



Report on the  
White Paper regarding Drug Laws Reform

Prepared by

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for

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*This report is dedicated  
to all those  
who cannot speak for themselves;  
and to all those  
who are in need of a stranger's hand.*



## EXECUTIVE SUMMARY

This report is divided into ten (10) sections. A summary of the salient points emerging from each section is provided hereunder.

### *Section 1*

#### Brief review of the three international conventions and a proper definition of decriminalization

This section provides a number of observations on 1961 Single Convention on Narcotic Drugs, on the 1971 Convention on Psychotropic Substances and on the 1998 Convention Against Illicit Trafficking in Narcotics and Psychotropic Substances and argues that the Government should consider revising its position vis-à-vis the foregoing international conventions.

This section also notes that the definition of decriminalization provided in the White Paper is inaccurate and provides an alternate definition.

### *Section 2*

#### Addressing two of the major points that help to guide drug reform

This section explains that: (i) while illegal drug use is a significant problem, the use of legal drugs among adolescents is also a major issue and should be addressed; and (ii) personal use of drugs and drug abuse should only be considered as a health and social problem and not as a criminal one in order to avoid the negative effects of labeling – primarily the development of a self-fulfilling prophecy.

This section also suggests some additional critical guidelines that should help the Government to guide drug reform particularly an emphasis on treatment.

### *Section 3*

#### Possible impact which the decriminalization of simple possession of all drugs may have in Malta

This section draws on the Portuguese experience by analyzing two contradictory evaluative studies and essentially finds that decriminalization may have a positive impact in Malta.

This section also argues that independently of the evaluative studies, decriminalization is likely to have a positive impact in Malta since the proposed policy seeks to divert drug user/abuser from the formal criminal justice system thus avoiding the negative effects of labeling.

This section concludes by noting that decriminalization of all drugs is definitely a step in the right direction but remarks that as long a drug trafficking remains illegal and in the hands criminals this policy is probably only half the answer and therefore decriminalization should be regarded as a baby step towards legalization.

### *Section 4*

#### Amending the procedure set out for individuals caught for the first time with simple possession of drugs.

This part of the report suggests that in order to aid the Commissioner of Justice to exercise his discretion and select the option that would be most beneficial to the drug user it would be appropriate for the Commissioner to be guided by Evaluative Board similar in composition to Portugal's Dissuasion Commissions.



## **Section 5**

### Developing criteria to determine simple possession and aggravated possession of drugs

This area of the report explains it would be beneficial for the Government develop a set of guiding criteria to aid criminal justice professionals to distinguish between simple possession and aggravated possession.

The criteria which should be taken into account include:

- (i) the amount of the drug;
- (ii) the purity of the substance;
- (iii) the type of drug;
- (iv) the harmfulness of the drug;
- (v) the level of addiction;
- (vi) the amount of daily use of the drug;
- (vii) the Circumstances in which the drug is found; and
- (viii) the place where drug was found.

## **Section 6**

### Additional points which the Government should take into account when establishing drug courts

This part of the reports explains that the Government should seek to establish adult drug courts, juvenile drug courts and family drug courts which take into account the differential needs of different target populations.

## **Section 7**

### An additional criminal justice policy or program that aims to limit drug trafficking

This section outlines a different approach to drug trafficking by considering implementing a DMI program which seeks to steer drug traffickers away from illegal activity with the help of agents of formal social control and agents of informal social control. Prosecution and confiscation of assets would only be used if the DMI approach is unsuccessful.

Furthermore, this part also suggests that in order to deter drug dealing the Government should consider highlighting the severity of punishment (the confiscation of assets) with a powerful media campaign which would increase the certainty of punishment.

## **Section 8**

### The possible impact which the decriminalization of marijuana may have in Malta

This section analyses a number of empirical studies on the decriminalization of marijuana and finds that notwithstanding methodological limitations Malta may experience an insignificant to marginal increase in marijuana usage after decriminalization. In addition, this section suggests that decriminalization would help divert police resources to prevent and detect more serious crimes.

## **Section 9**

### The possible impact which the legalization of medical marijuana may have in Malta

This section examines scientific research on the legalization of medical marijuana (whilst taking into account methodological shortcomings) and reports that Malta may:



- (i) not experience a significant increase in marijuana use after legalization; and
- (ii) see a decline in violent crime; and
- (iii) experience a decrease in traffic fatalities.

## ***Section 10***

### **Consequential Issues**

This part of the report puts forwards a few suggestions that the Government should address when seeking to reform the national policy on drugs such as developing tests to detect marijuana use while driving, implementing alternative drug treatment practices and improving prison conditions.

## THE REPORT

### *Introduction*

This report is divided into ten (10) sections as follows:

1. Section 1 contains a brief review the three international drug conventions to which Malta subscribes and sets out a proper definition of decriminalization.
2. Section 2 addresses two of the major points that help to guide drug reform and sets out some additional key guidelines.
3. Section 3 analyses the possible impact which the decriminalization of simple possession of all drugs may have in Malta by drawing on the Portuguese experience.
4. Section 4 proposes an amendment to the procedure set out for individuals caught for the first time with simple possession of drugs.
5. Section 5 considers developing criteria to determine simple possession and aggravated possession of drugs.
6. Section 6 lists some additional points which the Government should take into account when establishing drug courts.
7. Section 7 describes an additional criminal justice program that aims to limit drug trafficking.
8. Section 8 examines the possible impact which the decriminalization of marijuana may have in Malta.
9. Section 9 evaluates the possible impact which the legalization of medical marijuana may have in Malta.
10. Section 10 expands on consequential issues.

### *Section 1*

This section is divided into two parts: (i) the first part contains a brief review of the three international drug conventions to which Malta subscribes; and (ii) the second part suggests a proper definition of decriminalization.

