

Basis of the Presentation by Amanda Feilding for ISSDP 2013

The Crumbling Edifice of Prohibition and Proposals for Reform: The case of Guatemala

The purpose of this text is to present the proposals of drug policy reform elaborated by the Beckley Foundation for the Government of Guatemala, as part of the agreement set between these two bodies. Amanda Feilding was invited by President Otto Pérez Molina to establish a Beckley Foundation Latin American Chapter in Guatemala in July 2012, and was requested to produce a rigorous, evidence-based analysis of the impact of current prohibitionist drug policies on Guatemala and the wider region. The Beckley Foundation was also asked to develop and suggest a series of alternative drug policy options. The proposals were submitted in January 2013 as a contribution to the development of drug policies focused on public health, crime prevention, and social harm-reduction. While the Foundation's proposals have been specifically tailored for Guatemala, elements of our research can serve as a model for other countries in the region and the hemisphere, and may nurture fruitful discussion and negotiation.

1. The cracks of prohibition

Since the Global Commission on Drug Policy published its report *War on Drugs* in June 2011, the calls for review and reform of the current prohibitionist regime, widely perceived as a failure, have grown in number and intensity. Driven by undiminished demand in North America and Europe, the illicit traffic in controlled drugs and the violence generated by the traffic and by attempts to repress it, especially in Mexico and Central America, have continued to escalate. The illicit drug trade, and the disputes that it fosters among rival groups for control over territory and routes, leave a wake of conflict, death, corruption and environmental destruction. The increase in demand combined with the inverted market logic of the prohibitionist system, which is founded on the repression of supply, has caused significant and far-reaching collateral damage, mainly for drug-producing and transit countries.

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

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

More and more, countries are discussing research and implementation of alternative measures to limit the negative impacts of prohibition. The goal is to adopt policies that are respectful of human rights and focused on health, rather than repression. Some European countries have

implemented more lenient sentences, *de facto* decriminalization and successful harm-reduction policies for decades. The evidence coming from these decriminalized territories is broadly positive. In both Portugal and the Czech Republic, the possession of limited quantities of drugs for personal use is subject to administrative, rather than criminal penalties. In the Netherlands, the use of cannabis is tolerated in ‘coffee shops’. All three countries have seen a decline in problematic drug-use, along with positive economic impacts and an improvement in cost effectiveness. Similarly, harm-reduction strategies (substitution treatment, needle exchange, consumer rooms, etc.) in Switzerland and other countries have been proven effective in reducing drug-related deaths and infections, including decreased transmission of HIV amongst intravenous drug users.

In Latin American, the possibility of bringing about an alternative to prohibition-oriented US drug policy while moving towards harm-reduction and legal regulation is better today than it has ever been before. On the one hand, the system is cracking from within: 16 US States and the District of Columbia have created regulated markets in medical cannabis and, in November 2012, the States of Washington and Colorado voted to legalise the possession of limited quantities of marijuana for personal use, and to regulate its production and distribution and the growth of a licit domestic industry. It is not inconceivable that in his second term President Obama may permit the growth of this domestic industry.

Latin American leaders are challenging prohibition and are being heard worldwide. During 2012, President Otto Pérez Molina and President Juan Manuel Santos led this movement, organising and participating in numerous national and international fora, while President José Mujica of Uruguay and President Evo Morales of Bolivia drove the process of reform within their own countries. Together, they have all courageously broken the convention that only *ex-Heads of State* question the reigning orthodoxy.

Guatemala is experiencing a critical moment. The country is in one of its worst security crises since the bloodiest period of the civil conflict, partly as a consequence of the dynamics of international drug trafficking and the implementation of prohibitionist policies at the regional and national levels. Seemingly, President Pérez Molina’s declarations about the failures of the international system of drug control have opened up the possibility of exploring alternative drug policies suitable for Latin America.

