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THE BECKLEY FOUNDATION
DRUG POLICY PROGRAMME



THE EFFECTS OF DECRIMINALIZATION OF DRUG USE IN PORTUGAL

Caitlin Hughes¹ and Alex Stevens²

The Beckley Foundation Drug Policy Programme (BFDPP, www.internationaldrugpolicy.net) is a non-governmental initiative dedicated to providing a rigorous independent review of the effectiveness of national and international drug policies. The aim of this programme of research and analysis is to assemble and disseminate material that supports the rational consideration of complex drug policy issues, and leads to more effective management of the widespread use of psychoactive substances in the future. The Beckley Foundation Drug Policy Programme is a member of the International Drug Policy Consortium (IDPC, www.idpc.info), which is a global network of NGOs specialising in issues related to illegal drug use and government responses to the related problems. The Consortium aims to promote objective debate on the effectiveness, direction and content of drug policies at national and international level.

INTRODUCTION

In 2004, the Beckley Foundation reported on the legal changes that took place in Portugal in 2001 (Allen, Trace & Klein 2004). This report aims to provide an updated overview of the effects of these changes, using data from the evaluations that have been carried out and from new interviews with key stakeholders in Portugal.

We reviewed the available evaluative reports (Moreira, Trigueiros & Antunes 2007; Tavares, Graça, Martins & Asensio 2005; Trigo de Roza 2007) and also carried out 11 interviews with key stakeholders in October 2007. These included representatives of the Institute for Drugs and Drug Addiction (the government body in charge of researching and responding to drug addiction and use), non-governmental organisations, political parties and national and international drug researchers¹.

This report provides information for an international audience on the current trends and the perceptions of key stakeholders regarding the major impacts, successes, and challenges in adopting decriminalization. Given the length of this report, and the availability of data, it cannot provide a definitive evaluation of all the impacts.

THE 2001 CHANGES IN PORTUGAL

In July 2001, Portugal introduced a new law, Law 30/2000, which significantly changed the legal response to drug users. The new law decriminalized the use, possession and acquisition of all types of illicit substances for personal use, which was defined as being up to ten days supply of that substance. These changes did not legalize drug use in Portugal. Possession has remained prohibited by Portuguese law and criminal penalties are still applied to drug growers, dealers and traffickers.

The main features of these changes were:

- Ending the use of penal sanctions for drug possession (previously, offenders had been liable to fines or up to a year in prison).
- Introducing a system of referral to Commissions for the Dissuasion of Drug Addiction (Comissões para a Dissuasão da Toxicodpendência – CDTs).

The CDTs are regional panels made up of three people, including social workers, legal advisors and medical professionals, who are supported by a team of technical experts. The police refer people who are found in possession of drugs to the CDTs. The person appears before the CDT within 72 hours. The CDTs use targeted responses to drug users, including sanctions such as community service, fines, suspension of professional licences and bans on attending designated places. But their primary aim is to dissuade new drug users and to

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encourage dependent drug users to enter treatment. Towards this end they determine whether individuals are occasional or dependent drug users and then apply an appropriate sanction. Fines are not used for people who are considered to be dependent on drugs. For these people, the CDT can recommend that the person enters a treatment or education programme instead of receiving a sanction.

The law formed part of a strategic approach to drug use which aimed to focus police resources on those people who profit from the drugs trade, while enabling a public health approach to drug users. It developed from a period of reflection and debate, which included a 1998 report from the National Commission for the National Strategy to Combat Drugs. This led to the adoption, in 1999, of a National Strategy for the Fight Against Drugs. The prohibition of drug possession through administrative regulation, rather than criminal penalties, was one of the 13 objectives of this strategy, which also included increased enforcement of laws prohibiting trafficking and distribution of drugs, increased efforts for social and vocational reintegration of drug users and doubling the investment of public funds in treatment and prevention services. This strategy emphasises the principles of humanism, pragmatism and the right of people who have drug problems to receive treatment (Moreira, Trigueiros & Antunes 2007).

THE IMPLEMENTATION OF THE STRATEGY

Following the strategy there have been several institutional changes in the Portuguese response to illicit drugs and their users. These include:

- Establishing CDTs in every region of Portugal to receive referrals of drug users from the police and courts. They dealt with 39,492 cases between July 2001 and October 2007 (an average of 520 cases per month). The proportion that involved cannabis was 62%, with 18% of the cases involving heroin and 5% cocaine. Only 6.1% of these cases involved women. Most were young people, with 70% under 20, and 21% between 16 and 19 (Trigo de Roza 2007). Compared to the general pattern of use in Portugal, as reported by population surveys, the CDTs saw a larger proportion of cases involving heroin.
- Creating a central support department to assist the CDTs and to record all contacts with the CDTs.
- Rapidly expanding the provision of drug treatment. For example, the number of people in substitution treatment leapt from 6,040 in 1999 to 14,877 in 2003, an increase of 147% (Tavares *et al.* 2005). The number of places in detoxification, therapeutic communities and half-way houses has also increased.
- Increasing the number of schools that provide drug education.
- Refocusing police efforts on the interruption of large-scale trafficking operations.

