

Decriminalisation – moving the debate on, dispelling the myths.

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Myths

Criminal Justice Responses & Criminalisation deters drug use

“we did not in our fact-finding observe any obvious relationship between the toughness of a country’s enforcement against drug possession, and levels of drug use in that country.”

(UK Home Office: Drugs: International Comparators, 2014)

Myths

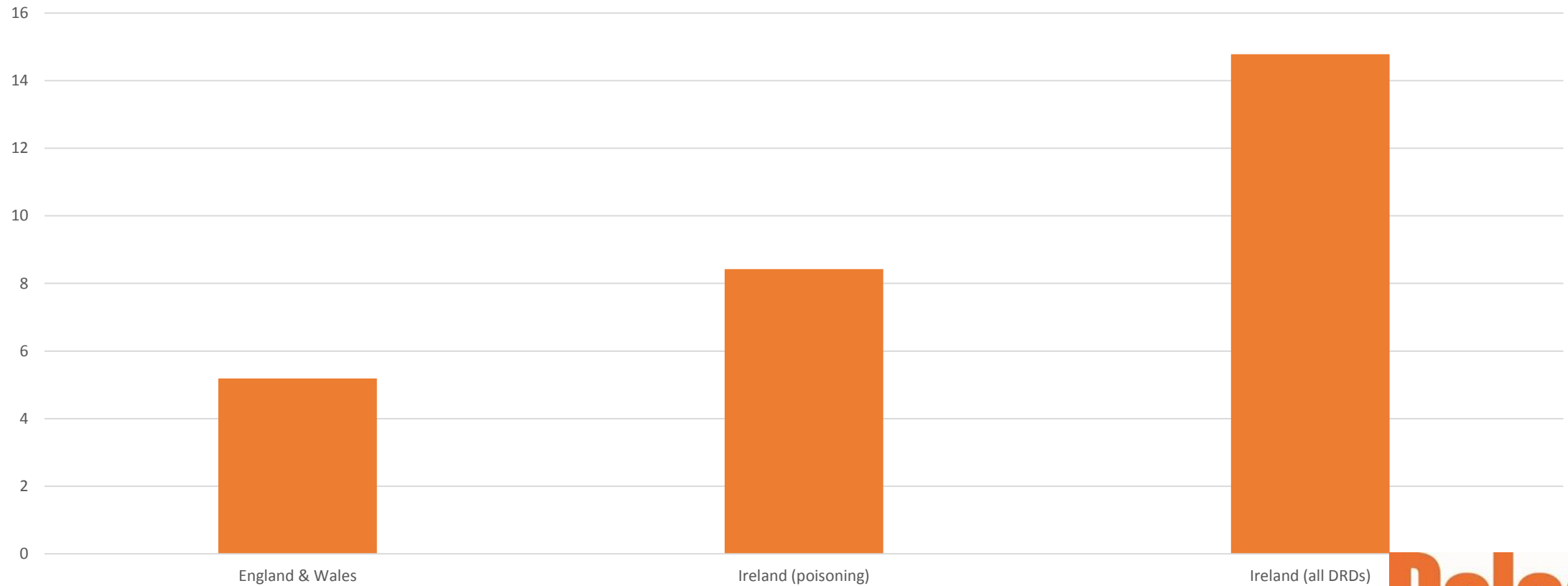
Decriminalisation sends a “message” drug use is ok

- 25 countries have ended criminal sanctions for either all drugs/ cannabis – prevalence did not go up
- Positive health, social and economic benefits
- Should our drug policy be about messaging or should it address harms caused by drugs and current policies

