



Regulation

The Responsible Control of Drugs



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Packaging for cannabis sold in pharmacies in Uruguay, the first country in the world to legalize cannabis from production to sale. © Miguel Rojo/AFP/Getty.

FOREWORD

The establishment of the Global Commission on Drug Policy was triggered by two observations: the patent failure of the international drug control system and the national policies that implement it; and the harm this drug control is causing to the health and safety of people and societies. The failure is easy to prove. Rather than meeting the objectives of the three international drug conventions, current drug policies are reducing neither the demand nor the supply of illegal drugs, quite the contrary, while the increasing power of organized crime is a sad reality. The harm to public and individual health is stark: not only is the number of – often deadly – poisonings increasing, but HIV and hepatitis C continue to spread among people who inject drugs and the general population. Moreover, the social fabric and state institutions are most affected by repressive policies targeting the most vulnerable, with corruption and violence causing more deaths, disappearances and displacement of people than wars do in certain countries.

The urgency of saving lives, of not leaving anyone without the care and respect they are entitled to, and of defending democratic institutions constitute the commitment of the members of the Global Commission. From five continents, these public figures consider it their duty to promote a change in the drug policy paradigm. By publishing reports such as this one, by taking positions on timely issues, and by holding public interventions and advocating with national and international policymakers, the Global Commission shares experiences, both negative and positive. The Commission contributes to the dissemination of scientific findings and evidence on the effects of drugs and drug policies, and tirelessly advocates for policies that are pragmatic, rational and respectful of human rights.

Such humane policies have produced positive results wherever they have been implemented, evaluated and largely debated. They nevertheless faced, until lately, a real taboo. While some countries still reject them, others are increasingly adopting them.

Public health measures aimed at mitigating drug-related risks have proven their efficiency in responding to HIV and hepatitis, reducing fatal overdoses, improving the health and social situation of people dependent on drugs, and empowering people who use drugs. Some countries still prefer to pursue the illusion of reaching a drug-free society. For that reason, harm reduction still struggles to claim its place in the international drug control regime. Nevertheless, it is slowly becoming a guiding principle of national health policies.

The criminalization of drug consumption and possession for personal use is also increasingly recognized as an obstacle to the effectiveness of health policies. Moreover, criminalization undermines the rule of law and fuels prejudices, stigma and discrimination against people and communities. Why punish people who cause no harm to others – even if they take a personal risk – when this results in incarceration crises that are unmanageable and inhumane? Why impose on people who have been convicted the burden of a criminal record? Shouldn't a pragmatic allocation of public resources be based on the analysis of benefits and costs of punitive drug policies? In response to these questions, more and more societies and policymakers are deciding to stop chasing people who use drugs, and even to decriminalize consumption and possession for personal use.

People involved in non-violent, low-level activities related to the production, transit and sale of psychoactive substances suffer extremely disproportionate sentences. Some risk capital punishment or prison terms longer than those handed out for violent crimes. The personal, social and economic circumstances that could have driven people to engage in this illegal activity are rarely seen as reasons to lower sentences. The enjoyment of human rights, sustainable development and social cohesion call for proportionate sentencing, for alternatives to incarceration, or for amnesty, especially when policy and economic measures are put in place to allow these offenders to join the legal labor market.

One of the negative consequences of the international drug control system – and its double paradigm of prohibition and punishment – has become clearer in the last few years. For the large majority of world's population, it hinders access to medicines, mostly analgesics and anesthetics, that appear simultaneously in the model list of essential medicines and in the illegal drugs schedules. This is only one "collateral damage" of the 40 years of the "war on drugs", or an "unintended consequence" of the international drug conventions, to use the UN terminology.

However, the international conventions – even the most repressive of them, adopted in 1988 – do not prevent a country from implementing policies necessary to protect public health, ease access to essential medicines, decriminalize drug use and possession, or establish alternatives to punishment for minor offences, according to "to its constitutional principles and the basic concepts of its legal system".