INDICATORS OF EFFECT

Patterns of drug use and related problems often change, even when there is no change in the legal or institutional framework for their regulation. For example, other countries and states that have previously reduced the penalties applied for drug possession have not seen major changes in patterns of use as a result (Reuter & Stevens 2007). Another example is provided by the trend in cocaine use, which has increased across Europe since the early 1990s, including countries with quite different drug laws (EMCDDA 2006). Given the oblique nature of the relationships between drug market trends and policy responses, coupled with the variety of responses that form the Portuguese drug strategy, it is difficult to attribute any changes in drug use indicators in Portugal solely to the 2001 law. It should also be recognised that it is notoriously difficult to measure drug use and related problems accurately. Drug use is a hidden and stigmatised activity. The causal link between drugs, death, disease and crime is not direct, but is mediated by culture, socio-economics and policy responses. Nevertheless, it is interesting to track the changes in drug indicators since 2001 and explore the perceptions of key informants in order to give some picture of the effects of decriminalization.

At the time of introducing decriminalization the Portuguese drug problem was notable due to a high level of problematic drug use and drug-related problems. This was associated primarily with use of heroin, with a particular problem of injecting drug use and the related risks of HIV/AIDS and viral hepatitis. Cannabis use in contrast was low, relative to other European countries.

Drug use

The primary indicators on drug use available in Portugal concern lifetime prevalence amongst school students. General population surveys did not commence until 2001 (the year decriminalization was introduced) and there are no regular surveys of recent use. This reduces the capacity to measure one of the major aims of decriminalization: reducing problematic use.

Nevertheless, indicators on lifetime prevalence amongst youth are collected as part of the European School Survey Project on Alcohol and Other Drugs (ESPAD)⁴. These indicators rely on school pupils accurately reporting their own drug use. They are therefore highly vulnerable to changes that arise from the willingness to report drug use, and not just changes in actual drug use. For example, if decriminalization signals to young people that cannabis use is more socially acceptable, they may become more willing to report using it when surveyed. So the figures in the table below should be used with caution.

⁴ The latest available figures from ESPAD concern 2003. Figures for 2007 will be reported in 2008 (see <http://www.espad.org/>).

Table 1: Changes in lifetime prevalence of drug use among students aged 16-18 (Tavares *et al.* 2005)

DRUG	1999	2003
Any drug	12.3%	17.7%
Cannabis	9.4%	15.1%
Heroin	2.5%	1.8%

These figures suggest that, while cannabis use among young people may have increased, heroin use has decreased. The Portuguese authorities have recorded a reduction in the numbers of heroin users who are entering treatment for the first time. It seems that initiation into heroin use is falling, while cannabis use may be rising towards the levels experienced in some other European countries. This indication is supported by the pattern of referrals to the CDT (IDT 2007), which is shown in table 2 below. There has been an increase in people appearing before CDTs for cannabis, and a decrease in those appearing for heroin.

Table 2: Pattern of drugs for which people were referred to CDTs, 2001-2005 (IDT, 2006)

DRUG	2001	2002	2003	2004	2005
Cannabis	47%	57%	67%	66%	65%
Heroin	33%	24%	17%	17%	15%
Cocaine	5%	6%	4%	6%	6%

Drug Supply Reduction

Portugal is the closest nation in Europe to the World's primary producer and exporter of cocaine (Columbia). In addition, there are historical links between Portugal and other Latin American countries that facilitate the development of drug trafficking networks. Trafficking in and through Portugal is therefore significant, not only for the Portuguese, but also for the European drug problem. Since the introduction of the new strategy, there have been considerable increases in the amount of drugs seized. There were increases of more than 100% in the amount of heroin, cocaine, cannabis and ecstasy seized between the four years 1995-1999 and the 2000-2004 period, even though the number of seizures decreased (Tavares *et al.* 2005). This could indicate that the Portuguese authorities have successfully refocused their supply reduction efforts on large-scale operations, rather than street level deals involving small amounts of drugs. Portugal has increasingly used widespread network investigation processes, involving key informants in strategic source countries including Brazil and Cabo Verde (IDT 2007). These processes are used to anticipate routes, seize assets and reduce the profits from drug trafficking.

