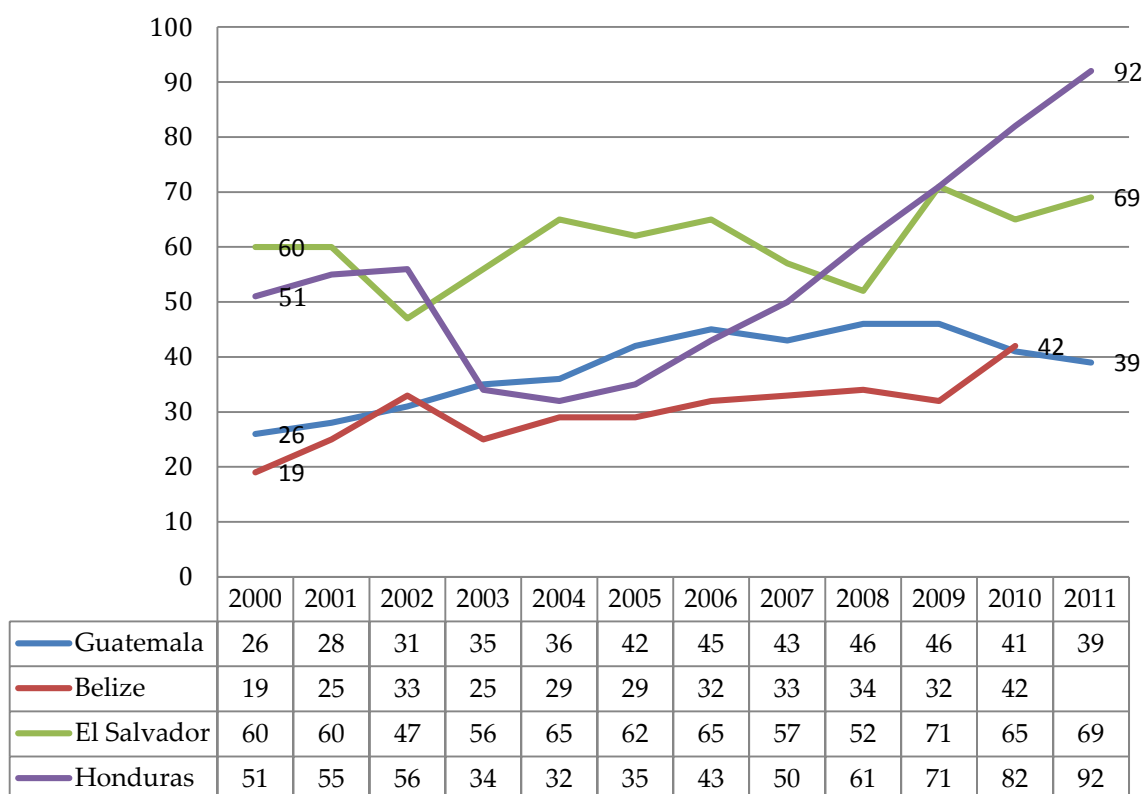
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<sup>99</sup>UNODC, "Intentional homicide, count per 100,000 population (2005–2011)", [www.unodc.org](http://www.unodc.org).

<sup>100</sup>UNODC (2012 a).

<sup>101</sup>Jorge A. Restrepo and Alonso Tobón García (Eds.), *Guatemala en la encrucijada. Panorama de una violencia transformada*, Bogotá: Geneva Declaration, 2011.

