

A stylized world map composed of a grid of dots in various shades of gray, with several dots highlighted in red. The map is centered behind the title and subtitle.

From Repression to Regulation

A Latin American Proposal for Reform of Drug Policies

**JOSÉ CARLOS CAMPERO
RICARDO VARGAS
EDUARDO VERGARA**

May 2013

- The war on drugs has failed. New ways of tackling the problems created not only by drug trafficking but also by the prohibitionist policies and the international regime implemented for decades to fight it are urgently needed.
- Regulation of the whole value chain (production, trade, and consumption), differentiated according to drug type and informed by scientific evidence, would help reduce harms to consumers and third parties and would deprive organized crime groups and other illegal actors of a large proportion of their profits.
- The complexity of implementing such regulations can be addressed if there is a clear commitment on the part of the international community, and in particular of countries that, like Germany, have development policies affecting producer and transit countries. These policies can be adjusted to help implement and enforce the regulations proposed here.

There is a growing international consensus that the war on drugs together with its prohibitionist models has failed to meet its objectives. The Latin American Commission on Drugs and Democracy¹ led by three former Latin American presidents and the Global Commission on Drugs and Democracy² have publicly highlighted the need to reform international drug policy. Their recommendations include decriminalizing the personal use of illegal drugs and making the treatment of addiction a public health issue. According to both commissions the international drug regime and repressive policies against drug trafficking should be revised in order to reduce the harm caused both by production, trafficking, and consumption, as well as by antidrug policies themselves.

There is a sense of urgency in the reports of both Commissions that has to do with the fact that the international regime against drugs, signed by most countries, including Germany and the other EU member states, has fueled dramatic levels of violence and profit related to transnational organized crime. Circa 60.000 people were killed in Mexico alone during the six years of the Calderon administration (2006–2012); in 2009 alone transnational organized crime generated 870 billion dollars, 1.5 per cent of global GDP, according to UNODC estimates. Constant demand for drugs in traditional consumer countries like the US, Germany, England, among others, keeps the business going and its illegality establishes perverse incentives for criminal groups, given the expected revenue.

In Europe the argument for a change in drug policy sometimes seems not to be especially relevant or urgent, despite the obvious health policy implications. However, money laundering is also happening through the European financial system, given the existing flexibility for capital movements and transnational transactions. Also, from a different perspective, European countries including Germany should note that their foreign, security, and development policies are hampered and undermined by drug cartels and other criminal groups that, through violence, intimidation, and corruption, weaken democratic governance and institutions in developing countries.

1. Commission on Drugs and Democracy (2009): *Drogas y democracia: hacia un cambio de paradigma* (Drugs and democracy: towards a paradigm change); www.drogasedemocracia.org.

2. Global Commission on Drugs and Democracy: 2011 and 2012 Reports; <http://www.globalcommissionondrugs.org/>.

The proposals presented here³ not only deal with reforms regarding consumption of current illicit drugs, but seek to move from repression to regulation of the entire value chain in order to achieve the following objectives:

- reduce damage caused by drug consumption to consumers;
- reduce damage caused by drug consumption to non-consumers;
- minimize damage caused by anti-drug policies both to consumers and third parties;
- minimize drug-related income and resources accruing to organized crime and other illegal actors;
- maximize the share of drug-related income obtained by the state and other legal actors (observing the first four objectives) for funding public health policies and the fight against organized crime.

To achieve these objectives drug policies need to take account of the differences among drugs and their derivatives. Each drug has different characteristics in terms of the health risks associated with consumption, the probability of addiction, and the social and economic costs of consumption, addiction, and treatment. Drug policies also need to take account of the fact that a large proportion of consumers, in most cases a large majority, are not problematic in a social or criminal sense, while consumption is typically highly concentrated among a small percentage of frequent and addicted users.

Latin America has borne a disproportionate share of the burden of past and current anti-drug policies. Although largely initiated and financed by the main consumer countries, these policies have focused on the repression of production and trafficking, imposing much of the burden of anti-drug policies on the immediate producers – peasants often living in conditions of poverty and vulnerable to pressure from organized criminal groups – and the societies of the producing and transit countries.