⁵ Crimes that were counted under this heading included theft of motor vehicle, theft using motor vehicle, burglary and robbery.

Drug-related death

Table 3 below shows the changes in recorded drug-related deaths between 1999 and 2003.

Table 3: Changes in drug-related death*, 1999-2003 (Tavares *et al.* 2005)

DRUG	1999	2003
Opiates	350	98
Other drugs	19	54
Total	369	152

* Drug-related death is difficult to measure, as it is hard to tell whether a death is directly related to drug use, even if traces of a drug are found with or in the body.

There has been a large drop in deaths related to the use of heroin. Deaths recorded as being related to the use of other drugs has risen, but there was an overall fall in drug-related deaths of 59% between 1999 and 2003. The fall in deaths related to opiates has been linked to the big increase in the numbers of heroin users who have entered substitution treatment (Tavares *et al.* 2005), as substitution treatment has repeatedly been found to be effective in reducing the mortality of opiate users (Brugal, Domingo-Salvany, Puig, Barrio, Garcia de Olalla & de la Fuente 2005; Joseph, Stancliff & Langrod 2000; Michels, Stöver & Gerlach 2007). It may also be another indicator of falling levels of heroin use.

Drug-related disease

With its relatively high rates of heroin use by injection, Portugal has had a serious problem with the transmission of HIV and other blood-borne viruses. For example, in 1999 Portugal had the highest rate of HIV amongst injecting drug users in the European Union (EMCDDA, 2000). This is a major target of a public health approach to drug use, with opiate substitution treatment and needle exchange being an important element of the Portuguese response. Between 1999 and 2003, there was a 17% reduction in the notifications of new, drug-related cases of HIV (Tavares *et al.* 2005). There were also reductions in the numbers of tracked cases of Hepatitis C and B in treatment centres, despite the increasing numbers of people in treatment.

Drug-related crime

The relationship between crime and drug use is complex and is not directly causal (da Agra 2002). Recorded crime rates are dependent on recording practices (Stevens 2007). Overall rates of crime and drug use can operate independently, as seen in the UK in the late 1990s, where crime fell rapidly, despite indicators of rising drug use (Reuter & Stevens 2007). Nevertheless, the evaluation of the national strategy noted that the number of crimes that were "linked strongly to drugs⁵" rose by 9% between 1999 and 2003 (Tavares *et al.* 2005).

Burden on the criminal justice system

One of the harms imposed by illegal drug use is the cost of dealing with it through the criminal justice system. The time of police officers, lawyers and courts, plus the cost of imprisoning drug offenders, can represent a significant proportion of the cost to the taxpayer that arises from the drug problem. At the time of the creation of the new strategy, Portuguese courts were overburdened and suffering severe

delays in processing cases. The prisons were also overcrowded. It is sometimes suggested that decriminalization offers a way to reduce this burden. Data are available on the number of drug-related arrests and imprisonments that indicates changes in this burden (IDT 2005). These are shown in figures 1 and 2 below.

Figure 1: Number of individuals charged with drug use, drug trafficking and trafficking-consumption, 1996-2005