## Murder rates in northern Central America

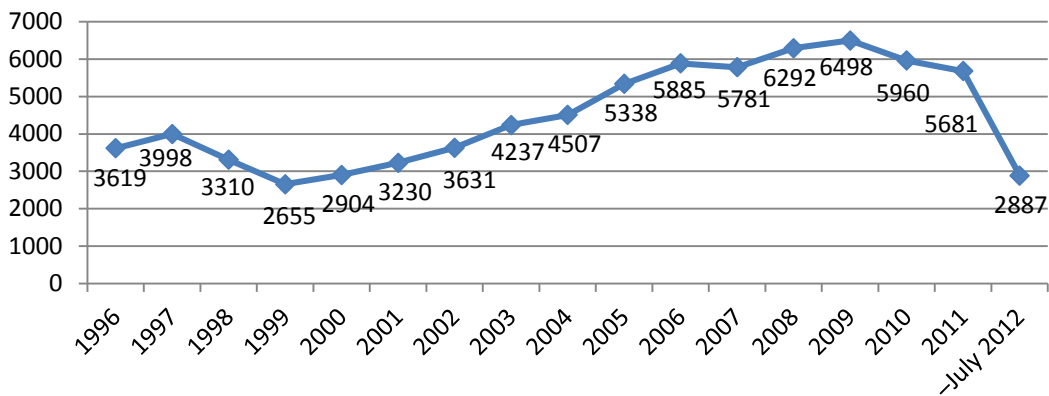


Source: UNODC, *Transnational Organised Crime in Central America and the Caribbean. A threat assessment*, 2012, [www.unodc.org](http://www.unodc.org).

- 2.3** Violence is not homogeneously distributed. Homicides mainly concentrate in large urban centres, in coastal areas and on the borders. Guatemala City is the most affected urban centre, together with border provinces, such as Petén, Izabal, Zacapa, Santa Rosa, Chiquimula, Jutiapa and Escuintla.<sup>102</sup> In Guatemala City, the rate of homicides per 100,000 of population was 116 in 2010. (By comparison, Mexico City, which is considered to be a dangerous city, has a rate of less than 9.) In contrast to the period of the civil conflict, in which violence was concentrated in rural areas and had indigenous people as its main target, current expressions of violence affect this group less, and are more associated with relatively new forms of violence, which are related to gangs and narcotrafficking.
- 2.4** Since 2009, the number of homicides in Guatemala has been falling by 500 people per year, which seems to be evidence of the better results achieved by crime prevention and prosecution.

<sup>102</sup>*Ibid.*

## Homicides in Guatemala



Source: *Centro de Estudios Guatemala, "Situación en Seguridad, Justicia y DDHH"*, Guatemala, July 2012.

2.5 Guatemala has among the highest percentages of homicides committed using a firearm in the world. According to CICIG,<sup>103</sup> 83% of homicides are carried out using a firearm. The national average is exceeded in the following departments: Izabal (90%), Guatemala (87%), El Progreso (87%), Escuintla (86%), Jutiapa (86%), Retalhuleu (86%), and Baja Verapaz (84%). In 2008, in El Salvador,<sup>104</sup> 76.9% of homicides were carried out with a firearm. The percentage was 83.4% in Honduras and 54.9% in Mexico. In some border municipalities (such as San José Acatempa and Morales), 100% of homicides are committed using a firearm. The most violent municipalities and provinces of Guatemala are also among the most involved with illicit trafficking of weapons.

### 3. VIOLENCE: VICTIMS, FORMS AND PERPETRATORS

3.1 Guatemala's case is quite complex, as despite drug-related violence being one of the leading causes of increasing homicide levels in some areas, many types of violence and perpetrators co-exist in the country. This short presentation of Guatemala's forms of violence and of some of its causes is by no means exhaustive. It is merely an attempt to identify the impact of drug-trafficking-related violence and its combination with other forms of violence in the country.

<sup>103</sup>CICIG (2009).

<sup>104</sup>Data corresponding to the last year available in UNODC, "Intentional homicide, count per 100,000 population (2005-2011)", [www.unodc.org](http://www.unodc.org).