Nevertheless, the international drug control regime continues to be based on a single premise: prohibition of any use of drugs beyond their medical and scientific use, thus forbidding their production, exchange, transport, sale and consumption. A demand for drugs exists, however, and if it is not satisfied through legal ways it will be satisfied by the illegal market. Prohibition has allowed criminal organizations to control the whole chain of drugs. Every region in the world suffers: from violence induced by turf wars over production areas and transit routes, from corruption and connivance of state institutions, and from laundering of drug money, which damages the legal economy and the functioning of democratic institutions. Collaboration among countries is necessary to face crime multinational enterprises.

A fundamental question regarding illegal drugs is still rarely asked. Who should assume the control of these substances that bear serious risks for health – the state or organized crime? We are convinced that the only responsible answer is to regulate the market, to establish regulations adapted to the dangerousness of each drug, and to monitor and enforce these regulations. This is already the case for food, for legal psychoactive substances, for chemicals, for medications, for isotopes and many other products or behaviors that comprise a risk of harm. This report shows that the regulation of currently illegal drugs is not only possible, it is necessary. The report reminds us that even if it takes the global community a long time to review the current drug conventions, **no international convention frees states from their obligations towards their populations, to protect their lives, their health, their dignity, and to guarantee equal rights for all without discrimination.**



Ruth Dreifuss
Former President of Switzerland

This report is in memory of Kofi Annan (1938-2018), Asma Jahangir (1952-2018), Thorvald Stoltenberg (1931-2018), John C. Whitehead (1922-2015), and Carlos Fuentes (1928-2012), members of the Global Commission on Drug Policy.

EXECUTIVE SUMMARY

The legal regulation of drugs is rapidly moving from the theoretical to the practical domain. Regulation is a critical part of drug policy reform if the harms of prohibition and the illegal drug market are to be reduced but remains a particularly challenging element of the public and political debate. Progress requires engaging with legitimate public concerns about how regulation might be implemented and what its impacts will be, as well as political opposition and institutional inertia.

Regulation and management of risky products and behaviors is a key function of government authorities across the world. It is the norm in almost all areas of policy and law – except drug policy. Regulation addresses the reality of risk in our lives and our communities and is all around us: product safety regulations that require flame-retardant mattresses; food regulations that require “sell-by” dates on labels; regulation of which vehicles can be driven, how fast, and where, and so on.

This report addresses the reality that over 250 million people around the world are taking risks by consuming currently prohibited drugs.¹ Accepting this reality and putting in place an effective regulatory strategy to manage it is neither admitting defeat nor condoning drug use. It is part of a responsible, evidence-based approach that deals with the world as it is in contrast with ideologically driven and ultimately counterproductive attempts to create a “drug free world”.

The report identifies key questions that, in the Commission’s experience, have become particular stumbling blocks in the progress of the public dialogue on regulation. By engaging with these questions directly, the report aims to facilitate and encourage the debate, thus bringing this much needed reform nearer.

1. How Regulation can get Drugs Under Control

The first section considers the nature, scope and impact of a regulation approach. It seeks to challenge prevalent misunderstandings and misconceptions by providing a coherent account of what drug regulation can mean in a real-world context, drawing on existing regulatory theory and practice for already legal drugs and other risky products and behaviors. There is a particular focus on how to mitigate the risks of over-commercialization, learning lessons from past mistakes with alcohol, tobacco and prescription opioids.

Currently prohibited drugs should be regulated. The process of legal regulation must be cautious, incremental and evidence-based, guided at all times by the principles of protecting and promoting human rights, public health, sustainable development, and peace and security. The development and implementation of regulation should engage key civil society expertise and communities most affected by punitive approaches, including people who use drugs, young people, and small-scale actors in the illegal market. Particular attention should be paid to the tensions between public health and commercial interests. Lessons learned from existing legal markets for potentially risky substances should be used to mitigate the threats of over-commercialization. Any regulation that is implemented must be accompanied by multidisciplinary scientific monitoring and evaluation, to assess its effectiveness and respond to any unforeseen negative impacts.