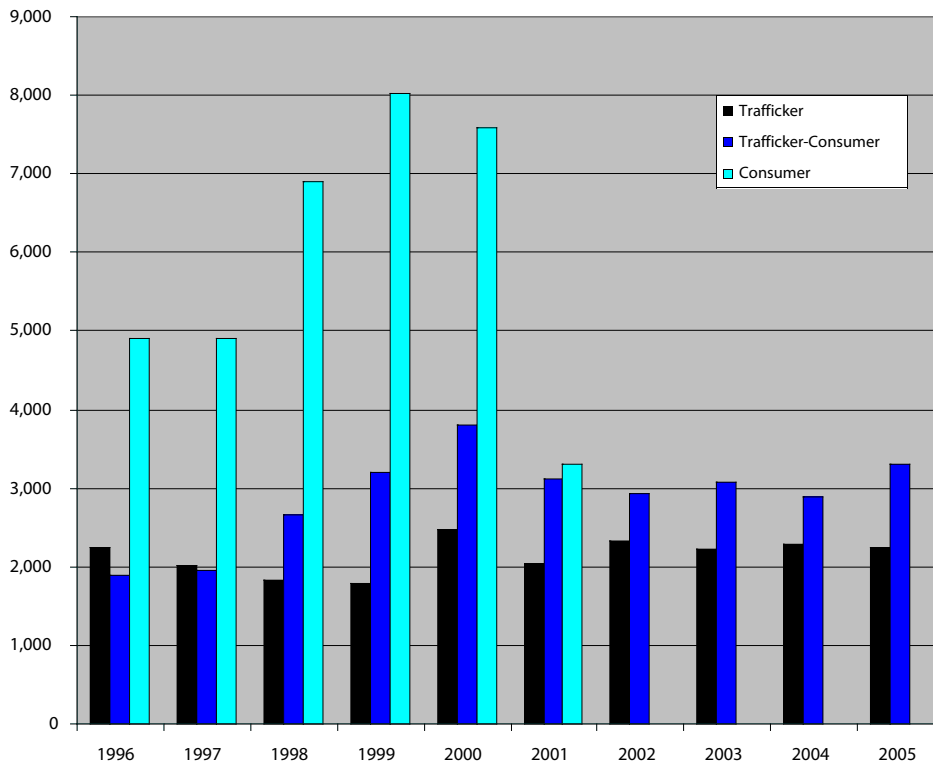


Figure 1 shows that the police made 7,592 charges for drug consumption in the year before the decriminalization. This compares to 6,026 referrals to the CDTs in the year after decriminalization (Trigo de Roza 2007), representing a significant diversion of cases from the over-burdened criminal courts. Charges for trafficking increased by 11% when comparing the four years prior to decriminalization with the four years subsequent to it. This may reflect the increased focus on trafficking by the police, or an increase in the occurrence of trafficking in and through Portugal, or a combination of the two factors.

Figure 2: Number of prisoners sentenced for drug and other offences, 1997-2005

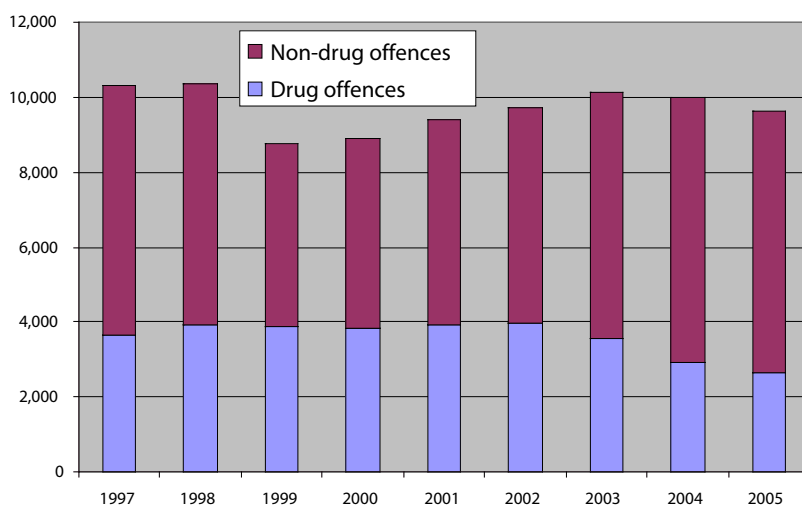


Figure 2 shows a reduction in the number and proportion of prisoners who were sentenced for drug offences following the decriminalization. This proportion declined to 28% in 2005, from a peak of 44% in 1999. This reduction in the imprisonment of drug offenders has contributed to a reduction in prison overcrowding, which fell from a rate of 119 to 101.5 prisoners per 100 prison places between 2001 and 2005 (Council of Europe 2007).

Taken together, these data suggest that Portuguese reforms have taken some of the pressure off the criminal justice system, although it should be remembered that the police are still involved in detecting drug consumers and referring them to the CDTs.

SUMMARY OF TRENDS

The available data suggest that, since 2001, the CDTs have dealt with a large number of drug users, who would have faced criminalisation and penal sanctions prior to 2001. The national strategy has led directly to increases in the scale of treatment and prevention activities in Portugal. The effects of these changes are harder to identify. It seems that there has been a shift in drug use patterns, with increasing use of cannabis and decreasing use of heroin. The rise in cannabis use is probably less threatening to public health than the levels of heroin use that were recorded prior to 2001. The reductions in drug-related deaths and blood-borne viruses also suggest that there have been public health improvements since 2001.

It is worth repeating that patterns of drug use and related problems may operate independently of drug laws and policies. The epidemics of heroin and HIV may already have passed their peak by 2001 and so may have fallen without any legal or policy changes. However, the recorded patterns in Portugal support the idea that decriminalization may lead to overall increases in drug use, but with reductions in drug-related public health problems.

STAKEHOLDER PERCEPTIONS

Key informants were interviewed in Portugal in October 2007 on their current perceptions of the Portuguese decriminalization. In this section we use their responses to outline expert opinion on the reform's impacts on drug use, drug-related problems and institutional practices and the major advantages and challenges to the adoption of decriminalization.