While these policies have had some success in destroying criminal organizations, by and large they have not succeeded in drying out markets for illegal drugs. On the contrary, whereas there have been shifts in the composition of drug markets – most recently the consumption of plant-based drugs has stagnated or even decreased to some extent, while synthetic drugs are on the rise –

3. These proposals are based on Campero/Vargas/Vergara (2013): *From Repression to Regulation: A proposal for Reform of Drug Policies and the International Drug Policy Regime*, Bogotá: Fescol (forthcoming).

overall drug demand is still on the increase, with growing markets in developing and transit countries. With some variation, future worldwide overall drug demand will be largely proportional to per capita GDP and repressive policies will prove to be ever more costly in fiscal, social, and political terms but with diminishing returns when it comes to the reduction of consumption and the fight against organized crime. In terms of production and trafficking, temporary displacements of production zones, processing locations, and trafficking routes in response to repression efforts can be observed, but overall levels of production remain largely unchanged.

The following proposals therefore present a Latin American perspective on drug policy reform, taking into account, unlike other current proposals and discussions, the value chain in its entirety including production and trafficking, instead of focusing exclusively on final consumption. From a Latin American perspective – and also from that of other producing and transit countries like Afghanistan and West African countries – drug policies need to shift the resource balance between organized crime and other illegal actors and legitimate state actors in order to weaken the first – specifically, their power to intimidate and corrupt – and enable states to strengthen their institutions and guarantee their citizens' rights.

Again, we are making a case for the need to regulate the drug business, not for legalization. The status quo of prohibition and illegality has the perverse consequence of creating completely unregulated black markets and does not help the state in its fight against organized crime. In this sense, these proposals are pragmatic: we want to reduce the harms associated today with drugs (consumption and contact with illegal markets) and to deprive criminal groups of some of the business revenues they have been enjoying.

Cannabis and Derivatives

By and large the health and addiction risks and the harms associated with cannabis and its derivatives are no worse than those associated with tobacco and alcohol. We therefore propose that cannabis regulation should follow best practices learned from the regulation of tobacco and alcohol: Cannabis products should be legally available and be subject to quality control at pro-

duction and point of sale. Consumption should be taxed to maximize tax revenue for the given market and consumption of smoked cannabis in public places should be prohibited. Self-production for self-consumption should be permitted within certain parameters. Commercial producers should be required to register not only for the purposes of quality control but also in order to prevent diversion of production for illegal uses and in order to enable proof of legitimate production when confronted with law enforcement agencies. The international control regime for cannabis should allow countries to choose individual cannabis policies, with the exception that production should be registered so that international trade flows of cannabis products can be monitored and controlled, avoiding diversion of production into illegal markets and into countries with a prohibition regime. The policies proposed would destroy most of the illegal cannabis markets in the countries that adopted them, leading to a significant reduction in the income of organized crime and other illegal actors. Insofar as illegal cannabis sales are the entry point for cannabis consumers for the consumption of harder drugs, the creation of legal sales outlets for cannabis would keep consumers of this particular drug away from the illegal markets and criminal groups.

Coca leaf, Cocaine and Derivatives

The evidence on the harms caused by cocaine is currently not conclusive because most studies either relate to consumers of crack cocaine and similar derivatives of the cocaine production process, which are highly damaging and addictive, or report damages that can be attributed to the substances used to dilute cocaine prior to sale to consumers. Nevertheless, the vast majority of users of quality cocaine are not problematic users. This implies that research is needed on the precise health effects of cocaine and other coca derivatives. However, given available evidence, we propose that drug policies and the international drug regime should differentiate between coca leaf, cocaine, and coca derivatives like crack and »bazuco«. The latter should remain prohibited, although their consumption should not be penalized or criminalized.