- 3.2 Guatemalan violence mainly concerns youth, both as victims and perpetrators. 91% of the homicides have men as victims, and young men aged 18 to 39 are particularly affected by lethal violence. In 2011, for example, out of 5681 homicides in Guatemala, 5050 victims were men and 62% of them were aged between 18 and 35. Young men are also more likely to be criminalised. In 2009, 22,746 people aged 18 to 30 were arrested. In 2011,<sup>105</sup> 77.44% of those arrested for homicide and grievous bodily harm were between 18 and 40 years old and, within this category, 45.7% were between 18 and 25 years old. On the one hand, this can provide us with a profile of murderers. On the other hand, data about criminalisation and detention must be treated carefully, as often they tell us more about who is “caught” or “targeted” by the criminal justice system, than about who is responsible for committing homicides. In Guatemala, there is a 94% level of impunity in crimes against life,<sup>106</sup> therefore people arrested represent only a tiny minority of actual criminals. Besides, police can target certain groups, such as *maras*, and fill prisons with them, but that does not necessarily lead to the conclusion that *maras* are the main or only perpetrators.
- 3.3 The report *Guatemala en la encrucijada* divides manifestations of violence into two categories: the first category includes the expressions of organised crime in the pursuit of economic benefit and presents three groups of perpetrators: drug-trafficking organisations, *maras* and clandestine security groups called CIACS: *Cuerpos Ilegales y Aparatos Clandestinos de Seguridad*. The second category includes those manifestations of violence that victimize specific groups: *femicide*, social cleansing and lynching.
- 3.4 As has already been pointed out, drug-related violence is mainly concentrated in border and coastal areas and in urban departments. Estimating the scale of drug-trafficking-related violence in a country in which so many daily forms of violence habitually co-exist and with such high level of impunity is certainly difficult. In his speech before the United Nations General Assembly in September 2012, President Otto Pérez Molina stated that 40% of the homicides occurring in Guatemala are a consequence of problems related to international traffic of illicit drugs. Drug-trafficking-related violence is mostly associated with fights between rival criminal groups and disputes over drugs and routes. However, violence is not caused by drug flows *per se*. Drug-trafficking can be a settled activity, in which different actors participate sharing zones and benefitting from effective territory distribution which does not attract public attention and operates as any other market activity: taking supply to consumers. However, the partial success of the fight against drug supply in Colombia has reduced the amount of drug available for trafficking. More groups are competing over a reducing supply and, at the same time, have to deal with an aggressive strategy of frontal attack, as is the case in Mexico, for instance, where the army and the navy were unleashed against drug-trafficking organisations in 2006. Fierce competition in an increasingly hostile environment is one of the causes of the increase of violence. Drug-trafficking-related violence would be another

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<sup>105</sup>Centro de Estudios de Guatemala (CEG) and European Union, *Las múltiples violencias y las juventudes*, Ciudad del Guatemala: European Union, 2012.

<sup>106</sup>*Ibid.*



manifestation of the balloon effect, whereby not only production and transit routes shift, but also violence moves from one region to another. This facet of violence is thus a consequence of international dynamics and should be tackled internationally from a drug-policy perspective.

- 3.5 A security issue which is particularly worrying for the urban population is the growth of *maras* and the violence related to these groups. Estimations of how many *mareros* there are in Guatemala vary. UNODC<sup>107</sup> estimates 5,000 members of *Mara Salvatrucha* (MS-13) and between 14,000 and 17,000 *Mara 18* (M-18). The report of the *Centro de Estudios de Guatemala* (CEG) and of the European Union (EU), *Las multiples violencias y las juventudes*<sup>108</sup> reports that the Ministry of Internal Affairs argues that there are between 8,000 and 10,000 gang members, and that 60% of the violence in the country is due to fights between gangs. Estimations are difficult to make and figures can be overestimated or underrepresented for political or ideological reasons. Gang members belong to marginalized groups, and the majority of them are young men, so young men who live in disadvantaged situations can be easily targeted and stigmatized as being part of a gang.
- 3.6 CIACS are usually connected to local or national elites and political powers, and are a legacy of the civil conflict. Clandestine armed groups are often formed by agents or ex-agents of the state, such as retired military or police. That by no means implies that they are an expression of state policy or that they are protected by the state. Actually, the International Commission against Impunity in Guatemala (CICIG) was created with the specific purpose of fighting these power groups, which benefit from impunity, corruption and the continuation of alliances and violence-related know-how that matured during the time of the civil conflict. Clandestine security groups can be involved in homicide for the purpose of getting rid of specific targets (such as human rights defendants, journalists or social protestors), to gain illicit profits or to carry out social cleansing. This practice usually has young males as victims, and is carried out against people who belong to specific social groups, such as *maras*, street children or other disadvantaged groups whose elimination is pursued as a way to “do justice” outside the boundaries of the state, in the form of extrajudicial executions. In April 2012, for example, a policeman and an ex-policeman were accused of the crime of extrajudicial execution and illicit association. They are on remand for allegedly belonging to a parallel structure dedicated to contract killing operating within the National Civil Police and the Ministry of Internal Affairs.<sup>109</sup> The victims of this illicit association were supposedly criminals who dedicated themselves to extortion. This case is an example of how illicit security groups operate within the state at the highest levels and with the supposed purpose of eliminating “undesirable” elements, such as criminals. Murder is here used as an alternative to state justice. Seemingly, the fact that Guatemala’s justice system, with the help of CICIG, is investigating and persecuting such cases is an indication of the country’s will to eradicate such