#### *Section 1.1*

##### Brief review of the three international drug conventions to which Malta subscribes

The White Paper the Government lists and describes the three international drug conventions to which Malta subscribes: the 1961 Single Convention on Narcotic Drugs, the 1971 Convention on Psychotropic Substances and the 1998 Convention Against Illicit Trafficking in Narcotics and Psychotropic Substances.<sup>1</sup> Although these Conventions give the Government the discretion as well as the flexibility to implement the provisions thereof in its national law as it deems fit<sup>2</sup> the following observations should be taken into account:

- i. The international drug conventions have not ensured a sufficient medical supply of opioids, namely in low- and middle-income nations, but also in some high-income nations.<sup>3</sup>
- ii. The international drug control system has not effectively limited the non-medical use of controlled substances. Indeed illegal drug production, manufacture, supply and use is now a global issue.

<sup>1</sup>Retrieved [http://msdc.gov.mt/en/Public\\_Consultations/MJCL/Documents/Riforma%20tal-ligijiet%20dwar%20id-drogi%20tal-abbuz%20-%20White%20Paper.pdf](http://msdc.gov.mt/en/Public_Consultations/MJCL/Documents/Riforma%20tal-ligijiet%20dwar%20id-drogi%20tal-abbuz%20-%20White%20Paper.pdf)

<sup>2</sup>Ibid.

<sup>3</sup>Room and Reuter (2012), p. 84.

Significantly, the use of illicit drugs accounts for a substantial and increasing global burden of disease.<sup>4</sup>

- iii. The conventions' emphasis on the criminalization of substance use has compounded the spread of HIV, increased imprisonment for minor offenses, led nation states to implement punitive policies, reduced the collection of data on the incidence and prevalence of the use and harm of illegal substances, all of which have caused (and are still causing) harm to drug users and their families.<sup>5</sup>
- iv. The conventions limit criminal justice policies that are more consistent with the risks of drug use and the negative consequences of prohibition for instance the regulation of producers, manufacturers and suppliers of drugs as well as the conditions under which substances are used.<sup>6</sup>
- v. Policy experimentation necessitates amendments to the foregoing conventions. Additional options include renunciation of the conventions and re-accession with reservations or the promulgation and adoption of a new international agreement.<sup>7</sup>

In the light of the aforementioned observations the Government should consider revising its position vis-à-vis the international drug conventions.

## **Section 1.2**

### Proper definition of decriminalization

The White Paper states that “decriminalization” means “that the crime is removed completely from the scope of the criminal law and that it no longer remains a crime”.<sup>8</sup> This definition is incorrect. A proper definition of “decriminalization” is provided by a 2005 EMCDDA report, which states:

*“Decriminalization comprises the removal of a conduct or activity from the sphere of the criminal law. Prohibition remains the rule, but sanctions for use (and its preparatory acts) no longer fall within the framework of the criminal law (elimination of the notion of a criminal offence). This may be reflected either by the imposition of sanctions of a different kind (administrative sanctions without the establishment of a police record – even if certain administrative measures are included in the police record in some countries, such as France), or the abolition of all sanctions. Other (non-criminal) laws can then regulate the conduct or activity that has been decriminalized”.*<sup>9</sup>

The Government should therefore consider revising its definition of “decriminalization”.

## **Section 2**

This section comprises the following two subsections: (i) the first subsection amends two of the major points that help to guide drug reform; and (ii) the second subsection sets out some additional key guidelines.

### **Section 2.1**

#### Addressing two of the major points that help to guide drug reform

That “Illegal drugs are essentially bad” is the first cardinal point mentioned in the White Paper that helps to guide drug reform.<sup>10</sup> While acknowledging the point that illegal drugs cause physical, psychological,

<sup>4</sup>Ibid.

<sup>5</sup>Ibid.

<sup>6</sup>Ibid.

<sup>7</sup>Ibid.

<sup>8</sup>Retrieved [http://msdc.gov.mt/en/Public\\_Consultations/MJCL/Documents/Riforma%20tal-ligijiet%20dwar%20id-drogi%20tal-abbuz%20-%20White%20Paper.pdf](http://msdc.gov.mt/en/Public_Consultations/MJCL/Documents/Riforma%20tal-ligijiet%20dwar%20id-drogi%20tal-abbuz%20-%20White%20Paper.pdf)

<sup>9</sup>Retrieved [www.emcdda.europa.eu/...cfm/att\\_10080\\_EN EMCDDATP\\_01.pdf](http://www.emcdda.europa.eu/...cfm/att_10080_EN EMCDDATP_01.pdf)

<sup>10</sup>Retrieved [http://msdc.gov.mt/en/Public\\_Consultations/MJCL/Documents/Riforma%20tal-ligijiet%20dwar%20id-drogi%20tal-abbuz%20-%20White%20Paper.pdf](http://msdc.gov.mt/en/Public_Consultations/MJCL/Documents/Riforma%20tal-ligijiet%20dwar%20id-drogi%20tal-abbuz%20-%20White%20Paper.pdf)



emotional and societal harm it should be noted that certain legal drugs (in particular tobacco, alcohol and inhalants) also cause similar harms. The 2013 National Report to the EMCDDA indicates that:

- i. Alcohol abuse is prevalent among students aged 15 to 16 years with 90% reporting having used the substance in their lifetime.<sup>11</sup>
- ii. Tobacco use on at least one occasion was reported by 38% of students aged 15 to 16.<sup>12</sup>
- iii. Inhalant abuse is also prevalent among students aged 15 to 16 with 14% reporting having used the substance in their lifetime.<sup>13</sup>

These figures are significantly higher than the reported use of illegal drugs with 10% of students using cannabis; 5% of students using mephedrone; 4% of students using cocaine; 3% of students using amphetamines, tranquilizers or sedatives without a doctor's prescription; 2% of students using magic mushrooms, LSD, crack cocaine and steroids and 1% of students using heroin and GHB.<sup>14</sup> In the light of the foregoing statistics it may be inferred that among students aged 15 to 16 the abuse of legal drugs is more prevalent than the abuse of illegal drugs. This should be a point for grave concern among policymakers. Hence, the first guideline should be revised to include this point. Nonetheless the following caveats should be made: (i) the foregoing statistics may suffer from reporting and recording errors which may have skewed the aforementioned inference; (ii) in order to paint a proper picture of the prevalence and incidence of legal and illegal drug abuse it is necessary to determine the frequency of such drug abuse.