Reducing harms should be primary goal of drug policy

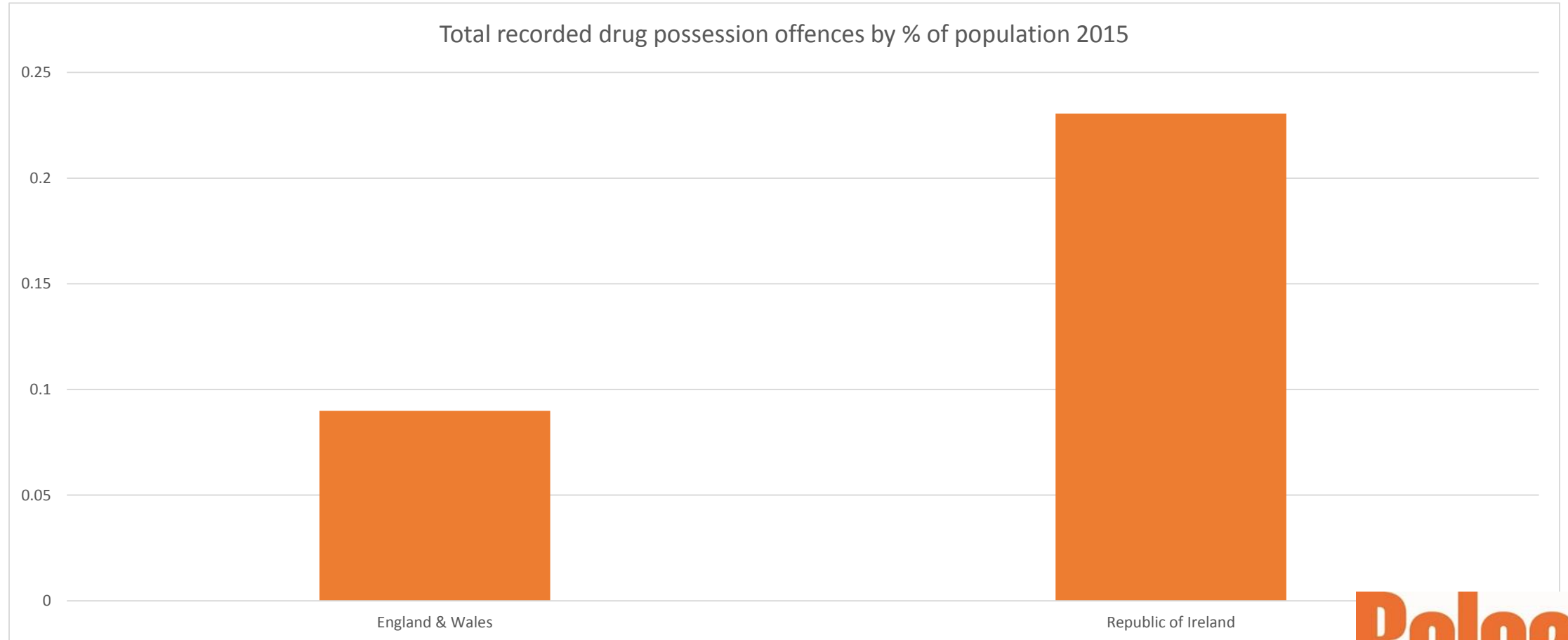
(ONS Drug Related Deaths 2013; Health research Board 2015)

Drug-related deaths per 100,000 people (2013)

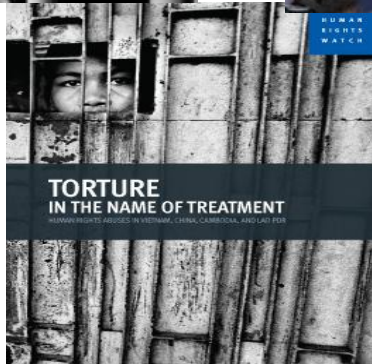


Harms of criminalisation

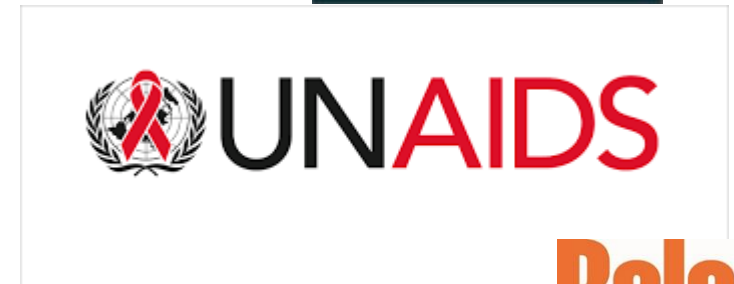
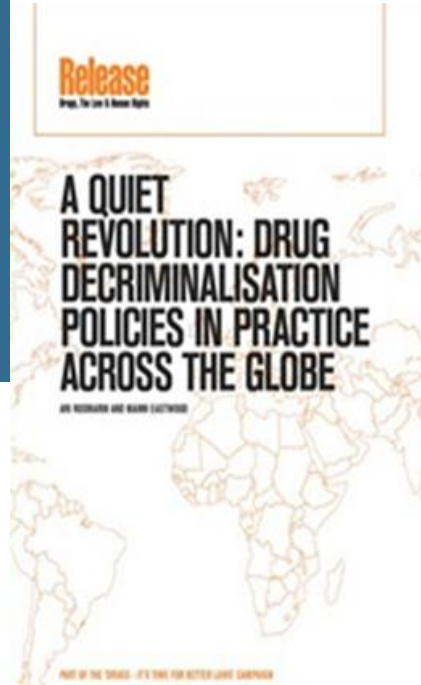
(Central Statistics Office – Recorded Crime, Controlled Drug Offences 2015)