Policymakers should seek evidence on the legal regulation of drugs, and must open local and national participatory processes to shape the reforms. Political leaders, at all levels of government, have a responsibility to initiate wide-ranging and inclusive national debates on major societal issues, including the responsible legal regulation of currently illicit drugs. National and local governments have a duty to collect evidence that they can use to analyze and compare the social, economic, and environmental dimensions of prohibition and regulation. They must then provide this evidence to their constituents and open national participatory processes where evidence and options are discussed.

Policymakers should take citizens' preferences into account as they move towards regulation models that are appropriate to local and national contexts.

2. The Challenges of Implementing Regulation

The second section considers the implications of the transition to regulated markets, particularly for developing countries, or those with fragile institutions. This is an important but under-discussed dimension of the global debate – one that has historically been dominated by the viewpoints and interests of developed economies. The section also explores how the interests and welfare of the millions currently working in the illegal drug economy can be protected and promoted in a post-prohibition world.

States should consider experimenting with the incremental regulation of lower-potency drugs. Each country must identify pathways to regulation that are suited to its particular context and constraints, and its institutional, social and cultural frameworks. Low- and middle-income economies or fragile institutions must not be considered obstacles to exploring regulation. By reducing the corrosive impacts of the illegal trade, the regulation of drug markets can foster development and create space for the strengthening of institutions. Priority for legal regulation could be given to substances with the highest prevalence of use in a national context; to plant-based drugs such as cannabis, coca leaf or opium; or to other substances that have some form of historic or traditional use, or are part of a cultural heritage.

Policymakers must not leave behind people and communities most affected by prohibition when legally regulating drug markets. In any transition towards the regulated production, trade and distribution of drugs, priority must be given to the interests of individuals and communities pushed into non-violent illegal activities by poverty, marginalization or lack of opportunities, and to those who were most harmed by punitive drug-enforcement efforts.

3. Regulation can Disempower Organized Crime

Linking to the previous sections' focus on development, Section 3 considers the potential impact of regulation on organized crime. It addresses the question of other illegal activities, since even if organized crime groups have illegal drug markets taken away from them by regulation they will simply redirect their criminal energies to other forms of crime. How can the opportunities to confront organized crime that regulation presents be maximized, and how do they fit into the wider sustainable development agenda?

States must maximize the development opportunities offered by regulation of drug markets. This requires redeploying resources to mitigate anticipated changes in organized crime activity. Governments must deploy institutional mechanisms against money laundering, corruption and transnational crime as part of wider efforts to strengthen rule of law, reform law-enforcement practices, and build institutional capacity. Criminal organizations are already active in illegal activities other than drug trafficking, thus the potential displacement of organized crime from drugs to other forms of criminality should not be overstated. Regulation holds the promise of substantially undermining the power and influence of organized crime, as well as liberating resources to counter its root causes and other forms of criminality.

4. Modernizing the International Drug Control System

The final section considers the options for modernizing the antiquated and dysfunctional international drug control system – specifically the three UN drug control treaties and related institutions that have formalized the prohibitionist model within international policy and law for the past 60 years. The tensions between member states' desire to explore regulation and their treaty commitments to maintain prohibition have become a flashpoint between increasingly polarized positions. How to cut this Gordian knot, and plot a path to more a relevant, flexible drug control framework that is genuinely fit to meet the realities of the modern world?

UN Member States should urgently consider the different options for modernizing the international drug control regime, in order to meet the needs of everyone with a stake in drug policy. Member States, civil society and the scientific community should begin formal and informal dialogues in key multilateral forums to plot a pathway to reforms and bring the world closer to the goal of the drug conventions of protecting the "health and welfare of humankind". If the international drug control framework is to be efficient, it must move away from the current repressive paradigm and better reflect the emerging focus on health, human rights and sustainable development. Crucially, reforms must introduce the possibility for member states to regulate drugs. Until this happens, reform-minded member states should consider options that allow domestic and international progress on this issue, while respecting the core tenets of the UN charter and remaining mindful that dialogue and collective action constitute the most productive approach.