At the World Economic Forum in Davos, on 24 January 2012, 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 announced that Guatemala may initiate the legal cultivation of poppy for medical purposes. Both of these proposals 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 the currently illegal poppy crops in several international fora, and in interviews with global media.

In Colombia, President Juan Manuel Santos announced new measures that may improve the country's drug policy. Justice Minister Ruth Stella Correa explained 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 ecstasy for personal consumption. The process of reform also includes the creation of an Advisory Commission on Drug Policy, made up of experts in the field of drug policy, including former President César Gaviria (chair of the Commission), General Naranjo, Rodrigo Uprimny and leading academics Francisco Thoumi and Daniel Mejía. The task of the Commission is to analyse the last decade of drug policy in Colombia, to evaluate it, and to guide its future direction. The 11 members of the Commission are all renowned and prestigious critics of the current repressive approach of drug policy.

At the February 2013 OAS meeting in Washington, the Guatemalan Foreign Minister, Luis Fernando Carrera, presented the main theme and subtopics to be discussed at the next OAS General Assembly, which will take place in Antigua, Guatemala in June 2013. The lead theme is "Alternative Strategies to fight Drugs", and the five subtopics are:

- i) strengthening the public health system for prevention and treating addiction;
- ii) reducing homicides and crimes connected with drug trafficking;
- iii) promoting local economic development and legalization of certain crops;
- iv) reducing arms trafficking and money laundering; and
- v) decriminalization of consumption and of minor drug-related crimes to reduce the prison population.

These topics attempt to address the multiple and complex drug-related situations experienced by producing and transit countries. In the next section, we summarize the current situation of Guatemala in relation to illicit drug-trafficking and the impact that prohibitionist policies have on that country.

2. The Problem of Transit Countries

The difficulties afflicting Guatemala and other states in Central America stem primarily from their role as *transit countries*, or as a land bridge between the sources of cocaine production in South America and the world's greatest market for cocaine – the United States.

Central America is the primary route for cocaine traffic entering the USA. Approximately 85% of cocaine shipped to the US is said to go through Central America. The transport of drugs through Central America has been occurring since the 1960s. However, the increasing relevance of the region started in the late 1990s, and has rapidly risen since 2000. According to the UNODC report entitled *Transnational Organized Crime in Central America and the Caribbean*,¹ in 2010, almost 1,000 tons of cocaine passed through Central America. Of that 1,000 tons, 30% of the total flow, or about 330 tons, is said to have passed through Guatemala, which is the main trafficking country in the region. The value of cocaine trafficking in Guatemala amounts to 4 billion US dollars, which represent 10% of the national GDP. Guatemala's proximity to Mexico explains the country's current standing as drug transit hub, but drug-trafficking has implications that impact and threaten the entire region.

Besides being a transit country for cocaine, another major source of illicit trafficking in Guatemala is the deviation of chemical precursors to illicit channels for the production of methamphetamines. Furthermore, Guatemala is a manufacturing country of Amphetamine Type Stimulants (ATS), and a producing country of poppy. Compared with the major centres of production in Afghanistan and South-East Asia, Guatemala is only a minor producer of illicit poppy, but the national impact is still important. That said, in a regional context, production is significant. The largest producer in the region by a clear margin is Mexico; Colombia has historically been the second-largest, but Guatemala's production is believed to be growing rapidly, and may now have surpassed that of Colombia.

The implementation of prohibitionist policies generates multiple dynamics and several negative impacts. For example, effective interdiction efforts in one area, aimed at preventing supply from reaching consumer markets, merely pushes production and trafficking to another area. This is known as the *balloon effect*. Supply reduction through seizures *can* increase levels of violence, as more competitors fight among each other for control of a decreasing quantity of cocaine. In Guatemala, local groups have been engaged in various criminal activities for decades in an environment of general impunity and compliancy by the authorities. International groups specialized 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 the *cockroach effect*,² which refers to the displacement of criminal organizations from one area to another.