“The personal use of drugs/drug abuse should be considered as a health and social problem and not only as criminal one” is the second cardinal point mentioned in the White Paper that helps to guide drug reform.<sup>15</sup> Tackling the personal use of drugs/drug abuse in this manner may lead to the labeling and stigmatization of drug users/abusers as criminals which could result in a self-fulfilling prophecy thereby causing more crime and may also inhibit drug users/abusers from seeking treatment out of fear of such labeling and stigmatization which could in turn lead to criminogenesis. Indeed Bernburg's and Krohn's study demonstrated inter alia that official labeling in early adolescence reduces the chances of educational attainment and employment thereby increasing the chances of crime in early adulthood<sup>16</sup> and Chiricos et. al.'s analysis indicated inter alia that being labeled as a felon increases the chances of recidivism.<sup>17</sup> Accordingly, drug use/abuse should only be considered as a health and social problem.

## **Section 2.2**

### Some additional key guidelines

The following additional key points should help to guide drug reform:

- i. The do-no-harm principle.
- ii. The Government should seek to develop a new generation of prevention initiatives and programs.<sup>18</sup>
- iii. The Government should seek to improve risk reduction and harm minimization systems through further development of initiatives already in place.<sup>19</sup>
- iv. The Government should seek to bolster currently available services, in terms of the diversity of the target groups and in terms of the regulation of adopted therapeutic standards, in specialized outpatient centers, day centers and therapeutic communities.<sup>20</sup>
- v. The Government should seek to improve monitoring and evaluation systems which would help to

<sup>11</sup>Retrieved <http://www.emcdda.europa.eu/html.cfm/index228463EN.html>

<sup>12</sup>Ibid.

<sup>13</sup>Ibid.

<sup>14</sup>Ibid.

<sup>15</sup>Retrieved [http://msdc.gov.mt/en/Public\\_Consultations/MJCL/Documents/Riforma%20tal-ligijiet%20dwar%20id-drogi%20tal-abbuz%20-%20White%20Paper.pdf](http://msdc.gov.mt/en/Public_Consultations/MJCL/Documents/Riforma%20tal-ligijiet%20dwar%20id-drogi%20tal-abbuz%20-%20White%20Paper.pdf)

<sup>16</sup>Bernburg and Krohn (2003), pp. 1310-1311

<sup>17</sup>Chiricos, Barrick, Bales & Bontrager (2007), p. 570

<sup>18</sup>Moreira, Trigueiros and Antunes (2007), p. 18.

<sup>19</sup>Ibid.

<sup>20</sup>Ibid.

develop evidence-based policies and programs.<sup>21</sup>

- vi. The Government should try to launch new initiatives to reduce drug-related social stigma among employers and to promote social and workplace reintegration.<sup>22</sup>
- vii. The Government should seek to clarify priorities in the ambits of training and research in order to produce more valid and reliable results.<sup>23</sup>

### Section 3

The possible impact which the decriminalization of simple possession of all drugs may have in Malta.

Evaluative studies of the Portuguese experience shall be drawn on in assessing the possible impact which the decriminalization of simple possession of all drugs may have in Malta. Despite one procedural difference highlighted below, a number of similarities between these two systems would come into effect which allow Portugal to be utilized a comparative jurisdiction. One important difference is that under Malta's proposed policy, individuals caught for the first time with the simple possession of any drug would be sent before a Commissioner of Justice (and if caught for a second time within the space of three (3) years would then sent before a Board)<sup>24</sup> but under Portugal's decriminalization policy drug users are immediately sent before a dissuasion commission.<sup>25</sup> However, by decriminalizing simple possession of all drugs Malta's policy would be similar to Portugal's 2001 decriminalization scheme in terms of which all drugs are decriminalized – that is, no distinction is made between hard and soft drugs.<sup>26</sup> And Malta's proposed Board composed of inter alios retired judges, police officers, social workers and psychologists would be similar to Portugal's Dissuasion Commissions which are composed of panels of 2 to 3 psychiatrists, social workers and legal advisors.<sup>27</sup> Furthermore, both Malta and Portugal are European nations which both adopt a western culture thereby providing another basis for comparison. Having laid a foundation for comparison evaluative studies of the Portuguese decriminalization policy shall be examined in analyzing the possible effects which the decriminalization of simple possession of all drugs may have in Malta in terms of: (i) usage rates; (ii) HIV/AIDs rates; and (iii) drug-related deaths and homicides.

#### i. Usage Rates

An evaluative study conducted by Greenwald found that:

- a. For individuals aged 13 to 15 the life-time prevalence rate for drug usage decreased by 3.5% from 14.1% in 2001 to 10.6% in 2006.<sup>28</sup>
- b. For individuals aged 16 to 18 the life-time prevalence rate for drug usage decreased by 6% from 27.6 in 2001 to 21.6 in 2006.<sup>29</sup> It should be noted that other studies found that among this group of students life-time prevalence rate for drug usage increased by 5.4% from 12.3% in 1999 to 17.7% in 2003.<sup>30</sup>
- c. For individuals aged 19 to 24 Portugal experienced a slight to mild increase in drug usage.<sup>31</sup>
- d. For individuals aged 15 to 24 Portugal experienced a small rise in the use of psychoactive substance and a substantial increase in illegal substances generally.<sup>32</sup>
- e. For older age groups Portugal experienced a slight to mild increase in drug usage life-time prevalence

<sup>21</sup>Ibid.

<sup>22</sup>Ibid.

<sup>23</sup>Ibid.

<sup>24</sup>Retrieved [http://msdc.gov.mt/en/Public\\_Consultations/MJCL/Documents/Riforma%20tal-ligijiet%20dwar%20id-drogi%20tal-abbuz%20-%20White%20Paper.pdf](http://msdc.gov.mt/en/Public_Consultations/MJCL/Documents/Riforma%20tal-ligijiet%20dwar%20id-drogi%20tal-abbuz%20-%20White%20Paper.pdf)

<sup>25</sup>Greenwald (2009), p. 3.