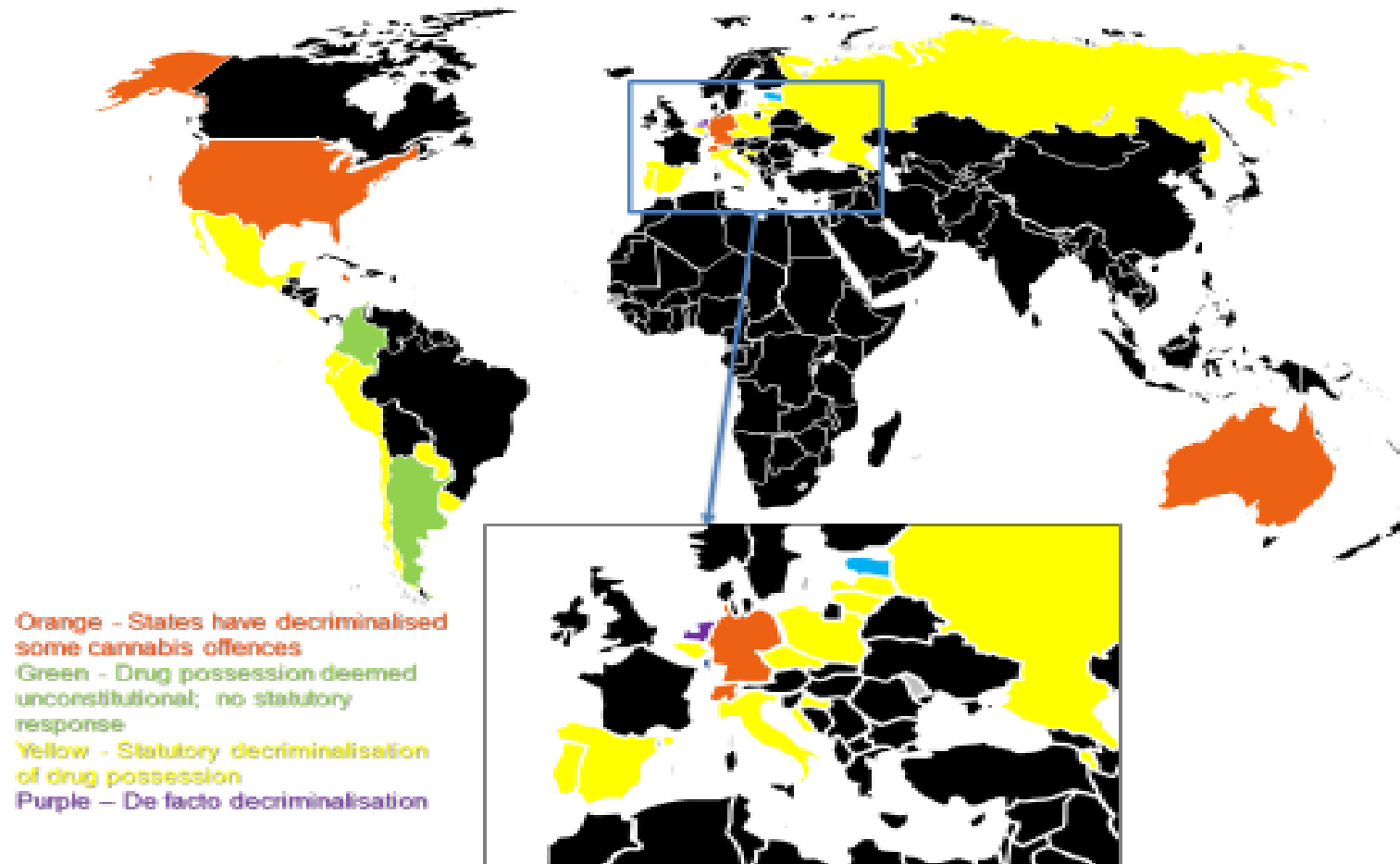
Harms of Criminalisation



Moving the debate on: decriminalisation



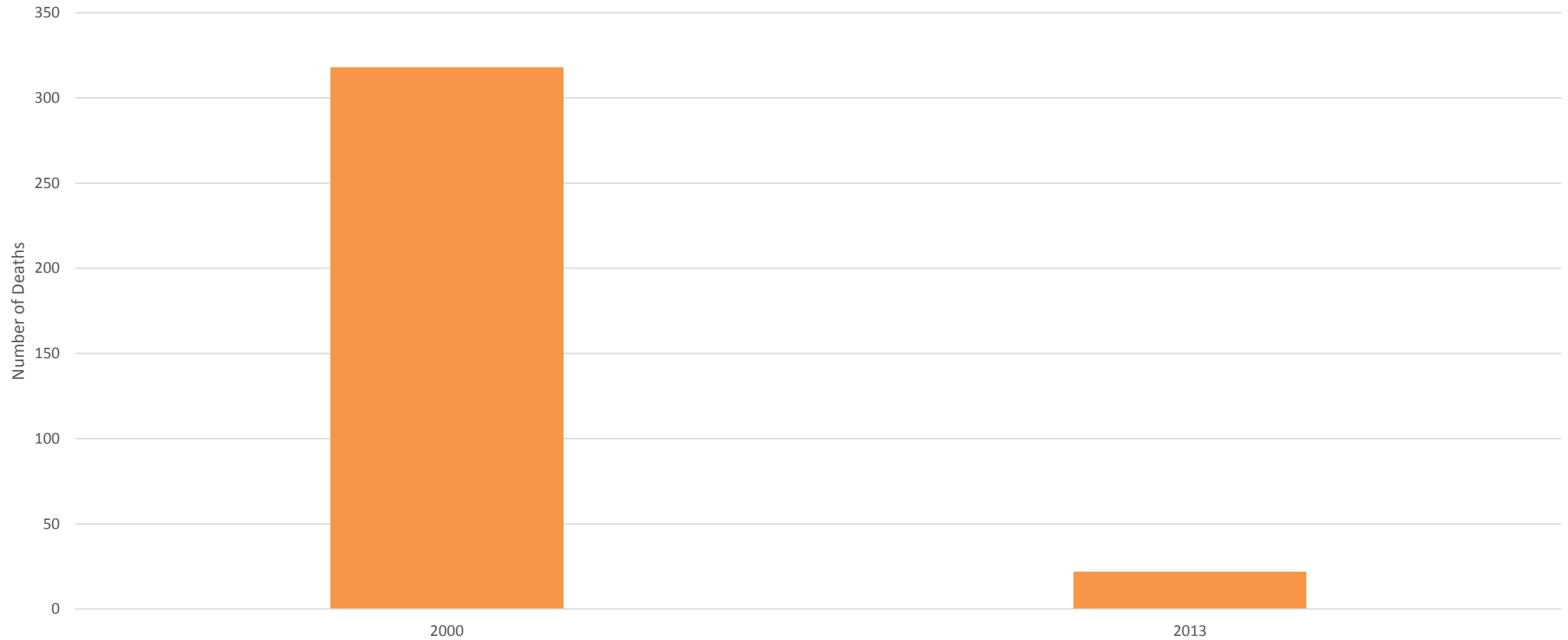
Decriminalisation = ending criminal sanctions for possession of drugs



Positive examples of decriminalisation

- ***Portugal introduction of decriminalisation of all drugs in 2001 & investment in public health led to:***
 - Decrease in use amongst vulnerable groups including problematic users and young people
 - Decrease in the number of young people becoming dependent on harder drugs such as heroin
 - Decrease (over 40%) of the estimated numbers of injecting drug users
 - Increase in the number of drug-dependent individuals entering treatment
 - Significant decrease in transmission of HIV and tuberculosis
 - Significant decrease in the number of drug-related deaths
 - Increased investment in harm-reduction services
 - Decrease in the number of criminal drug offences - from approximately 14,000 per year (2001) to an average of 5,000 to 5,500 per year today
 - Decrease in prison population
 - Reduced burden on criminal justice system allowing police to focus on serious crimes
 - Improved relationship between the community and police
 - **Cost-benefit saving: 12 per cent decrease in social cost of drugs in first five years of decriminalisation. (See: A social cost perspective in the wake of the Portuguese strategy for the fight against drugs - Gonçalves, Ricardo [2015])**