Drug-related violence manifests itself in an increase in homicide as rival groups compete over resources. In 1996, when the Peace Agreements were signed, Guatemala had a yearly homicide

¹*Ibid.*

²Bruce Bagley, "Drug trafficking and organized crime in the Americas: major trends in the twenty-first century", August 2012, www.wilsoncenter.org.

level of 35.3 per 100,000 of population. It fell to 30 in 1998, was 24 in 1999, 25 in 2000, and 28 in 2001. Then it began to rise significantly again. In the last 10 years, Guatemala's homicide rate has averaged 42 per 100,000 of population. Homicides are concentrated in urban centres, in coastal areas and on the borders. The Guatemalan/Honduran border is said to be one of the most violent areas in the world, and lethal violence is related to organized crime. Criminal networks are not only engaged in cocaine traffic, but also in other criminal activities, such as extortion and migrant smuggling³. According to the report *Guatemala en la Encrucijada*,⁴ which analyses violence in Guatemala, 2009 exhibited the highest number of homicides since 1986: 6,498 in total, which corresponds to 48 homicides per 100,000 of population. Homicide rates recorded for the ten year period between 1999-2009 were 75% higher than the homicide rate *before* the Peace Agreements.

The illicit trafficking of cocaine in a prohibitionist context often leads to an increase in local consumption. Local groups can be paid in kind by trans-national networks, and then are responsible for distributing the drugs within local markets. Although it would be simplistic to argue that demand is driven primarily by supply, it is clearly the case that where a supply is readily available, new demand can be fostered. This problem could arguably be mitigated if the transit of drugs did not depend on underground networks. The growing power of criminal organizations to bribe public officers and to co-opt institutions further increases corruption, while undermining social development and cohesion.

But these are only some of the effects of prohibition. Incarceration of secondary subjects, violations of human rights, environmental damage, criminalization of users, disproportionate arrest of marginalised groups and ethnic and racial minorities, health-related issues associated with unsafe drug use (such as the spread of HIV among injecting drug users), and the gradual loss of civil liberties (mainly freedom of expression) constitute what some euphemistically call “collateral damage” of the drug war.

Half a century after the promulgation of the UN Single Convention, its inadequacy is widely accepted and has sparked calls for reform.

3. Drug policy reform

While national reforms cannot resolve the international and regional dynamics of trafficking and prohibition, they can provide better tools to handle its impacts at the national level. With this mind, in this section we give a summary of the proposals the Beckley Foundation presented to President Otto Pérez Molina in *Paths for Reform* (January 2013). Our recommendations apply

³UNODC (2012 a).

⁴Jorge A. Restrepo and Alonso Tobón García (eds.), *Guatemala en la encrucijada. Panorama de una violencia transformada*, Bogotá: Geneva Declaration, 2011.

beyond the boundaries of Guatemala, and can serve as a starting point for discussion of drug-trafficking and related issues impacting the region. The Beckley foundation recently published a report entitled *Roadmaps to Reforming the UN Drug Conventions*, which explores and delineates how governments can reform drug policies to suit their national, internal requirements.

The first Beckley Foundation proposal aims to bridge the gap between President Pérez Molina's advocacy at the international level and within the local context of Guatemala, mainly in relation to Congress and civil society. The proposal is called "**Public engagement**", and its main purpose is to generate debate and create a critical mass of opinion in the country. The proposal recommends the creation of a core group to lead the process of reform. Academic institutions, NGOs, research centres and other civil society organisations also have a significant role to play in disseminating information to the public, developing and elaborating alternative proposals, and working towards the implementation of reform. Other groups and institutions are 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. The key societal influencers we identified 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.

The second proposal is called "**Legislative reform, including reform of marijuana control**", and consists of a revision of the national drug law the *Ley contra narcoactividad* (Law against Narcoactivity). One of the implications of the current prohibitionist approach enshrined in the United Nations Conventions on illicit drugs and transnational traffic is the promulgation of national laws that create harsh, punitive systems based on incarceration. Central American countries, with the exception of Costa Rica, criminalise drug possession for personal consumption, and apply prison sentences, which, it may be argued, often cause more harm than the taking of the drug in the first place.