The UN Secretary-General should take the lead on reforming the governance of the international drug control regime. Such a reform should aim at using existing international mechanisms more effectively to protect human rights and public health, promote sustainable development, and prevent corruption, money laundering and organized crime.



URUGUAY
REGULA
2013

Demonstration for the regulation of cannabis for recreational use in front of the Legislative Palace in Montevideo, Uruguay.
The law passed in 2013 and sales began in 2017. © Pablo Porciuncula/Getty Images.

HOW REGULATION CAN GET DRUGS UNDER CONTROL

The regulation of drugs – often misrepresented as uncontrolled liberalization – is best understood as a form of responsible risk management by governments. It moves control of drugs from unregulated criminal markets to appropriate government agencies. There is no “one size fits all” approach to this transition from prohibition to legal regulation: each country or jurisdiction will have to design a strategy fit to its own circumstances. And vital questions remain, including how to ensure the interests of public health and community safety are prioritized over private profit in a post-prohibition world.

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This report is about addressing the reality that over 250 million people around the world are taking risks by consuming currently prohibited drugs.² Accepting this reality and putting in place an effective regulatory strategy to manage it is neither admitting defeat nor condoning drug use. It is part of a responsible, evidence-based approach that deals with the world as it is in contrast with ideologically driven and ultimately counterproductive attempts to create a “drug free world”.

Regulation can be applied to all elements of a legal drug market: the licensing of producers and security of products; the price, potency, packaging and preparation of products; the licensing, vetting and training of vendors. The outlets that drugs are sold from can be regulated, including their location, appearance and opening hours, along with the marketing, advertising, branding and promotion of drugs. Access and availability can be regulated, most obviously in terms of age controls, but also potentially including options for licensed buyer or club membership schemes, and medical prescription models. None of this menu of regulatory tools, and the collective global expertise of regulators and agencies that support them, is available when markets remain under criminal control.

Evaluating and Responding to Drug Risks

To regulate drugs is to apply the regulatory principles and tools that are routinely applied to everything else to a set of risky products and behaviors that have, until now, been controlled entirely within a criminal economy. When viewed in this way, legally regulating adult access to and use of certain drugs is not radical or alien, but obvious and normal. In the field of public health, when compared with policy responses to other risky behaviors – such as dangerous sports, unhealthy diets or unsafe sex – it is punitive drug prohibitions that are the “radical” policy response, not regulation. Drugs should be regulated not because they are safe, but precisely because they are risky.

The risks associated with different drugs and drug-using modes vary enormously, from negligible to severe. Yet however risky a drug may be on its own, its risks inevitably increase, sometimes dramatically, when it is produced, sold and consumed in an unregulated criminal environment. Drugs of unknown strength are sold with no quality controls, often mis-sold or cut with adulterants and bulking agents,³ and devoid of even basic information about contents, risks or safety guidance. These are risks that flow directly from prohibition. Putting accountable governments and regulatory agencies back in control of this market can significantly reduce them.

“All drugs must be legalized ...
During the past 30 years [the war on drugs] has grown, grown, grown and
grown, every day more problems, every day more violence,
every day more militarization. This has not gotten
people off drugs.”

Jorge Batlle, former president of Uruguay, 2001

Effective market regulation requires establishing rules and parameters for what is permitted and then ensuring compliance. Activities that take place outside these parameters, such as sales to children or inaccurate packaging information, would remain prohibited and subject to proportionate sanctions. This understanding of regulation contrasts with common misconceptions that drug legalization means relaxing control or liberalizing markets. Legalization is merely a process — of making legal something that was illegal. Regulation, legal regulation or a legally regulated market is the end point of that process: the system of rules that govern the production, supply and use of drugs. Regulation brings state control into a market sphere where there was none. It establishes a clearly defined role for enforcement agencies in policing compliance in any new regulatory framework.