<sup>26</sup>Ibid.

<sup>27</sup>The Economist, Portugal's Drug Policy – Treating, Not Punishing, 08.27.09

<sup>28</sup>Greenwald (2009), p. 11.

<sup>29</sup>Ibid.

<sup>30</sup>Hughes and Stevens (2007), p. 3

<sup>31</sup>Greenwald (2009), p. 12.

<sup>32</sup>Ibid, p. 12

rates.<sup>33</sup> This increase is predictable due to the cohort effect – in the sample taken from one study to the other older individuals who never tried drugs are replaced by a new generation which contains a significant percentage who already consumed substances.<sup>34</sup>

- f. The prevalence rate for heroin decreased by 0.7% from 2.5% in 1999 to 1.8% in 2003.<sup>35</sup>
- g. For the phase 2001 to 2005 individuals aged 15 to 64 Portugal has the lowest life-times prevalence for cannabis – the most commonly abused substance in the EU.<sup>36</sup> In fact, the majority of EU member states experienced cannabis usage rates double and triple the rate Portugal experienced post-decriminalization.<sup>37</sup>
- h. For the foregoing same period and age group only five (5) EU member states had a lower prevalence rate than Portugal.<sup>38</sup> The majority of EU member states (including some states with draconian drug laws) experienced cocaine usage rates ranging from double to quadruple Portugal's rate.
- i. Generally adult drug usage life-time prevalence rates are far lower in Portugal than in Europe.<sup>39</sup>
- j. Portugal has not transformed itself into a mecca for drug-tourists.<sup>40</sup>

In addition, another evaluative study found that although life-time prevalence rates for cannabis usage among 16-18 year olds increased by 5.7% from 9.4% in 1999 to 15.1% in 2003 when compared to the European average Portugal actually experienced a 1% decline from 16% in 1999 to 15% in 2003.<sup>41</sup>

Despite these generally positive results, a report prepared by Coelho cast doubt on this aspect of Greenwald's study. For instance, according to Coelho:

- a. No drug category decreased since 2001.<sup>42</sup>
- b. There was an increase in every drug category from 1998 to 2002 with marijuana increasing by 150%.<sup>43</sup>
- c. During the period from 2001 to 2007 drug consumption increased by 4.2% in absolute terms.<sup>44</sup>

Both the evaluative studies suffer from methodological limitations including: (i) selective use of secondary data; (ii) extreme differences between secondary data; (iii) exclusion of data; and (iv) lack of measurement validity.<sup>45</sup> These shortcomings preclude any definite conclusions. Nonetheless, available evidence suggests “grounds for arguing that while there was some growth in the scale of drug use in post-reform Portugal there was an overall positive net benefit for the Portuguese community”.<sup>46</sup> This effect may possibly be replicated in Malta.

## ii. HIV/AIDS rates

An evaluative study conducted by Greenwald using EMCDDA data found that:

- a. The percentage of drug users among newly HIV positive individuals continues to decline.<sup>47</sup>
- b. General infection rates for HIV remained the same since 2004.<sup>48</sup>

<sup>33</sup>Ibid.

<sup>34</sup>Ibid.

<sup>35</sup>Hughes and Stevens (2007), p. 3; cf. Greenwald (2009), p. 14.

<sup>36</sup>Greenwald (2009), p. 22.

<sup>37</sup>Ibid.

<sup>38</sup>Ibid.

<sup>39</sup>Ibid.

<sup>40</sup>Greenwald (2009), p. i; The Economist, Portugal's Drug Policy – Treating, Not Punishing, 08.27.09

<sup>41</sup>Hughes and Stevens (2007), p. 3; Moreira, Trigueiros and Antunes (2007), p. 21.

<sup>42</sup>Coelho (2010), p. 4.

<sup>43</sup>Ibid.

<sup>44</sup>Ibid.

<sup>45</sup>Hughes and Stevens (2012), pp. 103-105.

<sup>46</sup>Ibid, p. 105.

<sup>47</sup>Greenwald (2009), p. 16.

<sup>48</sup>Ibid.

- c. Since 2001 the number of newly reported cases of HIV and AIDs among drugs addicts declined every year.<sup>49</sup>

Although Greenwald's results provide support for decriminalization, Coelho's study casts a shadow upon this data. This researcher postulated that "the highest HIV/AIDS mortality rates among drug users are reported for Portugal, followed by Estonia, Spain, Latvia and Italy; in most other countries the rates are low" and "Portugal remains the country with the highest incidence of IDU-related AIDS and it is the only country recording a recent increase. 703 newly diagnosed infections, followed from a distance by Estonia with 191 and Latvia with 108 reported cases".<sup>50</sup> Coelho quoted from the EMCDDA (2010) Annual Report former point and cited the EMCDDA (2007) Annual Report in support of the latter. Analysis, however, revealed that neither the EMCDDA (2010) Annual Report nor the EMCDDA (2007) Annual Report contained the above excerpt or similar figures. It may therefore be argued that this aspect of Coelho's report fails to abide by the ethical principle of reporting results fairly and accurately. This provides renewed support for Greenwald's study notwithstanding certain methodological shortcomings including defects in causal validity, measurement errors and reporting and recording and reporting problems in secondary data. Accordingly it may be possible to replicate the results of Greenwald's study in Malta.