Perceptions of effects on drug use

All the interviewees agreed that decriminalization has been beneficial for existing drug users, principally because decriminalization has resulted in earlier intervention and the provision of more therapeutic and targeted responses to both drug and drug-related problems. Through providing problematic drug users with a better system of detection and referral to treatment, the CDTs increase the ability to address the causes of and harms from problematic drug use.

"In general it had a positive impact on people who really needed treatment." R5

In addition, through increased education and dissuasion the CDTs reduce the likelihood that non-problematic drug users will continue to use drugs.

"It allows us to reach people that are not drug addicts, they are experimenting and at risk of turning into drug addicts." R11

In this sense, the general view is that the current strategy has enabled a reduction in the rate of drug use and drug-related problems amongst existing users.

On the other hand there are concerns that decriminalization has contributed towards a rise in new drug use, particularly use of cannabis and ecstasy. While the drug trends clearly illustrate a rise in cannabis use amongst youth, key informants raised a number of possible explanations:

- increased self-reported use due to less stigma surrounding drug use
- increased use as part of a European trend
- increased use due to the decriminalization and perceived tolerance of use

From the first perspective, people are now more likely to report their own use and to encourage others to report and seek help for their use, implying that there has not been a real increase in cannabis use. From the second perspective cannabis use has increased, but this has been part of a European trend. The increase in cannabis use in Portugal has been mirrored in many European nations, including neighbouring Spain and Italy, nations with historically low prevalence of cannabis use. From this perspective, given that all three countries exhibited a similar trend the decriminalization in Portugal is not to blame for the increase. Finally, the decriminalization may have contributed to a real increase in cannabis use due to a perceived tolerance of use. From this perspective decriminalization has had a counter-productive impact on drug use.

It is plausible that the rise in cannabis drug use is due to one or all of these explanations. Yet, the different interpretations lead to conflicting views on the worth of decriminalization. Key informants supporting the first and second explanations have far more positive views of the reform than those supporting the final explanation. Indeed one key informant stated that the increased reporting of cannabis use has improved the adaptation of current policy responses.

"This reform is a success regarding the use of recreational drugs, because there is a greater awareness of the numbers [of users], and this in turn forces a constant rethink of the drug combat policies." R4

Perceptions of effects on drug-related problems

Decriminalization is seen as contributing towards better targeting of health responses, which should in the long run reduce the development and extent of drug-related problems, such as overdose, HIV, TB. However, this is also dependent upon having sufficient treatment places, and responses that meet current drug needs. Many of our interviewees questioned the existence of such responses.

The data suggest that the heroin market has declined but that cannabis, cocaine and ecstasy markets have expanded (due to international and/or domestic reasons). Our key informants had two major views on the causes. One contends that the overall drug market has increased directly as a result of decriminalization. The other contends that the drug market has either remained the same or increased independently of the reform. From the former, decriminalization has facilitated more drug use and hence an expansion of the market.

“As a result Portugal at the moment resembles a place of tolerance for drug use – where crime is completely permitted.” R1

From the latter perspective decriminalization is deemed to have had a limited impact upon the drug market itself. Drug market changes particularly in cocaine trafficking are deemed to have occurred independently of the decriminalization. Instead they are attributed to geopolitical reasons, including Portugal’s geographic location and changing drug patterns in Europe.

“There is some increase and some reductions in other substances, but much lower than in other countries in Europe. This is consistent with globalization, but not a direct impact of decriminalization in Portugal.” R11

This ties in with the argument that cannabis use has increased in many countries, not only in Portugal. The major mechanism by which decriminalization is perceived to have impacted on the market is through freeing up law enforcement resources to focus upon supply reduction. This is deemed to have facilitated law enforcement intervention in the cocaine market in Portugal.

“In fact we see that the efficacy and activity of the police is much higher.” R11

The extent to which such changes are driven by a perceived weakening of the laws as opposed to increasing European demand, geographic location or some other factor remains unclear. The ability to assess these views is limited by data shortages and a variety of changes. For example, in regards to the cocaine market in Portugal there have been increased seizures. These may reflect more transit drug trafficking (i.e. drugs passing through Portugal to the wider European market) or increased use within Portugal. Alternatively, they may reflect better supply reduction. The data tend to suggest all may be occurring, yet establishing whether demand or supply is the driving factor is important. The causes of such changes demand not only a national, but also an international focus, particularly on trends in Europe.