Figure 1: Regulation reduces harm to health and societies

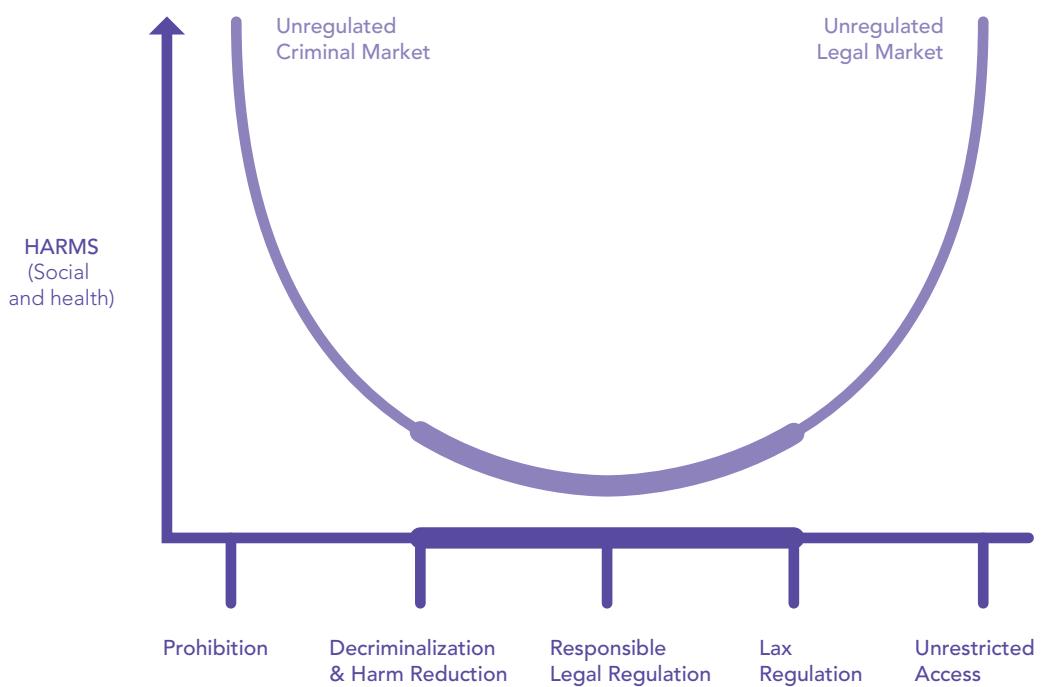
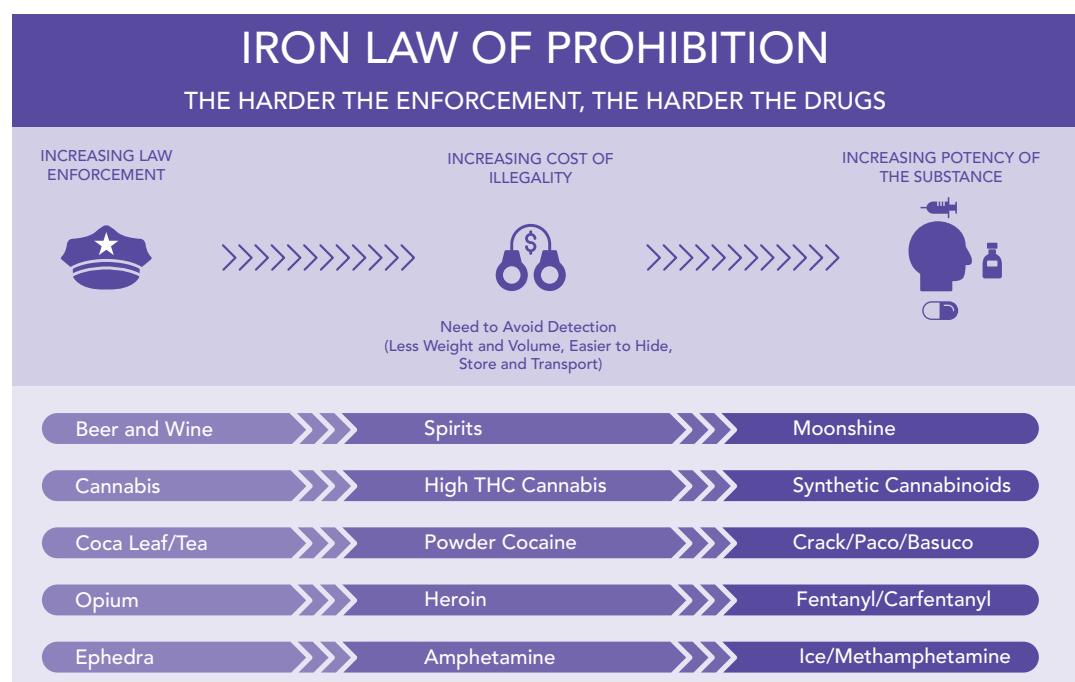