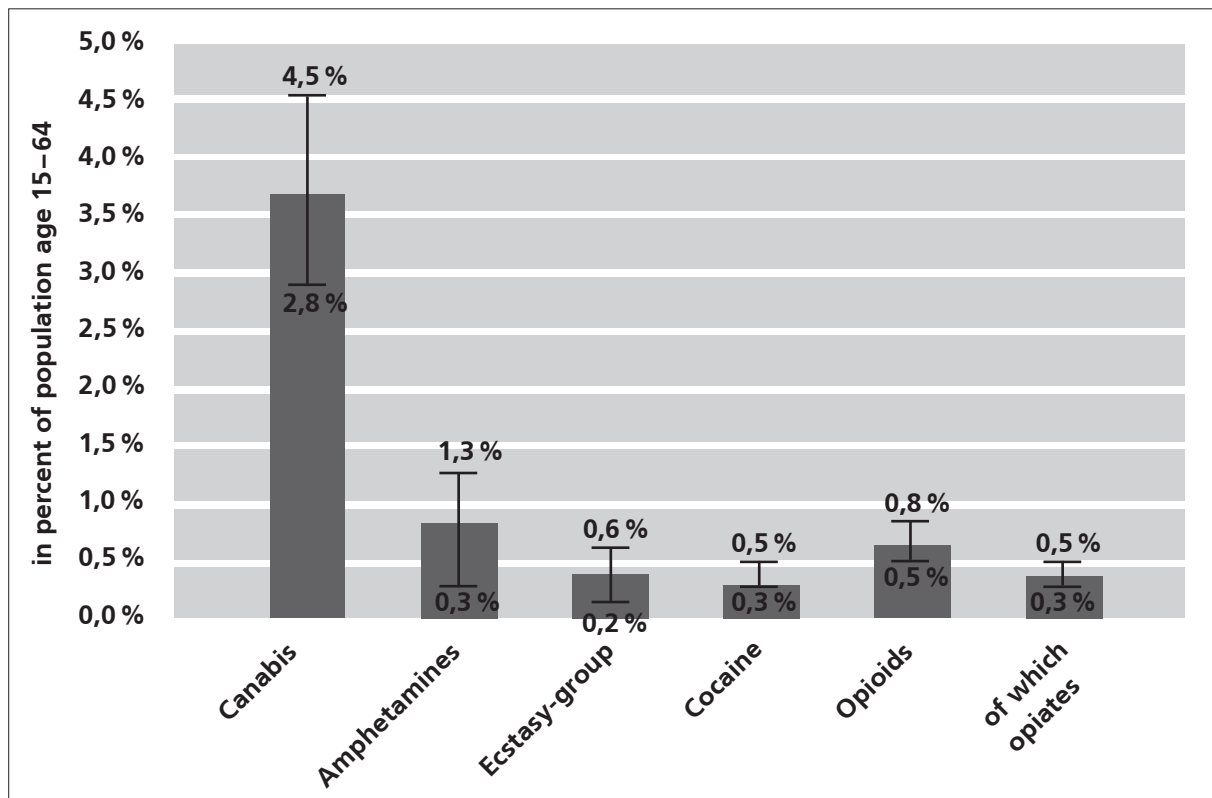
With regard to production, trade, and consumption of coca leaf for what is called »traditional« use – mastication, teas, and other uses of the coca leaf that do not

involve chemical processing with the objective of extracting and processing of alkaloids – we see no reason for prohibition, and propose that states should be free to choose the policy that they prefer. Bolivia offers a good example of a functioning coca leaf policy. Since coca leaf is the raw material for cocaine, we do propose, however, that legal coca leaf producers should be registered and that coca leaf production should be regulated. We also propose terminating eradication programs based on fumigation as well as linking eradication programs with effective strategies for generating alternative sources of income.

For cocaine we propose a regulated value chain with registered producers, traders/distributors/vendors and consumers, and maintaining current consumer prices by means of taxation, at least until research has clarified damage and quality issues related to cocaine. Final sales to and registration of consumers should be assigned to pharmacies that have created the necessary infra-

structure. Quality control should ensure that damage to the health of users is minimized. Since the vast majority of consumers of quality cocaine, as mentioned, are not problematic users, a regulated and registered value chain would serve to reduce illegal incomes and increase public incomes from the cocaine value chain in order to generate revenue for public health, drug treatment, and research. We also propose that problematic users should be able to enroll in drug maintenance programs similar to those available to heroin addicts. We estimate that the combined volume of consumption by registered non-problematic users and addicts would capture more than half of the market currently supplied by criminal organizations – that is, it would reduce incomes by organized crime by an estimated 40 billion US dollars annually. Since registered consumption can be supplied by direct trade between producer and consumer countries, the pressure on already weak institutions in transit countries – e. g. the northern triangle of Central American and West African countries – would also be reduced.