Perceptions of effects on institutional practices

Decriminalization has necessitated considerable changes in institutional practices. The most notable shift has been the adoption and implementation of new Commissions for the Dissuasion of Drug Addiction (CDTs). But there have been additional changes in the existing institutions and their relations with and between the law enforcement sector, judiciary and the drug treatment sector.

All our interviewees saw the CDTs as critical to the success of decriminalization, noting the need for the Commissions to provide a response that is perceived as punitive whilst simultaneously providing targeted interventions for drug users. However, key informants noted numerous difficulties in their design and implementation. Principally, they were seen as being excessive in design, and so very resource intensive.

“The dissuasion dispositive was too big; disproportionate to the reality and very costly.” R11

Other problems include that the CDTs are too bureaucratic in operation, have an inadequate range of sanctions and provide inequitable responses to users. Moreover, the governance of the CDTs remains unclear as they have competing supervision. While the CDTs are governed solely by the Health Minister, their technical support, including staff, budget and procedural guidelines are all provided by the Institute for Drugs and Drug Addiction (IDT).

There is considerable debate and controversy over the impacts of the CDTs, particularly over whether they have benefited all or only a subset of drug users. The CDTs have been designed to be all things to all users: to provide assistance to both the HIV positive, heroin dependent user and the recreational, wealthy cannabis user. This poses significant limitations. In the context of limited resources there is debate about where priorities should be set, and what interventions are most effective for each type of user. The most pessimistic view is that the CDTs have failed to dissuade drug use, with the direct consequence that decriminalization has not worked.

“Dissuasion is only the name [of the CDTs]. It does not dissuade. It was a failed solution.” R1

This report has not looked closely at the operational effectiveness of the CDTs, but the diversity of views suggests this is a major area where detailed studies are needed.

The law enforcement sector was seen as supportive of the reform, particularly because they perceived decriminalization and referral to education and treatment as offering a better response to drug users than under the previous legislative approach. Key informants asserted law enforcement have embraced the more preventative role for drug users.

“It impacted also on the law enforcement agencies because nowadays I am quite sure that a significant number of agencies see themselves as having a role in early prevention.”

They know that their actions will not take a drug user to prison, it will probably give him a better opportunity to assess his or her problems earlier on. I think this was very positive because law enforcement agencies are seen by the general public as repressive.” R5

The change in law enforcement roles is deemed to have increased their sense of involvement in other areas of the national drug strategy: prevention, treatment and harm reduction.

A number of less positive impacts were also identified. These were of particular importance in the initial years following decriminalization. Decriminalization reduced law enforcement access to drug users and their information for example on street price, places of use, networks. Decriminalization also made it harder to distinguish trafficker-consumers from consumers. From one perspective such difficulties have continued and as a consequence decriminalization has made supply reduction more difficult. Yet from the other perspective law enforcement have adapted to new ways of getting information on the drug markets and new approaches to identifying traffickers. For example, the law enforcement sector has increasingly used international cooperation to detect and dismantle drug trafficking networks in source countries. For at least some key informants this has improved their supply reduction efforts.

Given gaps in the current sample this report has not been able to examine all impacts on the criminal justice system, particularly on courts and prisons. Key informants noted that courts have increased their knowledge on the causes of consumer-trafficking and adopted more appropriate sentences for such individuals. This is due largely to consumer-traffickers being dealt with firstly as consumers, by the specialist CDTs, and then as offenders, by the courts. The increased use of suspended sentences may reflect such a change.

For the health sector decriminalization has increased professional understanding of the different types of users, their motivations for and patterns of use. This has been important, since Portugal has traditionally provided a limited range of options, with primarily abstinence-based approaches. Professionals have increasingly recognised that such approaches do not suit all drug users, and that a broader range of responses can facilitate demand and harm reduction. The increased recognition of heterogeneity is argued to have enabled a more realistic response, more driven by experience and evidence than ideology.

Key informants also argued that decriminalization and the introduction of the CDTs forced multiple institutions to work together. This impacted upon interactions between institutions, particularly law enforcement and health. Following the reform it took time for all services to learn what their new roles were, and how they interacted. Overall collaboration is seen as having improved and enabled a much better response. That said, there are some continuing challenges. Those areas with poorer collaboration are perceived to have contributed towards variability in responses to drug users.

Perceptions of the role of decriminalization in wider drugs and social policy

By sending the message that drug users are not criminals decriminalization was expected to change social perceptions of drug use and drug users. Indeed the reform is seen to have contributed towards more tolerance and integration of drug users.

“Professionals and the general public say it had a very positive impact in reducing the stigmatization of drug users and increasing the opportunities for responses they need.” R5

This is deemed to have reduced the barriers to treatment and health and social services.