Portugal Number of Drug related deaths 2000 and 2013 (EMCDDA & SICAD, 2014 National Report to the EMCDDA)



Social Impact of Decriminalisation

- ***Australia (3 states* have decriminalised cannabis possession) has shown a capacity to keep individuals out of the criminal justice system. A comparative study showed individuals who were given criminal penalties suffered:***
 - Negative employment, relationship and accommodation consequences
 - Increased likelihood of further contact with criminal justice system

**Four states – Australia Capital Territory, Northern Territory, South Australia, and Western Australia – decriminalised cannabis possession. Western Australia repealed its decriminalisation policy in July 2011.*

Economic benefits



Source: Savings in California Marijuana Law Enforcement Costs Attributable to the Moscone Act of 1976: A Summary, Journal of Psychoactive Drugs Vol. 20(1), Jan-Mar 1988, p 75-81, By Michael R. Aldrich, PhD and Tod Mikuriya, M.D

Implementation of Decriminalisation

- Threshold quantity to determine personal possession
- The role of the decision maker
- Sanctions

Jurisdiction	TQ	Jurisdiction	TQ
Argentina	No definition	Italy	Judicial discretion
Armenia	‘small quantity’	Jamaica	56.7g cannabis
Australia: South Australia	100g cannabis	Mexico	5g cannabis; 0.5g cocaine; 0.50mg heroin; 1 MDMA pill
Australia: ACT	50g cannabis	Netherlands	5g cannabis; 0.5g heroin/ cocaine
Australia: Northern Territory	50g cannabis	Paraguay	10g cannabis; 2g cocaine/heroin
Belgium	3g cannabis	Peru	5g cocaine paste; 2g cocaine powder; 1g heroin; 8g cannabis
Chile	No definition	Poland	‘small quantity’
Colombia	20g cannabis; 5g resin; 1g cocaine	Portugal	25g cannabis; 2g cocaine; 1g heroin; 1g MDMA
Costa Rica	No set amount but case involving 200g of cannabis or cocaine	Russian Federation	6g cannabis; 0.5g heroin/cocaine
Croatia	‘small quantity’	Spain	100g cannabis; 25g resin; 2.4g MDMA; 3g heroin; 7.5g cocaine
Czech Republic	1.5g methamphet.; cannabis 10g	Switzerland	10g cannabis
Ecuador	10g cannabis; 1g cocaine; 0.1g heroin	United States: California	28.5g cannabis
Estonia	10x daily dose	United States: Washington DC	56.7 cannabis/ 6 plants – can gift
Germany	Varies: 6-15g cannabis; 1-3 cocaine	Uruguay	‘reasonable quantity’

Russia – thresholds in practice

- Prior to 2004:
 - cannabis was 0.1 grams
 - heroin 0.005grams
- In to 2004:
 - cannabis was 20 grams
 - heroin 1 gram

Resulting in:

- 40,000 people previously convicted being released or their sentences reduced
- 2004 -05 it is estimated 60,000 people avoided criminal prosecution as a result of the change in thresholds.

Threshold Quantities ('TQs')

- TQs do not appear to have any impact on prevalence - South Australia anything less than 100 grams of cannabis would be treated as a civil possession offence, whereas in Western Australia the limit was 10 grams.
- Hollow examples – Mexico & Russia
- Human Rights abuses – Russia, Mexico, Paraguay

Sanctions

- No sanction – appears to have no impact on prevalence e.g. Netherlands
- Street fines – can lead to increased policing of offence, net widening & perverse outcomes such as harsher punishment for non payment e.g. Spain & South Australia
- More comprehensive approach – Portugal