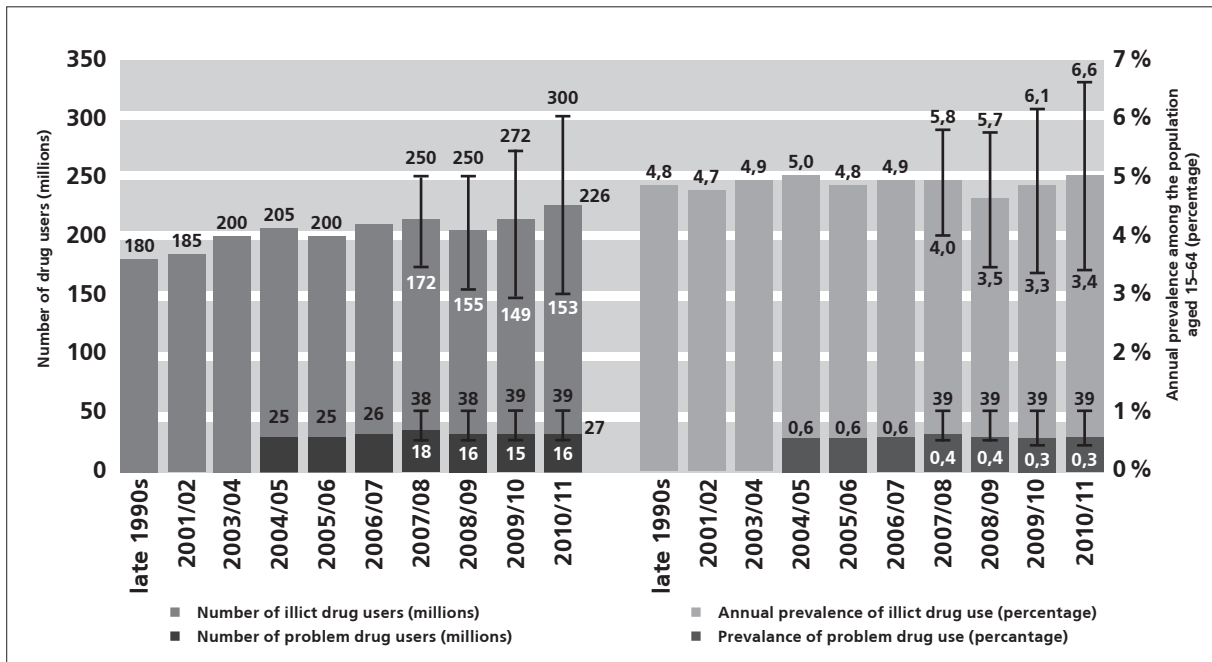
Figure 1: Annual prevalence of drug use at the global level, in percent of the population aged 15–64, 2009/2010



Source: own diagram based on UNODC, World Drug Report 2011: 25.



Figure 2: Illicit drug use at the global level, late 1990s–2010/11



Source: own diagram based on UNODC, World Drug Report 2012: 66.

Heroin

In the case of heroin, prohibition should be maintained. The health damage to the users, the high rates of addiction and consequent harm to third parties are well established and beyond doubt. Nevertheless, we propose an expansion of drug maintenance programs to all users willing to register for such programs and their conditionality, including regular medical treatment and consumption of the drug under controlled and hygienic conditions, including the use of clean needles to contain the spread of HIV and other blood transmitted diseases. As far as possible, participants in such programs should be charged street prices for their heroin supply. Given the concentration of consumption among addicts in the case of heroin, successful drug maintenance programs should be capable of capturing a significant share of the previously illegal market while at the same time improving the health of addicts and reducing harms to third parties, in particular their families. We also recommend programs for expanding legal and regulated poppy production for medical purposes, both to expand access to opiates and opioid medication in developing countries and to include peasants and farmers in Afghanistan in the sourcing of the medical production of opiates and opioids.

Implementation Issues

It is clear that implementing the regulations and controls proposed here is complex, particularly in contexts where institutions and democratic governance are weak or historically absent. It is crucial to address these complexities if a reform of drug policy like the one proposed here is to be successful. However, finding solutions that help reduce the lives lost to organized crime and the risks and harms suffered by drug consumers in all countries is also a matter of great urgency.

The differences between the current predominantly prohibitionist policies and the regulatory approach to drug policy proposed here can be illustrated succinctly as follows: The current world of drugs (CWD) consists of a) drug production (DP), b) drug consumption (DC), c) damages (DD) resulting from drug quality (DQ) and victimization of consumers (VC) and d) drug revenues obtained by organized crime (DROC):

$$CWD = DP + DC + DD(DQ + VC) + DROC$$

Under the current prohibitionist policies and regime, drug production and consumption have not been reduced. On the contrary, although there have been

temporary substitution effects between different illicit drugs, by and large world drug consumption appears to have increased proportionally to world per capita GDP with a 5 per cent prevalence of annual consumption among the population aged between 15 and 64 and frequent and/or problematic consumption of about 0.6 per cent.