### iii. Drug-related deaths and homicides

Greenwald's study found that:

- a. From 2002 to 2006 drug-related deaths for every prohibited substantially declined or remained constant compared with 2001.<sup>51</sup>
- b. In the ten pre-decriminalization years (from 1989 to 1999) the number of drug-related deaths increased tenfold (up to 400 in 1999) only to decrease post-decriminalization to 290 in 2006.<sup>52</sup>

These positive results are tempered by Coelho's study which indicated that: (a) drug-related deaths in 2005 amounted to 219 representing a 40% increase from 2004; (b) the number of deceased individuals who tested positive for drugs increase by 45% from 216 deaths in 2006 to 314 in 2007.<sup>53</sup> Moreover, Coelho remarked that since decriminalization the number of drug-related homicides increased by 40%.<sup>54</sup>

These studies suffer from methodological shortcomings which preclude any definitive conclusions. Firstly, both studies selectively interpreted secondary data. Secondly, both studies employed secondary data which suffered from reporting and recording problems. Thirdly, both investigations were affected by errors in causal reasoning.<sup>55</sup> Lastly, Coelho's statement that the number of drug-related homicides increased by 40% since decriminalization is based on a false attribution to the World Drug Report<sup>56</sup> again calling into question the research ethics of his study. Despite these limitations drug treatments increased substantially during reform which may be regarded at least as partial evidence that the declines noted by Greenwald were due to decriminalization. It may be possible to replicate this effect in Malta.

Ultimately, the results of Greenwald's and Coelho's research (notwithstanding their methodological shortcomings) suggest that decriminalization may have a positive impact in Malta. Independently of these studies, the decriminalization policy in Malta is likely to have beneficial effects since by seeking to treat drug users/abusers as individuals in need of help rather than as criminals it eliminates the disintegrative official labeling effects imposed by the criminal justice system. As noted above, Bernburg's and Krohn's study demonstrated inter alia that official labeling in early adolescence reduces the chances of educational attainment and employment thereby increasing the chances of crime in early adulthood<sup>57</sup> and Chiricos

<sup>49</sup>Ibid.

<sup>50</sup>Coelho (2010), p. 5.

<sup>51</sup>Greenwald (2009), p. 17.

<sup>52</sup>Ibid.

<sup>53</sup>Coelho (2010), p. 5.

<sup>54</sup>Ibid.

<sup>55</sup>Hughes and Stevens (2012), pp. 106-107.

<sup>56</sup>Ibid, p. 108.

<sup>57</sup>Bernburg and Krohn (2003), pp. 1310-1311

et. al.'s analysis indicated inter alia that being labeled as a felon increases the chances of recidivism.<sup>58</sup> This line of reasoning necessarily begs the question: should drug offenses (in particular simple possession) be dealt with outside the criminal justice system simply to avoid the negative effects of stigmatization? The reason is that drug offenses are primarily victimless crimes and non-violence offenses even though addiction may be an indirect cause of violence. Generally drug addiction causes more harm to the drug user than to his family. Moreover, certain drug addictions are regarded in the DSM-V as mental disorders. If a person suffers from a mental disorder it is evident that such person should be regarded as a patient in need of treatment and not as a criminal who must be punished. Therefore decriminalization of all drugs is “useful first step towards a saner approach to drugs”. But as long as trafficking substances remains illegal and in the hands of criminals who murder and corrupt (and who will go on murdering and corrupting) this policy is maybe only half the answer. Accordingly, in order to effectively manage the drug problem decriminalization should be regarded as a one small step on the long bumpy road towards legalization.

#### **Section 4**

##### Suggested amendment to the procedure set out for individuals caught for the first time with simple possession of drugs

The White Paper explains that individuals caught for the first time with simple possession of any drug are brought before a Commission of Justice who has the discretion to:

- (i) give that individual a warning; or
- (ii) send the individuals before a Board.<sup>60</sup>

In order to help the Commissioner of Justice to exercise his discretion and select the option that would be most beneficial to the drug user it would be apt for the Commissioner to be aided by Evaluative Board. This Evaluative Board (which ought to be similar in composition to Portugal's Dissuasion Commissions) should examine the individual brought before the Commission of Justice and should take into account a range of factors including:

- (i) the type of drug used;
- (ii) the frequency of drug use (that is, whether use is occasional or habitual); and
- (iii) whether drug use occurred in a private or public setting.<sup>61</sup>

In this manner individuals caught for the first time with simple possession of drugs but who have been using and/or abusing drugs for lengthy period of time may receive the appropriate treatment.

#### **Section 5**

##### Developing criteria to determine simple possession and aggravated possession of drugs

The White Paper makes multiple references to “simple possession of drugs” and “aggravated possession of drugs (possessing an amount which indicates that it was not for the exclusive use or personal use of the offender)”.<sup>62</sup> However, the White Paper fails to provide a threshold of the amount of a drug which denotes personal use and aggravated possession. That is, what amount of a drug suggests simple possession and aggravated possession? Or what amounts delineate the boundary between simple possession and aggravated possession? Given that the Maltese criminal justice system treats individuals caught with the simple possession of drugs differently from those individuals apprehended with the aggravated possession

<sup>58</sup>Chiricos, Barrick, Bales & Bontrager (2007), p. 570

<sup>59</sup>The Economist, The Difference between Legalization and Decriminalization, 06.18.14.

<sup>60</sup>Retrieved [http://msdc.gov.mt/en/Public\\_Consultations/MJCL/Documents/Riforma%20tal-ligijiet%20dwar%20id-drogi%20tal-abbuz%20-%20White%20Paper.pdf](http://msdc.gov.mt/en/Public_Consultations/MJCL/Documents/Riforma%20tal-ligijiet%20dwar%20id-drogi%20tal-abbuz%20-%20White%20Paper.pdf)

<sup>61</sup>Cf. Greenwald (2009), p. 4.

<sup>62</sup>Retrieved [http://msdc.gov.mt/en/Public\\_Consultations/MJCL/Documents/Riforma%20tal-ligijiet%20dwar%20id-drogi%20tal-abbuz%20-%20White%20Paper.pdf](http://msdc.gov.mt/en/Public_Consultations/MJCL/Documents/Riforma%20tal-ligijiet%20dwar%20id-drogi%20tal-abbuz%20-%20White%20Paper.pdf)

of drugs (even under the regime proposed by the White Paper) it would be beneficial for the Government develop a set of criteria to assist criminal justice professionals in distinguishing between these two forms of possession. The criteria which should be taken into account include the following:

- i. The amount of the drug
- ii. The purity of the substance
- ii. The type of drug
- iii. The harmfulness of the drug
- iv. The level of addiction
- v. Amount of daily use of the drug
- vi. Circumstances in which the drug is found
- vii. Place where drug is found

These criteria are intended to be used as guidelines and accordingly every individual caught in possession of drugs must be assessed on a case-by-case basis.