Poverty and social exclusion frequently underlie the involvement of low-level players in domestic distribution and international traffic. Many of these low-level traffickers could be regarded primarily as victims of both social circumstances and the transnational criminal organisations that exploit them. Contact with the criminal justice system and the experience of incarceration, which has long-lasting effects on the individual and his or her family, as well as on the community, tend to erode social cohesion, reinforce exclusion, and generate violence and crime. Furthermore, low-level players in the drug trade can easily be replaced, so their arrest is not necessarily a winning solution in the war on drugs as many prohibitionists may believe.

Looking at this Guatemalan law as a case study, Article 1 declares that, as a matter of public interest and in the pursuit of health, the State must adopt all necessary measures aiming to prevent, control, investigate, avoid and sanction 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.

It is important to stress that the aims of the law go beyond the limits of the international conventions, which “do not oblige any penalty (criminal or administrative) to be imposed for consumption per se.”⁶ Article 12 lists the applicable sentences for perpetrators. The most relevant are death, imprisonment, fines and perpetual disqualification. Possession for personal consumption is punished with sentences of between four months and two years.

Some of the Beckley Foundation’s specific recommendations for reforming the law include an in-depth review of international precedents for drug-policy reform, and the full decriminalisation of drug possession, and decriminalization of the cultivation of a limited amount of cannabis for personal use. The Foundation also recommends the legal distinction between minor drug offences and major offences relating to transnational organised crime be clarified and reinforced, and that sentences for relatively minor drug offences be reduced or eliminated. The Beckley Foundation also recommend that the same core group, or Commission, take the lead on such an 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. 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 apparently small size of the internal marijuana market, priority should be given to changes to the *Ley contra Narcoactividad*.

The third Beckley Foundation proposal, **Development of Protocols for Police and Prosecutors**, aims to accelerate the process of reform through the creation and implementation of special protocols for police and prosecutors in relation to drug-related offences. Such protocols should prioritise the detection and prosecution of violent and serious crimes, and give 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, while regulating the relationship between public officers and offenders.

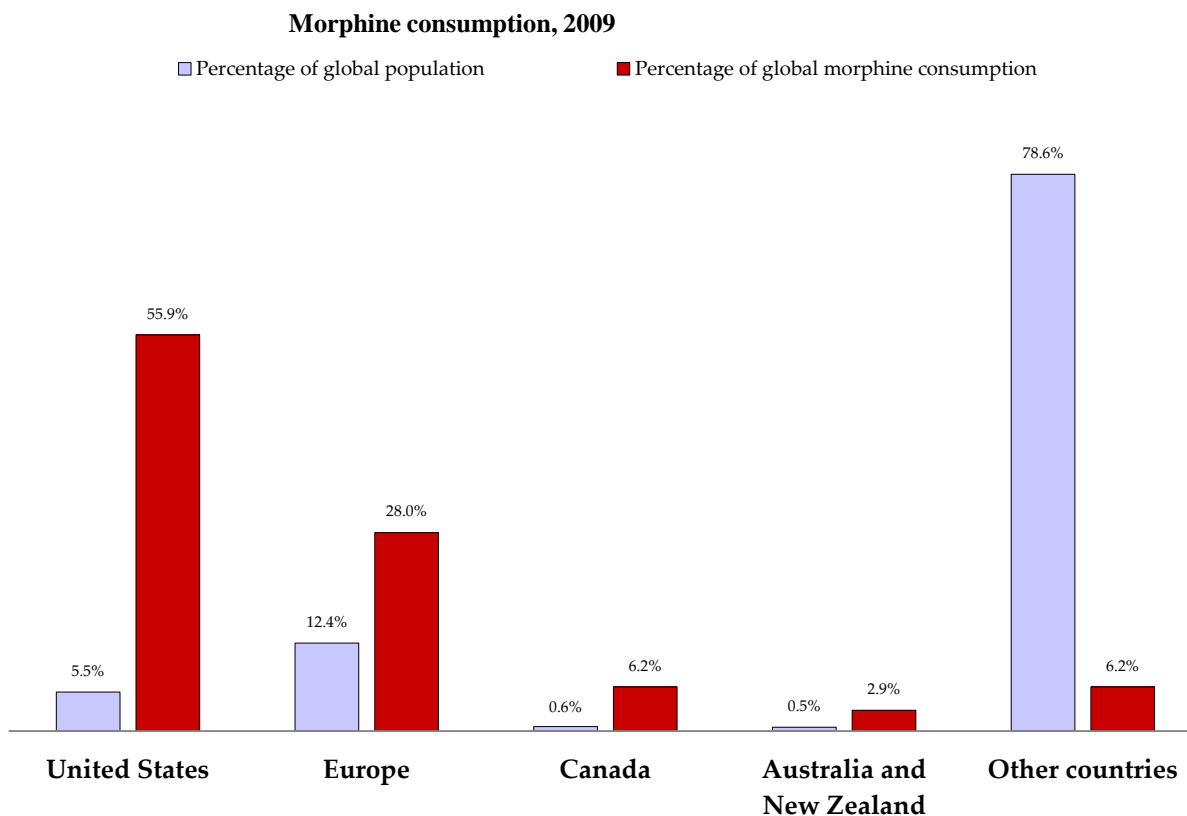
The fourth proposal, **Legalisation of the currently illicit poppy crop**, was particularly welcomed by President Pérez Molina and his ministers. It is based on an investigation of the current market of medical opium and related products (such as concentrate of poppy straw), and the uneven distribution across the globe of essential medicines.