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<sup>107</sup>UNODC (2012 a).

<sup>108</sup>CEG and European Union (2012).

<sup>109</sup>CICIG, “*Juzgado liga a proceso a dos sindicatos de ejecuciones extrajudiciales*”, April 30, 2012, [www.cicig.org](http://www.cicig.org).

practices. However, parallel powers have a systemic presence which is very hard to dismantle.

- 3.7** Other forms of violence that hit the country more and more fiercely are *femicide* – the killing of women out of hatred by reason of their gender – and lynching, which is a practice rooted in communal justice. The former is an expression of cultural *machismo*, exacerbated by a context of increasing violence and general impunity. The latter, as in the case of extrajudicial executions, is a demonstration of the weakness and lack of credibility of the justice system. People literally take justice into their own hands and respond to a shared feeling of wrongdoing through collective murder.
- 3.8** These six manifestations of violence – drug-trafficking organisations, *maras*, clandestine security groups, social cleansing, *femicide* and lynching – are not the only expressions of violence, neither are they the only threat to people’s security. Conflicts over land and other natural resources can also be a source of violence. State repression against protesters also helps to generate a culture of violence as a means for conflict resolution. And, finally, the presence of armed security companies increases the number of weapons that are legally carried and the risk of violent acts in which firearms are involved. According to the *Centro de Estudios Guatemala* (CEG),<sup>110</sup> in Guatemala there are 24,000 agents in the *Policía Nacional Civil* (PNC) and 18,000 soldiers, far fewer than the 150,000 private security agents (of which less than 30% are legally registered).
- 3.9** All these elements make up the complex scenario of violence in which the country is immersed. As the violence is a multifaceted phenomenon, so is the search for its roots and for policies that can tackle it. There is an extensive literature on violence. The study by CEG and the European Union<sup>111</sup> mentioned above, defines *structural violence* as a type of indirect violence which refers to social structures that do not allow the satisfaction of everybody’s needs. Racism, marginality, social exclusion, *machismo*, oligarchical power and weak state institutions are all drivers of structural violence.
- 3.10** In Section II, we pointed out to the lax firearms regime, and how there is a general consensus that a stricter system of arms control could help to reduce levels of violence.<sup>112</sup> A change in the law or the implementation of weapon-collection programmes would hardly automatically result in fewer homicides or diminishing illicit trade in weapons. Mexico, for example, has a strict regime of arms control, but that does not prevent organised crime from having unrestricted access to weapons. However, there is wide room for ameliorating the actual regime in Guatemala and improving the legal framework of arms possession to fully comply with the agreements that arose during the Peace Process.
- 3.11** The role of the state in improving the country’s situation is key, not so much in terms of fighting violence with violence, nor in criminalising and incarcerating citizens, but by working to gradually eliminate or consistently reduce the practices within State

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<sup>110</sup>CEG and European Union (2012).

<sup>111</sup>*Ibid.*

<sup>112</sup>*Ibid.*; CICIG (2009).

institutions that undermine the strength and legitimacy of the state. There is a general consensus that corrupt practices occur at all levels and that no public institution is immune to them. In December 2012, the global index of perceptions of corruption published by Transparency International<sup>113</sup> showed that Guatemala ranks 113 out of 176 countries, where 176 is the most corrupt country in the world.