## **Section 6**

### Additional points which the Government should take into account when establishing drug courts

Instead of establishing one drug court the Government should aim to establish the following three types of drug courts which target different populations:

- i. Adult drug courts that utilize programs designed to reduce drug use relapse and criminal recidivism via: risk and needs assessment; judicial interaction; monitoring and supervision; graduated sanctions; and various rehabilitative services.<sup>63</sup>
- ii. Juvenile drug courts that employ apply a similar program model tailored to the needs of juvenile offenders.<sup>64</sup> Generally, youth drug court programs provide youth and their families with counseling, education and other services to: promote immediate intervention, treatment and structure; improve level of functioning; address problems that may contribute to drug use; build skills that increase their ability to lead drug- and crime-free lives; strengthen the family's capacity to offer structure and guidance; and promote accountability for all involved.<sup>65</sup>
- iii. Family drug courts that stress treatment for parents with substance use disorders to help in the reunification and stabilization of families affected by parental drug abuse.<sup>66</sup> Program goals include helping the parent to become emotionally, financially and personally self-sufficient; promoting the development of parenting and coping skills adequate for serving as an effective parent on a day-to-day basis; and providing services to their children.<sup>67</sup>

## **Section 7**

### An additional criminal justice policy or program that aims to limit drug trafficking

On page 24 of the White Paper the Government re-outlined its policy to confiscate the proceeds of drug trafficking.<sup>68</sup> Confiscating proceeds of drug trafficking should deter such offences in terms of the rational choice/deterrence theory since it increases the severity of punishment. Assuming that drug traffickers are rational and hedonistic beings who choose to commit crimes out of their own free will after weighing

<sup>63</sup>Retrieved <https://www.ncjrs.gov/pdffiles1/nij/238527.pdf>.

<sup>64</sup>Ibid.

<sup>65</sup>Ibid.

<sup>66</sup>Ibid.

<sup>67</sup>Ibid.

<sup>68</sup>Retrieved [http://msdc.gov.mt/en/Public\\_Consultations/MJCL/Documents/Riforma%20tal-ligijiet%20dwar%20id-drogi%20tal-abbuz%20-%20White%20Paper.pdf](http://msdc.gov.mt/en/Public_Consultations/MJCL/Documents/Riforma%20tal-ligijiet%20dwar%20id-drogi%20tal-abbuz%20-%20White%20Paper.pdf)

costs and benefits they should rationalize that it not worth engaging in drug trafficking if they are going to be deprived of the benefits thereof – that is, a rational person would rationalize that the severe nature of the punishment (confiscation of assets) would increase pain and minimize pleasure thus deterring drug trafficking. However, given that the severity of punishment is the aspect of the rational choice/deterrence theory which has the least deterrent effect on crime<sup>69</sup> and that drug trafficking is intrinsically a non-violent offence the Government should consider adopting an approach similar to the DMI program utilized in the United States. The DMI functions in the following manner:

- (a) police build strong cases against offenders and share information with prosecutors;
- (b) police and prosecutors then send letters inviting these alleged drug dealers for a talk promising them that if they came they would not be arrested;
- (c) when these alleged offenders turn up they do not only meet police and prosecutors (agents of formal social control) but also family members, people from their communities, pastors from local churches and representatives from social-service agencies (agents of informal social control);
- (d) their neighbors and relatives tell these alleged offenders how drug dealing was hurting their families and community while police showed them the information they had gathered; and
- (e) the police then offer the alleged drug dealers a choice – deal again and we will prosecute you, stop and these people will help you turn your lives around.<sup>70</sup>

The first DMI program evaluation showed significant promise for addressing overt drug markets in High Point, North Carolina but called for additional studies due to methodological limitations.<sup>71</sup> A subsequent evaluation of the DMI program in Nashville, Tennessee reported a 55.5% decline in narcotics offenses, a 36.8% decline in drug equipment violations and an 18.1% decrease per month in calls of service. Similar effects were seen across neighborhoods thereby providing no evidence of displacement or diffusion effects.<sup>72</sup> Another DMI program evaluation suggested that in order for this strategy to have the desired effect cooperation between neighborhood stakeholders is a necessity.<sup>73</sup> It is fundamental to take these observations in account when designing an effective DMI program.

The above is not to suggest that the Government should not implement a strict confiscation policy if the DMI initiative is not successful vis-à-vis traffickers. Confiscation of criminal assets should, however, be used as a last resort. And in order to deter drug trafficking the increase in the severity of punishment should be accompanied by an increase in the certainty of punishment through the implementation of a media campaign. Indeed, a study carried out by Decker, Wright and Logie on “perceptual deterrence among active residential burglars” demonstrated that a severe penalty alone does not necessarily deter burglars but when combined with an increased certainty of punishment was effective in deterring prospective burglars.<sup>74</sup>

## **Section 8**

### The possible impact which the decriminalization of marijuana may have in Malta

This section is organised as follows: (i) section 8.1 contains a table which examines studies which found no or only an insignificant increase in marijuana usage following decriminalization; (ii) section 8.2 contains a table which analysis reports which demonstrated a marginal increase in marijuana usage after decriminalization; (iii) section 8.3 contains a table which investigates research that showed a significant increase in marijuana usage post-decriminalization; and (iv) section 8.4 describes one miscellaneous effect which the decriminalization of marijuana may have in Malta.