⁶David R. Bewley-Taylor and Martin Jelsma, “The Limits of Latitude”, March 2012, www.tni.org, 7.

The Single Convention on Narcotic Drugs declares that it pursues two complementary goals: to reduce drug-dependence, and to guarantee universal access to essential medicines. However, it seems to be failing on both accounts.

The total global consumption of legal opioids increased significantly after 1986, when the World Health Organization (WHO) introduced the Analgesic Ladder for cancer pain relief. The increase in consumption occurred principally in a limited number of industrialised countries that represent only a small part of the world’s population. More than 90% of the global consumption of opioid analgesics occurs in Australia, Canada, New Zealand, the USA and several European countries. By contrast, 79% of the world’s population live in countries with low or non-existent access to controlled medicines and have no or inadequate access to treatment for moderate to severe pain.

The chart below shows the levels of distribution of morphine consumption:



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

The INCB uses a system of estimation to evaluate countries’ levels of opioid analgesics consumption.. The unit of measurements is the S-DDD, which stands for “defined daily doses for statistical purposes.” This value is used for statistical analysis, and does not represent a

recommended prescription dose. Consumption of opioid analgesics in quantities between 100 and 200 S-DDD per million inhabitants per day is considered inadequate. Consumption of opioid analgesics in quantities equal to or less than 100 S-DDD is considered very inadequate. According to this definition, 21 countries have inadequate consumption levels and more than 100 other countries have very inadequate consumption levels, among them Guatemala and many of its neighbours.

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

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

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

Poppy is legally cultivated in 18 countries: the five largest producers are Australia, France, Turkey, India and Hungary. The others (in alphabetical order) are Austria, China, Germany, Japan, Macedonia, the Netherlands, New Zealand, Poland, Romania, Slovakia, Spain, Ukraine and the United Kingdom.

Illicit crops are concentrated in Afghanistan, Myanmar, Mexico, the Lao People's Democratic Republic, Colombia and a few other countries. Interdiction efforts based on eradication have not only proved to be unsuccessful in limiting the spread of illicit crops (because of the 'balloon effect'), but have also led to the criminalisation of poverty through the prosecution and incarceration of farmers. Local communities find themselves trapped between ruthless criminal

networks and the repressive forces of the State. Children participating, together with their families, in the harvesting of poppy plants, grow up in an implicitly illegal environment, not because their families are criminals, but because the rural activity they carry out for subsistence is criminalised under the current system.