Figure 1 captures the essence of the case for regulation. The spectrum of policy options runs from one effectively unregulated market – the criminal market under prohibition at one end – to another, the legal, commercialized free market.⁴ For both, profit is the primary motivation, and neither has to cope with the consequences in terms of potential health and social harms. Between these extremes, an optimal level of government regulation can minimize overall harm and maximize benefits. Strict government regulation can, therefore, reasonably lay claim to the pragmatic, center-ground position.

Even when legalization has taken place, there are many ways to regulate the market, as Figure 1 shows. The global conversation on drugs is moving from "if" to "how" regulation takes place. As well as underlining the need to explore regulation options for some currently illegal drugs, this welcome progress also highlights the need to review and improve how alcohol, tobacco and some other legal drugs are regulated. These parallel calls are not inconsistent; the goals of better regulation are the same, but the starting points are different.

The precise contours of regulation models will need to be shaped by, and sensitive to, local economic, political and cultural environments. Different drugs and preparations will also require different approaches. More risky drugs clearly justify a greater level of government intervention in the market, and tighter restrictions. Injectable heroin, for example, would be subject to far more stringent controls, within a medical prescription model, than less restrictive retail cannabis markets. The ability to vary the intensity of regulatory controls allows for the creation of a "risk-availability gradient" according to which the availability of drugs is further restricted as their risks increase (Figure 2).

Figure 2. Regulation can balance the availability of drugs against their risks



This regulatory risk-availability gradient can support longer term public-health objectives by progressively discouraging higher-risk consumption and encouraging less risky behaviors. This thinking has, for example, been used to discourage consumption of stronger alcoholic drinks by linking increased taxation rates to higher alcohol content. In the longer term, such an approach can foster social norms that favor more responsible and less harmful use. Illegal drug markets, by contrast, are driven by economic processes that encourage the production and supply of more potent and profitable drugs and preparations. Effective regulation can help to gradually reverse this dynamic.

Legally regulated supply should not, therefore, be seen as inevitably leading to increased drug availability, but instead as enabling responsible authorities to assume control over which drugs are available, where and how. Maintaining prohibitions on the most potent and risky drugs –

such as synthetic opioids like carfentanil that can be deadly in the tiniest of doses – will remain a health imperative, and can be further justified by the availability of less potent, less risky alternatives. Even where prohibitions may be maintained on certain high-risk products, a harm reduction and decriminalization approach should be taken with people who may still choose to use them.

Prevention and demand reduction are also important elements of a harm reduction approach, particularly where it concerns children and young people. The idea that regulating risky drugs can support prevention efforts can seem counterintuitive. But it becomes easier to understand when considering a strictly regulated, adult-only access regulation model based on the principle of pragmatic risk management. Moving from unregulated criminal street sales to strictly controlled availability, including enforcement of age access, can support youth prevention efforts. Such a transition can be reinforced by redirecting at least some of the resources currently spent on counterproductive enforcement into proven prevention and education programs.