## Section 8.1

### Studies which found no or only an insignificant increase in marijuana usage following decriminalization

Research Paper and Year of Study	Results	Methodological limitations
Johnston (1981)	Generally, the study found that decriminalization had no effect on use. <sup>75</sup>	Measurement effects Non-representative samples – lack of generalizability Defects in causal reasoning
Thies and Register (1993)	No powerful evidence which implies that decriminalization affects the choice of drug or frequency of use (including marijuana). That is, States which decriminalized marijuana did not experience significant increases in marijuana usage. <sup>76</sup>	Measurement errors Defects in causal reasoning Ecological fallacy
MacCoun and Reuter (1997)	No evidence that decriminalization increased levels of cannabis use. <sup>77</sup>	Measurement errors Defects in causal reasoning Ecological fallacy
Pacula (1998)	Insignificant effect of State decriminalization on demand for cannabis. <sup>78</sup>	Measurement errors Errors in causal reasoning Ecological fallacy
Chaloupka, Grossman and Tauras, (1999)	Decriminalization appears to have no effect on either the probability of past-month cannabis use or on the number of occasions young marijuana users consumed cannabis in the past year or month. <sup>79</sup>	Measurement errors Errors in causal reasoning Ecological fallacy
Single, Christie and Ali (2000) <sup>80</sup>	Decriminalization did not lead to significant changes in rates of marijuana use	Measurement errors Defects in causal reasoning
MacCoun and Reuter (2001)	Evidence suggests that decriminalization does not increase marijuana prevalence. <sup>81</sup>	Measurement errors Weak forms of causal inference
Wodak, Reinerman, Cohen and Drummond (2002)	Data suggests that decriminalization is not linked to increases in usage. <sup>82</sup>	Defects in causation
Williams (2004)	Decriminalization does not appear to increase the likelihood of marijuana use among young males or females and this policy appears to have no effect on increasing the frequency of user among marijuana users. <sup>84</sup>	Measurement errors Defects in causal reasoning Cross-generalizability
Reinerman, Cohen and Kaal (2004)	Decriminalization had no apparent effect upon marijuana use. <sup>85</sup>	Measurement errors Defects in causal reasoning

<sup>75</sup>Johnston (1981), p. 1.

<sup>76</sup>Thies and Register (1993), p. 385.

<sup>77</sup>MacCoun and Reuter (1997), p. 50.

<sup>78</sup>Pacula (1997), p. 583.

<sup>79</sup>Chaloupka, Grossman and Tauras (1999), p. 150.

<sup>80</sup>Single, Christie and Ali (2000), p. 178.

<sup>81</sup>MacCoun and Reuter (2001), p. 123.

<sup>82</sup>Wodak, Reinerman, Cohen and Drummond (2002), p. 106.

<sup>83</sup>Williams (2004), p. 135.

<sup>84</sup>Ibid, p. 123.

<sup>85</sup>Reinerman, Cohen and Kaal (2004), p.

## Section 8.2

### Studies which found a marginal increase in marijuana usage following decriminalization

Research Paper and Year of Study	Results	Methodological limitations
Saffer and Chaloupka (1995)	Study suggests that decriminalization increases cannabis usage by about 4 to 7%. <sup>86</sup>	Measurement errors Causation defects
Saffer and Chaloupka (1998)	Decriminalization had a positive effect on marijuana usage in relation to 7 out of 8 ethnic groups. <sup>87</sup>	Measurement errors Errors in causation.
Chaloupka, Pacula, Farrelly, Johnson, O'Malley and Bray (1999)	Youths residing in decriminalized states are more likely to report using marijuana and may consume more frequently. <sup>88</sup>	Measurement errors Defects in causal reasoning
Cameron and Williams (2001)	Decriminalization may have led to a temporary increase in marijuana usage among those aged over 30. <sup>89</sup>	Measurement errors Defects in causal reasoning
Pacula, Chriqui and King (2003)	Discovered that youths residing in decriminalized States are 2% more likely to use both in the past year and in the past month but this finding is not statistically significant at conventional levels. <sup>90</sup>	Measurement errors Causal errors
Zhao and Harris (2004)	Study showed that individuals residing in decriminalized states have on average a 1 to 2% increased likelihood to consume marijuana. <sup>91</sup>	Measurement errors Causation defects
Adda, McConnell and Rasul (2014)	Decriminalization led to an increase in cannabis possession offences. <sup>92</sup>	Measurement errors Causation defects
Williams and Bretteville-Jensen (2014)	Study revealed no long term effect of decriminalization upon marijuana usage rates but found that individuals start to use cannabis earlier and a small net increase in the first five years after decriminalization. <sup>93</sup> Examination also showed that after the policy had been in place for over five years there was no significant effect upon initiation into marijuana use among youths and adults. <sup>94</sup>	Measurement errors Subject fatigue Causal errors

<sup>86</sup>Saffer and Chaloupka (1995), p. 14.

<sup>87</sup>Saffer and Chaloupka (1998), p. 14.

<sup>88</sup>Chaloupka, Pacula, Farrelly, Johnson, O'Malley and Bray (1999), p. 13.

<sup>89</sup>Cameron and Williams (2001), p. 31.

<sup>90</sup>Pacula, Chriqui and King (2003), p. 18.

<sup>91</sup>Zhao and Harris (2004), p. 401.

<sup>92</sup>Adda, McConnell and Rasul (2014), p. 36.

<sup>93</sup>Williams and Bretteville-Jensen (2014), p. 31.

<sup>94</sup>Ibid.

### Section 8.3

#### Studies which found a significant increase in marijuana usage post- decriminalization

Research Paper and Year of Study	Results	Methodological limitations
Model (1993)	Association between decriminalization and number of ER episodes involving marijuana users. <sup>95</sup>	Measurement errors
Chaloupka, Grossman, Bickel and Saffer (1999)	Decriminalization is estimated to increase the probability of past year marijuana users by 4 to 5%. <sup>96</sup>	Measurement errors Errors in causal reasoning Ecological fallacy
Damrongplisit, Hsiao and Zhao (2010)	Study revealed that living in a State which decriminalized marijuana is likely to increase marijuana consumption by 16.2%. <sup>97</sup>	Measurement errors Errors in causation

In the light of the above studies and notwithstanding their limitations it can be argued that Malta may experience an insignificant to marginal increase in marijuana usage following decriminalization. However, care must be taken by the Government when making cross-generalizations.