In the proposal we outline the process by which the Government of Guatemala can join the countries that legally cultivate poppy crops for the production of medicines, highlighting how this can be done with full respect for the UN Single Convention of 1961. This process would not only provide valuable medicinal options within Guatemala itself, but might at a later stage also feed the region with essential medicines they currently lack.

While the ultimate aim of the reform is to convert the whole of the current illicit cultivation into legal production for medicinal purposes, this conversion is best regarded as a long-term goal. Cultivation for use within Guatemala is logistically and legally simpler than cultivation for export. We recommend that the Government start with a pilot project involving the growth of a limited quantity of poppy, for national use, at a single site (or a small number of sites), which can be easily secured. The evaluation of this project would include:

- i) an assessment of the price that the State would be able to offer farmers for a licit crop, and of how that compares with the price available on the illicit market;
- ii) an analysis of the logistics of securing the licit crop, and of how to minimise the risks of corruption among those charged with safeguarding the crop;
- iii) an analysis of how the licit market functions alongside the illicit market: in particular, we recommend that the Government assess ways of mitigating the risk that new illicit farms might be created as some of the existing farms are converted to legal production.

The fifth proposal is called **Discussions regarding international traffic of cocaine** and does not include specific recommendations or suggestions of policy reform, but is rather a recommendation that President Pérez Molina continue to take the lead in promoting hemispheric discussion on tackling the traffic of cocaine through Central America. The problems arising from cocaine production and traffic cannot be tackled by any one country acting alone. If these serious problems are to have any hope of resolution, then regional and international collaboration is not just ideal, but necessary.

At the meeting with the President and his advisors in January 2013, I suggested that the Beckley Foundation undertake the production of an academic report investigating the possibilities of reducing harms through decriminalisation and regulation of the cocaine trade, and assess the potential benefits or harms. This suggestion was enthusiastically received by the President and his Ministers.

Conclusions

The proposals presented by the Beckley Foundation were designed to fit within the provisions of the UN Drug Conventions. The creation of a regulated non-medical market in marijuana would create legal tensions with the existing treaty obligations that would need to be addressed. However, in the light of recent international developments, such a change may now be within the realm of possibility.

The debate around drug policy reform is new in Guatemala, having been more or less initiated by President Pérez Molina in January 2012. There is no extensive knowledge of drug-related topics, either among the general public or in academia. Accordingly, any process of reform should begin with an extensive public campaign of information and education about international drug policies. The general absence of updated, verifiable and *public* data obstructs the elaboration of evidence-based public policy. Therefore, 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 the illicit poppy market.

The Beckley Foundation recognises that, despite the potential benefits of drug policy reform, fostering consensus on the necessity for change is not easy. In order to help shape, refine and promote the process of reform, a national debate on drug policy reform, involving all sectors of society – the Government, civil society, the Church, indigenous groups, the judiciary, health professionals, security experts, business, academia and the general public– must be initiated. The national debate can simultaneously move outwards to Guatemala’s neighbours and beyond, with a view to exploring the potential for multinational understandings and collaborations. Further informal intergovernmental meetings will be essential to explore potential policy options and the alliances that can be built around them in the region.

Finally, while there are many policies that can be instituted on a national level to mitigate the destructive effects of the current prohibitionist system, we believe that the beneficial effects for transit countries will multiply exponentially if prohibition efforts are relaxed across Latin America and North America. We therefore consider that, as reforms in Guatemalan policy are formulated, this ultimate goal should be kept in view. In the end, what is being challenged is prohibition itself, a system whose obsolete architecture is slowly, but inexorably, crumbling.

I would like to end by saying how honoured I am to have been invited to advise brave leader and global spokesman, President Otto Pérez Molina, and his government on the necessity for drug policy reform.