The fact that supply has to rely on illegal markets and that consumers are subject to persecution has resulted in high levels of damage both through the bad quality of drugs and the victimization of consumers by dealers and repressive policies. The revenues of organized crime are actually maximized under these conditions:

$$CWD(\text{Prohibition}) = \overline{DP} + \overline{DC} + DD\uparrow (DQ\downarrow + VC\uparrow) + DROC\uparrow^{\text{max}}$$

The proposals presented here would, at least at first, reduce neither production nor consumption, but would divert more than half of it into regulated and quality-controlled value chains. Because of taxation, they would not lead to an increase in consumption either. As a result, damage to consumers and third parties – including social and political institutions in the countries most affected – would be reduced drastically as a consequence of the improved quality of drugs, treatment offers to problematic consumers, and an almost complete elimination of consumer victimization. Moreover, revenues of organized crime and other illegal actors would be reduced considerably – on our estimate by 50–75 per cent, depending on implementation.

$$CWD(\text{Regulation}) = \overline{DP} + \overline{DC} + DD\downarrow_{\text{min}} (DQ\uparrow^{\text{max}} + VC\downarrow_{\text{min}}) + DROC\downarrow_{50-75\%}$$

Because of taxation, most the revenue taken away from organized crime could be captured for damage reduction, treatment, and rehabilitation of problematic consumers, better and more transparent information on the risks associated with the available drugs, and finally to focus the fight against organized crime on serious and damaging crimes like forced (sexual) labor, arms smuggling, organs trade, etc.

In a medium-term perspective, regulated markets could also possibly contribute to a reduction in problematic consumption as a consequence of more transparent markets and better information about the risks of various drugs.

A Call for Action

The policies proposed here, if implemented, will significantly reduce damages to drug users and third parties, avoid peasants and small farmers in producer countries having to bear most of the burden of repressive policies, and, most importantly, reduce the incomes earned by organized crime and other illegal actors from drug trafficking. At the same time, they will increase states' income and free resources and capacities for fighting organized crime and treating drug addicts. However, they will not eliminate illegal markets entirely. Just as with cigarettes and alcohol, high taxation will continue to imply an illegal market. Nevertheless, illegal markets for the currently illegal plant-based drugs will be considerably reduced, probably by more than half of their current size.

The necessary debate in Latin America has begun, with several presidents calling for reforms. It is time for the EU and Germany to act and engage in this debate over new approaches, given that the current repressive system's unintended (and at times intended) consequences run counter to the objectives of Germany's and the EU's own health, security, foreign, and development policies, to name only these. Legalizing and regulating cannabis sale and consumption and decriminalizing consumption of other drugs would be important steps toward reforming drug policies at the domestic level. Moreover, through foreign and development policy, Germany and the EU should assist production and transit countries in implementing regulatory regimes as proposed above. A lot can already be done within the confines of the existing global drug regime to correct the current disastrous bias toward repressive measures. More needs to be done to change the global regime eventually, even if that might seem an audacious ambition at present. Moving from the current highly ideological and polarized debate to a more evidence- and fact-based policy discourse is crucial. After all, most certainly, the answer to the failure and devastating consequences of the decades-long war on drugs should not and cannot be »more of the same«.



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About the authors

José Carlos Campero (Bolivia) is a consultant and a researcher on drug trafficking and organized crime in Bolivia. He holds a Master in Management and Public Administration and is a graduate in economics.

Eduardo Vergara (Chile) is the founding director of *Asuntos del Sur* and the *Observatorio Latinoamericano de Políticas de Drogas y Opinión Pública*. He is a political scientist and holds a master's degree at the *California State University Long Beach* and a Master of Public Affairs in Human Security at the *Sciences Po Paris* in France.

Ricardo Vargas Meza (Colombia) is a sociologist and holds a master's degree in social philosophy at the National University of Colombia. He is an associate researcher at the *Transnational Institute* (TNI) based in Amsterdam.

Imprint

Friedrich-Ebert-Stiftung | Latin America and the Caribbean
Hiroshimastr. 28 | 10785 Berlin | Germany

Responsible:
Dörte Wollrad,
Head of the Department of Latin America and the Caribbean

Phone: ++49-30-269-35-7484 | Fax: ++49-30-269-35-9253
<http://www.fes.de/lateinamerika>

To order publications:
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This publication is printed on paper from sustainable forestry.



ISBN 978-3-86498-556-0