### Section 8.4

#### Miscellaneous Effect

The decriminalization of cannabis may help to re-allocate law enforcement resources to tackling serious crimes.<sup>98</sup> Nevertheless, as noted above, the Government must be cautious when making cross-generalizations.

### Section 9

#### The possible impact which the legalization of medical marijuana may have in Malta

This section is organised as follows:

- (i) section 9.1 examines in tabular format studies which indicate that legalization of medical marijuana resulted in a decrease in marijuana use;
- (ii) section 9.2 analyses in tabular format research which reveals that legalization of medical marijuana resulted in an increase in marijuana use;
- (iii) section 9.3 sets out in tabular format studies which demonstrate that legalization of medical marijuana resulted in a decrease in crime;
- (iv) section 9.4 investigates in tabular format studies which show that legalization of medical marijuana

<sup>95</sup>Model (1993), pp. 745-646.

<sup>96</sup>Chaloupka, Grossman and Tauras (1999), p. 150.

<sup>97</sup>Damrongplisit, Hsiao and Zhao (2010), p. 28.

<sup>98</sup>Adda, McConnell and Rasul (2014), p. 36

## Section 9.1

### Studies which indicate that legalization of medical marijuana resulted in a decrease in marijuana use

Research Paper and Year of Study	Results	Methodological limitations
Anderson and Rees (2014)	No evidence of increased marijuana usage among youths. <sup>99</sup>	Measurement errors Causal errors
Friese and Grube (2013)	Despite an association between perceived ease of access to marijuana and medical marijuana cards was found, this does not necessarily suggest an increase in marijuana usage. <sup>100</sup>	Measurement errors
Choo, Benz, Zaller, Warren, Rising and McConnell (2014)	Research did not demonstrate increases in adolescent marijuana use. <sup>101</sup>	Measurement errors Defects in causation
Chu (2014)	Discovered that medical marijuana laws are linked with a 10 to 20% increase in marijuana arrests and treatments. This result is not significantly large since arrests and treatments capture both intensive and extensive margins. <sup>102</sup>	

## Section 9.2

### Research which reveals that legalization of medical marijuana resulted in an increase in marijuana use

Research Paper and Year of Study	Results	Methodological limitations
Wen, Hockenberry and Cummings (2014)	Found an increase in cannabis use following legalization of medical marijuana. Even though increase may be due to those individual using medical marijuana for medicinal purposes there may still be the possibility that marijuana abuse/dependence would increase due to legalization of medical marijuana. <sup>103</sup>	Errors in causation

In the light of the above, it may be contended that Malta may not experience a significant increase in marijuana usage following the legalization of medical marijuana. The Government must, nonetheless, exercise caution when making cross-generalizations.

## Section 9.3

### Studies which demonstrate that legalization of medical marijuana resulted in a decrease in crime

Research Paper and Year of Study	Results	Methodological limitations
Morris, TenEyck, Barnes and Kovandzic (2014)	Study demonstrated that medical marijuana laws did not lead to an increase in crime. This research also found that medical marijuana laws may be correlated with a reduction in homicide and assault rates. <sup>104</sup>	Measurement errors Errors in causation

<sup>99</sup>Anderson and Rees (2014) p. 19.

<sup>100</sup>Friese and Grube (2013), p. 6.

<sup>101</sup>Choo, Benz, Zaller, Warren, Rising and McConnell (2014), p. 6.

<sup>102</sup>Chu (2014), p. 27.

<sup>103</sup>Wen, Hockenberry and Cummings (2014), p. 24.

<sup>104</sup>Morris, TenEyck, Barnes and Kovandzic (2014), pp. 6-7.

## Section 9.4

### Studies which show that legalization of medical marijuana resulted in a increase in crime

Research Paper and Year of Study	Results	Methodological limitations
Holmes (2014)	Research suggests that the legalization of medical marijuana resulted in an increase in violent/non-violence crime between 2000 and 2010. However, between 1995 and 2010 the study only found a correlation between legalization of medical marijuana and increases in property crime. <sup>105</sup>	Measurement errors Errors in causation

The foregoing studies suggest that the legalization of medical marijuana in Malta may cause a decrease in violent crime. However, the relationship between the legalization of medical marijuana and property crime still remains dubious. The Government must, nevertheless, exercise caution when making cross-generalizations.

## Section 9.5

### Miscellaneous Effect

The legalization of medical marijuana may result in a decrease in traffic fatalities owing to the substitution effects between marijuana and alcohol.<sup>106</sup> That is, since the penalties for simple possession of marijuana would be reduced it is somewhat likely that young adults who previously used to drink alcohol may start to consume marijuana instead. However, as noted above, the Government must be cautious when cross-generalizing the results of foreign research.

## Section 10

### Consequential issues

The Government should consider tackling the following when addressing drug reform:

- i. Developing specific breathalyzer tests for marijuana;
- ii. Increasing penalties for driving under the influence;
- iii. Implementing alternative drug rehabilitation programs such as HAT. This form of treatment involves constructing safe sites where heroin users can inject under the supervision of medical staff and for registered addicts providing heroin for free. Evidence shows that HAT reduces:
  - (a) heroin-related deaths;
  - (b) heroin-related crime; and
  - (c) heroin use.
- iv. Improving structural and environmental conditions within Corradino Correctional Facility to promote rehabilitation.
- v. Amending the provisions regarding simple possession in the Dangerous Drugs Ordinance.

<sup>105</sup>Holmes (2014), pp. 66-67.

<sup>106</sup>Anderson and Rees (2014) pp. 19-20.

<sup>107</sup>The Economist, Drug Policy Hoffman's Habit, 02.08.14.



### ***Limitations***

This report suffers from a number of limitations including:

- (i) reliance on secondary data;
- (ii) did not examine the policy of growing marijuana for personal use;
- (iii) a lack of focus on drug legalization.



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### ***Legend***

DMI	Drug Market Intervention
EMCDDA	European Monitoring Centre for Drugs and Drug Addiction
HAT	Heroin Assisted Treatment
White Paper	White Paper regarding Drug Reform