UN drug control treaties & obligations on personal use

Treaty Obligation	Derogation from Obligation
1961 Convention – “duty to not permit possession” in respect of specific drugs controlled under the treaty (Article 33)	Except under “legal authority” (Article 33)
1961 Convention – “shall adopt measures as will ensure that ... possession ... shall be a punishable offence” (Article 36 (1) (a))	Subject to member states’ “constitutional limitations” (Article 36 paragraph 1. a) Where those who commit an offence under Article 36 are “abusers of drugs” an alternative to conviction/ punishment can be applied (Article 36 (1)(b))
1971 Convention – “desirable that the Parties do not permit the possession of substances” in respect of specific drugs controlled under the treaty (Article 5 (3))	Except under “legal authority” (Article 5 (3))
1971 Convention - “each Party shall treat as a punishable offence ... any action contrary to a law or regulation adopted in pursuance of its obligation under this Convention” (Article 22 (1) (a))	Subject to member states “constitutional limitations” (Article 22 (1) (a)) Where those who commit an offence under Article 22 are “abusers of drugs” an alternative to conviction/ punishment can be applied (Article 22 (1) (b))
1988 Convention - “each Party shall adopt such measures as may be necessary to establish a criminal offence under its domestic law...the possession, purchase or cultivation of narcotic drugs or psychotropic substances for personal consumption” (Article 3 (2))	“Subject to its [the party’s] constitutional principles and the basics concept of its legal system” (Article 3 (2)) Can provide “alternative to conviction or punishment” (Article 3 (4)(d))

UNGASS – country statements

- 22 countries made statements in support of decriminalisation
- Many already have the policy/legal system in place but new voices included: Cyprus; Iceland; Greece; Slovenia; Trinidad and Tobago; Tunisia
- 10 spoke out against decriminalization
- 9 countries supported regulation mainly cannabis

New Recommendation from Global Commission on Drug Policy

- No sanctions on the basis it undermines the rule of law and principles of privacy/human dignity/ autonomy.

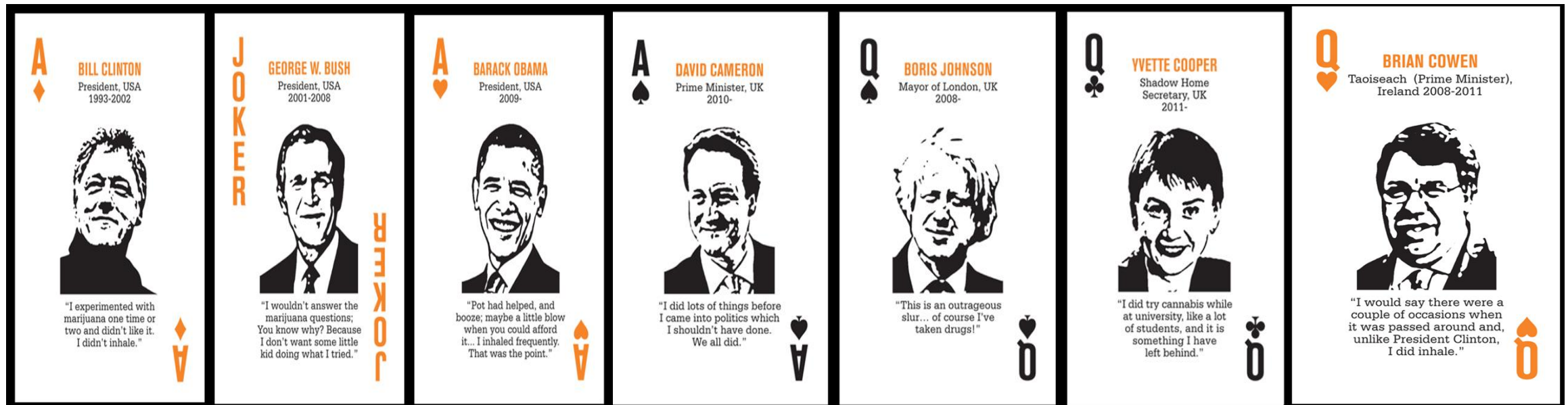
Punishment of drug use/ possession undermines right to privacy

“Privacy is the “cornerstone of respect for personal autonomy and human dignity.” (Human Rights Watch (2015)

“The state is only justified in interfering in an individual’s private life if they can demonstrate that the interference is for a legitimate aim—such as preventing risk to others—is proportional, and is necessary. Penalizing people who possess drugs for personal use, and who cause no harm to others, is neither proportional nor necessary, and can never be a justified interference.” (GCDP report 2016)

Punishing drug use undermines the rule of law

The rule of law requires that “citizens ... respect and comply with legal norms, even if they disagree.”





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