“With decriminalization drug users are more empowered to demand their rights to treatment etc. Decriminalization is obviously going to help a lot – not just in drug use, but in health issues too.” R7

Key informants also pointed to a reduction in fear about the drugs issue. As a result, the general public is more likely to admit to past or present drug use and to seek or encourage other drug users to obtain assistance. On the other hand decriminalization is seen as sending the wrong message and increasing the sense of social acceptability and tolerance of drug use.

Decriminalization is also seen to have facilitated shifts in the drug policy arena. The reform has led to a more evidence-informed environment in which to debate and create drug policies. For example, there are current discussions concerning the provision of injecting rooms. These may not be adopted and may not be needed, but the important change is that discussions can now be held about whether these are or are not desirable for the Portuguese environment. Such discussions were seen as taboo in an earlier period.

“I think that the services and views nowadays feel about this problem helped us to discuss further on different types of interventions such as harm reduction interventions. We’ve been able to discuss syringe exchange in prison which was taboo. We’ve been able to discuss injecting drug rooms, which we do not have.” R5

Associated with this, there has been an expansion in the range of policy interventions that are provided in Portugal. While not everyone is supportive of this, particularly in regard to harm reduction measures, there is a general view that the types of interventions have become more varied and that decriminalization has enabled a more balanced approach to the drug problem: increased treatment, harm reduction, prevention as well as supply reduction.

“Decriminalization has enabled better impacts across the whole strategy. There is more prevention, [and] more

treatment through [the] CDTs One area impacts on the other. When we decriminalized drugs in Portugal it had an impact requiring responsabilisation across the other areas.” R4

Finally, Government is seen as becoming more accountable and responsive to the public. The public and NGOs are much more involved in policy making today and more likely to comment on the priorities, actions and quality of services.

“I also think the general public and civil society has been much more active in speaking their minds. They are more educated in this area and they demand more. A few years ago, most of them wouldn’t have had a clue about what prevention should be about, and now they do. This is good because it means public agencies have to be much more careful with the quality in what they do... ” R5

Implementation issues

There are recognized problems which have taken time to resolve including justice by geography, whereby differing levels of collaboration between CDTs and police have resulted in varying degrees of responses to drug users, delays in adequately training personnel and development of a communication strategy to clarify that decriminalization does not mean legalization. Yet, in the Portuguese context, many saw this law as having been better implemented than many other reforms.

“In Portugal we have some bad examples of things that are legislated in an excellent way but you can’t apply it in the field because you have not created the institutions or you don’t have the political context for that topic. So I think the main reason for the success of this law was the combination of the three things: the political context in 2000, the innovative law and the possibility of creating institutions in the field for applying this.” R8

Key informants noted that most of the difficulties in implementation could not have been identified or foreseen prior to undertaking the reform.

“Most of the things, it would have been very difficult to see them when we made the law and started implementing it. They have problems to do with implementation, not the decriminalization concept.” R5

However, interviewees also noted that some things could have been better followed up. Principally there could have been more data collection and research into the outcomes of the CDTs. This could have facilitated improvements at an earlier stage.

Several interviewees saw more positive impacts at the commencement of decriminalization, when resources and support were greater. The strategy has become less visible over time and there is a perception that it has become less effective, as indicated by increased CDTs operating without full staff, reduced access to treatment, and inappropriate treatment responses particularly for the current demand.

“The decrease of investment brought several consequences, such as the generalized feeling that the resources aren’t being well-applied; [and] especially when compared to the big investment made in the beginning, there’s a feeling that a lot of the work done is not being properly carried out.” R4

In this regard, the creation of a resource demanding system has been a key impediment to the implementation of the reform, particularly given changes in political willingness to prioritise its funding.

Lessons are now being learnt about what is really required to undertake decriminalization. It requires shifts in attitudes and practices, collaboration and a systematic approach. One key realization is that the original intentions to build a new and separate system for responding to drug users was based on good intentions, but had counter-productive impacts in reducing the capacity for collaboration.

“At the time we made [the CDTs] so independent that it fulfilled the objectives of taking them away from the criminal justice system, but also had the negative of making them distant from other local resources in the community.” R5

Another lesson has been that decriminalization puts greater pressure on a nation to provide access to good quality prevention and treatment. It therefore increases the need for a comprehensive and well-resourced system. This is particularly if a more therapeutic form of response is adopted.

“It is dangerous if you want a system that is more just or more liberal if you don’t have a system that can support that.” R10

The current debate

Decriminalization has reached a point where many stakeholders feel it is time to make some changes. Politically, there are two major issues of debate: whether to abandon or continue with decriminalization; and if it is continued, how to improve the implementation of decriminalization – particularly the operation of the CDTs.