There are at least five basic possibilities for regulating drug supply and availability⁵, all of which have been applied to existing products:

Medical prescription: The riskiest drugs (whether in terms of toxicology or dependency potential) can be prescribed by qualified medical professionals to people with drug dependencies. Different levels of regulation can be implemented as appropriate. Heroin assisted treatment day clinics in Switzerland are a working example of this approach.⁶

Specialist pharmacy: Pharmacists or similarly licensed and trained professionals can serve as gatekeepers to over-the-counter retailing of drugs. Additional controls, such as licensing of purchasers or sales rationing, can also be implemented. This is one of the models adopted for retail sales of cannabis in Uruguay.⁷

Licensed retail: Licensed outlets can sell lower-risk drugs in accordance with strict conditions that can include controls on price, marketing, sales to minors, and mandated health and safety information on product packaging. Cannabis retail stores in Canada are following this model.⁸ Less restrictive examples of this model include off-sales licenses, sales by tobacconists, or front-of-counter sales in pharmacies.

Licensed premises: Similar to pubs, bars or cannabis ‘coffee shops’, licensed premises sell lower-risk drugs for on-site consumption, subject to strict conditions similar to those for licensed retail but with additional responsibilities for vendors and managers of premises.



The risks associated with street dealing (above, © Alan Betson/The Irish Times) as opposed to the safer selling of regulated cannabis in the Calaveras Little Trees dispensary in California (opposite).

Unlicensed retail: Drugs of sufficiently low risk, such as coffee or coca tea, require little or no licensing, with regulation needed only to ensure that appropriate production practices and trading standards are followed.

Managing the Risks of Over-commercialization

In designing appropriate regulatory frameworks for drugs, it is vital to balance the profound tensions between the interests of public health (to moderate risky drug use and minimize health harms) and of commercial entities selling drugs (to maximize sales and profits).

Legal corporations that pay tax and are answerable to the law, to trade unions and to consumer organizations are naturally preferable to unaccountable organized crime groups. In a legal market, however, companies can promote their products directly to customers in ways that organized crime cannot. The threat that profit-motivated commercialization could lead to aggressive marketing of newly legally regulated drugs – similar to the way alcohol, tobacco and medical opioids have sometimes been marketed – has stoked fears of uncontrolled increases in consumption and related health harms. The response to this concern should be to ensure that policies are designed to manage such risks, rather than to abandon reform altogether.⁹ Early evidence from commercially oriented cannabis regulation in the United States suggests that while there are still lessons to be learned, the doom-laden predictions of some reform critics have not materialized, and outcomes have been positive.¹⁰

"Harm reduction constitutes more than decriminalization. To truly address and reduce harm, cannabis should be tested, traced, and taxed. Tested for potency, mold, microbial, residual solvents, pesticides and other contaminants so that cannabis consumption is safe. Traced so that if cannabis is contaminated, it can be easily identified and recalled. Taxed to raise the money needed to address the social costs related to cannabis: youth prevention, substance abuse treatment and prevention, and public education campaigns."

Barbara Brohl, former Executive Director of the Colorado Department of Revenue, 2016



Calaveras Little Trees dispensary in California. © Jeremy Carlson.

Profit-making entities need not be excluded from drug markets, which can benefit from the innovations and efficiencies that competition and entrepreneurs can bring. However, it will be important to establish control structures supported by regulatory frameworks that can prevent runaway commercialization and unregulated marketing. Such over-commercialization of alcohol and tobacco across the globe, and more recently with prescription opioids in North America, has led to serious harm to public health.

Some alternative market models that have been proposed or experimented with include:

State monopoly control of part or all of the market

State monopolies on alcohol supply remain common across Scandinavia (Systembolaget in Sweden, Alko in Finland, Vínbúð in Iceland, Vinmonopolet in Norway), and in most Canadian provinces, many of which are adopting similar state monopoly models for legal cannabis supply.¹¹ In Uruguay, the government is the sole buyer of licensed cannabis production and sole supplier for pharmacy-only licensed sales. In both Canada and Uruguay, cannabis is sold in unbranded packaging with standardized product information and health warnings.