- 3.12** The *Policía Nacional Civil* (PNC) is one of the least trusted bodies in Guatemala. PNC was created at the end of the internal conflict. From 1997 to 2000, the PNC was trained by foreign police forces, within a programme of international cooperation. It was hoped that the PNC would become more efficient and less corrupt. However, this trend did not last, and today's PNC is a body struggling with itself. In 2010, the *Reforma Policial* (Police Reform) was undertaken, led by the internationally respected lawyer and human rights activist Helen Mack. In 2012, her mandate was assumed by Adela Camacho de Torrebiarte, also widely respected. In spite of the energy and commitment devoted to the police reform, the results are still modest. As one of expert expressed it: "Organised crime is going one way and the police is going in the opposite direction". Corruption and lack of good preparation still persist, so that the goal of a reformed police force remains unattained.
- 3.13** The judicial power is another significant source of bad practice and corruption. According to the above-mentioned International Commission against Impunity in Guatemala (CICIG), the judicial power is prone to corruption and tends to absolve powerful, guilty individuals. In November 2012, the Commission published a report entitled "Judges of Impunity".<sup>114</sup> The report contains the names of 18 judges who have acted against the law. It was handed over to the Attorney-General to take legal proceedings against them. It would be a mistake to consider the whole judicial system as corrupt and inefficient. A historic step in the enforcement of justice is the trial of Efraín Ríos Montt, who was President of Guatemala during the bloodiest period of the armed conflict, and who is accused of genocide and crimes against humanity. The formal decision to bring him to justice, announced in January 2013, was internationally applauded. At the time of writing, it remains to be seen how credible the conclusion of the legal process will be.
- 3.14** The development of effective investigations is crucial to the fight against impunity. Guatemala's current Attorney-General, Claudia Paz y Paz, is a key element for the improvements in terms of homicide rates and the detentions of high-ranking criminals. The efficiency, professionalism and success of Claudia Paz are widely acknowledged in Guatemala, an astonishing achievement in a country where opinions usually are quite polarised. Attorney-General Paz has arrested the *capos* mentioned in Section I. Also, she built the case to try Ríos Montt. She has created a solid, trustworthy and coordinated team, and she has developed the ability to work in cooperation with other institutions such as the Ministry of State, and hence with the police, and with the CICIG. The lowering of the homicide rate, although not dramatic, is a proof of the improvements achieved in terms of investigation and prosecution.

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<sup>113</sup>Transparency International, [www.transparency.org](http://www.transparency.org).

<sup>114</sup>CICIG, "Entregan Informe "Jueces de la Impunidad", November 29, 2012, [www.cicig.org](http://www.cicig.org).

- 3.15 Experts interviewed point out the ambivalent processes that shape Guatemala, and describe the country as a nation which is capable of building great agreements and reaching profound levels of national cohesion while, at the same time, preserving, or even, exacerbating, unchanged models of social exclusion and racial discrimination. When looking at the history of this country, one sees a sequence of violent times, corruption and authoritarian rule. Between 1997/1998 and 2000, which coincides with a decrease in homicide levels, the country seemed to experience a glimpse of peace and the promise of a better future. When talking directly with international or national experts about the evolution of the country since the end of the civil conflict, their perception is that the country is constantly striving towards, but has not yet achieved, the accomplishment of its goals. Guatemalan civil society is attempting to bring about the changes promised by the Peace Agreements, despite being often fragmented and ideologically divided.
- 3.16 Although the political system is highly fragmented, Guatemala has had uninterrupted democratic elections for twenty years. Seemingly, despite corruption in the Police and high levels of impunity, the combined efforts of the Police itself, of the Attorney-General and of CICIG are improving the quality and quantity of investigations inside public institutions. Perhaps bringing to justice corrupt policemen or judges only affects the tip of the iceberg, but nonetheless it is necessary to generate accountability and gradually implement a culture of legality in state institutions, something which is lacking in almost the entire region. The perception of public institutions can influence criminal tendencies in society, either reinforcing or deterring them.
- 3.17 On the one hand, we see a “routinisation” or trivialisation of violence, which, in turn, becomes a trivialization of life and death. On the other, violence in all its forms is a symptom of open wounds and unresolved social divides and further undermines social development. Organised crime exacerbates the multiple forms of violence, representing a threat to state institutions, which are already weak and penetrated by corruption. The state should try to devise non-violent forms of responding to violence, as the repressive approach and the use of the military can exacerbate violence and enlarges the distance between the citizenry and the state. Drug policy reform is not the panacea, but it definitely should be a central axis of an integral violence-reducing strategy aimed at reinforcing human security, human rights, democracy and public health.
- 3.18 In the following paragraphs we present a summary of the proposals that the Beckley Foundation presented to President Otto Pérez Molina in January 2013, and a short explication and discussion over the benefits of each proposal.