The first issue – abandoning decriminalization – has been pushed primarily by the right-wing parties. While the dominant view is that the decriminalization has not been a failure, an alternate view

has formed that decriminalization has been dangerous. From this perspective decriminalization could have been a worthwhile experiment, but only if it had been properly implemented. Failings in the areas of implementation have led to the conclusion that while decriminalization has contributed towards some positive impacts, particularly for problematic drug users, it not been the right policy for Portugal.

The alternate view is that decriminalization has been successful and is worth continuing, but that there is need for definite changes. From this perspective the issue is how to best improve implementation. For most, the CDTs need reform. Options include reducing the size, cost and formality of the structures, changing the types of measures provided, particularly providing more interventions for responding to drug users.

Others have proposed changes in the broader network of services that operate with the CDTs. The capacity of the CDTs to work is dependent upon the collaboration between the network of services and on the provision of adequate resources. From this perspective merely changing the structures of the CDTs may have limited impact unless there is also a concerted effort to provide the required resources and encourage paradigmatic change and collaboration through, for example, a better articulation of responsibilities, more training and the provision of feedback (particularly to the police) on the outcomes of CDT referrals.

It is also perceived that more evidence is required on the outputs and impacts of the CDTs. The lack of evidence has prevented the assessment of the positive and negative impacts and the extent to which decriminalization is enabling change. Moreover there is limited knowledge as to what constitutes best-practice in terms of responses or use of resources.

Finally, there is a continuing issue of how to send a clearer message that decriminalization does not mean drug use is condoned in Portugal. For some this is deemed an impossible message: decriminalization will inevitably equate with legalization. But for others a clearer message can be promoted, that use and possession are not allowed and continues to be met with sanctions and other measures which can be quite intrusive. Related to this is the need for a clearer message that any drug use is risky and potentially damaging to health.

Plans that are underway may go some way to meeting these issues. First, there are current efforts to reduce the complexity and streamline the actions of the CDTs and methods of referral from the CDTs to treatment. Proposals to adopt such changes are due to be debated in the parliament by the end of 2007. Second, a study of the outcomes from the CDTs is planned in 2008.

CONCLUSIONS

The statistical indicators suggest that since the decriminalization in July 2001, the following developments have occurred:

- Increased use of cannabis.
- Decreased use of heroin.
- Increased uptake of treatment.
- Reduction in drug related deaths.

Decriminalization has enabled earlier intervention and more targeted and therapeutic responses to drug users, increased collaboration across a network of services and the increased attention to adopting policies that work. This is perceived to be reducing the level of current and future drug use and harm. Yet, key informants also highlighted that impacts were less than expected and that there were concerns over the message that decriminalization was sending to new drug users.

The Portuguese experience cannot provide a definitive guide to the effects of decriminalization of drugs, but only indications of the results of decriminalization in the specific Portuguese context. It is not possible to tell the extent to which changes were caused by decriminalization or the wider drug strategy. The extent to which difficulties in implementation impeded the impacts from the reform remains unclear.

Decriminalization, particularly the model adopted in Portugal, depends upon the existence of a well operating system. Putting a decriminalization initiative based on diversion to education and treatment programs into practice has been a challenge, due to the difficulties in adopting a new reform and in particular the design of the chosen model involving the CDTs. As a consequence, the impacts have not been as positive as anticipated. The implementation of decriminalization has been affected by a lack of strong collaboration, of adequate resources, of a good media campaign on the meaning of the reform and evidence-based studies and evaluation. Suggested improvements, which are already under discussion, include the adoption of a more streamlined mechanism for processing drug users, increasing collaboration between services and developing the message to discourage the uptake of new use.

Differing views remain over the impacts of the decriminalization. The issue of particular contention – the extent to which increases in occasional use can be attributed to decriminalization – is not new. It was raised as a concern in the evaluation in 2004 and indeed in the original Beckley Foundation report (Allen, Trace & Klein 2004). The fact that it remains unanswered is of concern because the answer is crucial for assessing the impacts of decriminalization.

Overall, it is clear that the Portuguese decriminalization was an innovative experiment. At the time of adoption there was political and public support for the reform. There are signs this support is under strain. While the adoption of decriminalization has brought definite

advantages, particularly for addressing and reducing problematic drug use, it appears that decriminalization requires the development of a comprehensive system in order to have the desired goals. The future of decriminalization will depend partly on the evidence-base, but also on national views as to whether this is the best policy response for Portugal. This is inevitably hard for outsiders to assess. For now it appears that decriminalization will continue. Yet, movements forward, in developing implementation, and backwards to re-criminalization are both possible.

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