#### 4. THE ROLE OF DRUG POLICY REFORM AND PROPOSALS FOR CHANGE

- 4.1 The following proposals are based on the assumption that drug trafficking is a *glocal* phenomenon, with both global elements (transnational criminal networks operating in the context of the UN system of interdiction) and local ones (the configuration of local communities and the involvement of local actors). While national reforms cannot

resolve this *glocal* problem, they can provide a country with better tools to handle its impacts at national level. The debate around drug policy reform is new in Guatemala, having been more or less initiated by President Pérez Molina. There is no extensive knowledge of drug-related topics, either among the general public or in academia. Accordingly, any process of reform should probably begin with an extensive campaign of information and education about international drug policies. The general absence of up-dated, verifiable and *public* data obstructs the development of evidence-based public policy. Intensive and in-depth quantitative and qualitative research is necessary in order to create scientific knowledge on drug-related problems in Guatemala.

- 4.2 The first proposal aims at bridging the gap between President Pérez Molina's presence at the international level and the local context of Guatemala, mainly in relation to Congress and civil society. The purpose of this ***Public engagement*** proposal is to create a critical mass of opinion and to generate debate in the country. The proposal recommends the creation of a core group, a sort of Commission, which would lead the process of reform. This group could be led by Special Ambassador Edgar Gutiérrez and supported by the *Consejo Asesor de Seguridad* (CAS), which is a public organisation composed of members from civil society, selected by the President. CAS works as an advisor to the President, and would be a crucial actor in the building of a critical mass for the development of alternative drug policies. Academic institutions, NGOs, research centres and other civil society organisations also have a significant role to play in disseminating critical analysis, developing and elaborating alternative proposals, and working towards the implementation of reforms. A range of other groups and institutions would be important in building support for reform, either because they have a powerful influence on government decision-making, or because they are instrumental in shaping public opinion. These include the Catholic and Evangelical Churches; the business sector (principally the *Comité Coordinador de Asociaciones Agrícolas, Comerciales, Industriales y Financieras*), the legislature, the judiciary and the media.
- 4.3 The second proposal is for ***Legislative reform, including reform of marijuana control*** and basically consists of a revision of the national drug law described in Section II. Some of the specific recommendations include an in-depth review of international precedents for drug-policy reform, the full decriminalisation of drug possession, including of the cultivation of a limited amount of cannabis for personal use, clarifying and reinforcing the legal distinction between minor drug offences and major offences relating to transnational organised crime, and reducing or eliminating sentences for relatively minor drug offences. The proposal includes 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 also advise that harm-reduction policies be implemented within prisons as well as outside them. Finally, 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. However, considering the small scale of the internal marijuana market, priority should be given to changes to the *Ley Contra la Nacoactividad*.

- 4.4 The same core group, or Commission, should take the lead of such initiative. The Board of Security and Justice of the Congress could provide an important mechanism for civil society and Congress to work together on the development of reforms.
- 4.5 The third proposal, *Development of Protocols for Police and Prosecutors*, aims at accelerating the process of reform through the creation and implementation of special protocols for police and prosecutors in relation to drug-related offence. Such protocols should prioritise the detection and prosecution of violent and serious crime, and afford the prosecution of minor drug-offences a low judicial priority. Explicit guidelines can improve public confidence in the agencies of law-enforcement by contributing to improved consistency in the planning and execution of enforcement activities, and regulating the relationship between public officers and offenders.
- 4.6 The fourth proposal has been particularly welcomed by President Pérez Molina and his ministers. It consists of an investigation of the market for medical opium and related products (such as concentrate of poppy straw), and of the uneven distribution across the globe of essential medicines. The conclusion of this investigation is the proposal for *Legalisation of the currently illicit poppy crop*, in which we outline the process by which the Government of Guatemala could join the countries that legally cultivate poppy crops for the production of medicines, and how this could be done in full compliance with the UN Single Convention of 1961. Such a process would not only provide the country, and possibly the region, with essential medicines that they currently lack, but also avoid the criminalisation of poor farming communities, who are trapped between criminal networks and the repressive force of the state.
- 4.7 The fifth proposal is for *Discussions regarding international traffic of cocaine*. We do not include specific recommendations or suggestions of policy reform, but rather invite President Pérez Molina to continue to take in the lead in promoting hemispheric discussion on tackling the traffic of cocaine through Central America. The proposal is based on the assumption that the major drug problem faced by Guatemala is the traffic of cocaine, and that this grave and pernicious problem cannot be tackled without international cooperation.
- 4.8 The proposals presented by the Beckley Foundation could for the most part be undertaken under the provisions of the UN drug conventions, to which Guatemala is a party. The proposals should be complemented by development and improvement of harm-reduction and -prevention programmes, and by extensive quantitative and qualitative studies on specific matters, such as consumption patterns and the current situation and extension of poppy illicit market.

## 5. CONCLUSIONS

- 5.1 In the first part of this Section III, we have attempted to understand the impact of international drug traffic on Guatemala's levels of violence. We laid out six main trends in violence, which by no means should be considered as "categories" of violence, but only as analytical tools that can help us define the scale and incidence of drug-trafficking-related violence. The level of homicides is partly a consequence of the specific impact of the prohibition system in Latin America. Guatemala has not yet overcome the internal structural problems that facilitate the penetration of criminal organisations into the political and law-enforcement apparatus. The firearms-ownership regime, the normalization of violence, and the levels of impunity also contribute to the spread of lethal violence.
- 5.2 The violent dynamics of illicit drugs markets are a consequence of the international prohibition system and its specific implementation in transit countries. The interdiction model compels Guatemala to divert its limited resources to fight drug-trafficking, thus further reducing the capacity of the state to attend to the needs of the population. This causes decreasing levels of social and economic development, and increases the levels of violence, by exacerbating social conflict. The current model of the fight against transnational crime creates a vicious circle of violence and the penetration of crime into society. Attacking criminal groups does not solve the problem. In the first place, even if criminal organisations are temporarily weakened or dismantled, they can regenerate, or new ones can be born. As long as there is a market space for criminal activities, criminal organisations will spring up and take advantage of it. Secondly, attempting to eliminate supply is a failed strategy from the start, as new sources of drugs will be created in order to satisfy demand. Finally, the use of state violence should be avoided as much as possible, especially in societies in which violence is a routinized social practice, and any use of state power can easily turn into abuse, even unintentionally.
- 5.3 Isolated, national attempts to adopt alternative drug strategies can neither address the complexity of transnational organised crime, nor solve all the collateral effects of the international system of drug control. Nonetheless, reform in national policies can provide a country with better tools to handle the *glocality* of drug traffic and the blindness of the current interdiction system. Drug policy reform is not, in itself, the solution for all the country's complex and multiple forms of violence, but it would certainly help to tackle specific issues. In particular, reforms could help to depressurize the prison system; foster respect for human rights; avoid the criminalisation of users and secondary subjects of criminal organisations – such as mules, retail sellers and farmers; extinguish the historically unprecedented profits of the narcotraffickers; tackle the otherwise irresistible corruption of law-enforcers; and provide a springboard for the moral and social regeneration of Guatemala and the other, similarly affected transit countries of Meso-America.