Limiting the market of certain plant-based drugs to personal cultivation and not-for-profit sharing

Examples include the 'give and grow' cannabis regulation models established in the District of Columbia¹² and Vermont¹³ in the United States.

Not-for-profit membership-based club model

The Spanish 'cannabis social clubs' have pioneered a model in which cannabis is grown and shared in a controlled environment among adult members on a not-for-profit basis.¹⁴ This model has since been adopted in other countries, including Belgium and Uruguay (alongside home cultivation and licensed retail options in the latter).

Limiting the size of businesses allowed to participate in a market as a means of preventing regulatory capture and industry lobbying.

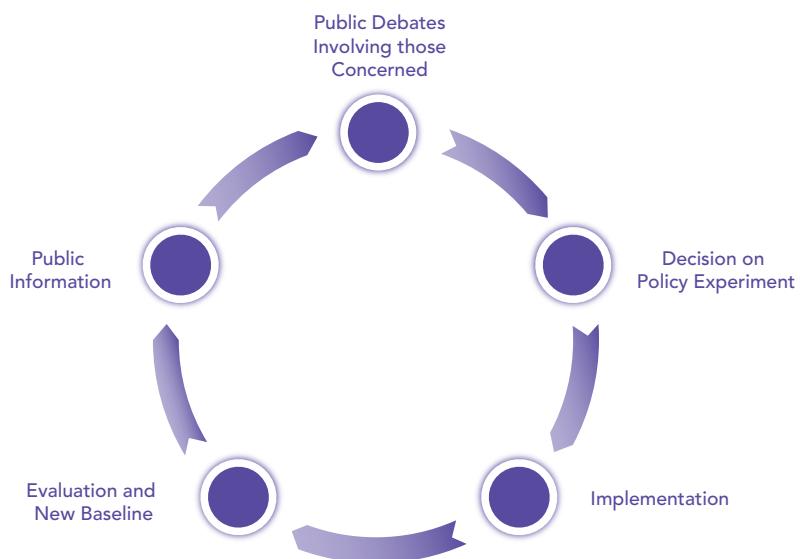
Restricting market access to not-for-profit entities, benefit corporations or social enterprises

Legal structures exist in many countries for businesses to operate either on a not-for-profit basis, or with community, worker and environmental interests a part of their legally defined goals in addition to creating profits.¹⁵

Learning from mistakes and monitoring regulation implementation

The type of regulatory controls that are increasingly being used in response to the severe risks associated with long-term smoked tobacco use point the way forward for regulating drugs that are currently prohibited. Such controls on price, packaging, marketing and availability – outlined in the World Health Organization Framework Convention on Tobacco Control (WHO FCTC)¹⁶ – have successfully reduced harmful tobacco consumption in many countries, in combination with public health education. Significantly, this success has been achieved without denying legal access to the market for tobacco production or vending businesses, or criminalizing those who consume it. The regulatory pragmatism of the FCTC stands in striking contrast to the prohibitionist elements of the three United Nations drug conventions. These have similar levels of member state support but embody a dramatically different response to the use of illegal drugs, based on ideology rather than evidence of effectiveness.

Figure 3: Design of Public Policies



Policymakers developing new regulation models have a rare opportunity to "get it right" by avoiding mistakes of the past. Progress must be led by informed experimentation, evaluation and a willingness to be flexible and respond intelligently to both successes and failures. All policy innovation involves a degree of risk and unpredictability. Given what is at stake, a cautious and incremental approach, erring on the side of stricter regulation as a starting point, is preferable to having to reverse-engineer solutions into inadequately designed frameworks, particularly if entrenched and politically powerful industry lobby groups have influence.

"We have to look at regulation and public education rather than the total suppression of drugs, which we know will not work. The steps taken successfully to reduce tobacco consumption (a very powerful and damaging addiction) show what can be achieved. It is regulation and education, not the threat of prison, which has cut the number of smokers in many countries. Higher taxes, restrictions on sale and effective anti-smoking campaigns have delivered the right results."

Kofi Annan, member of the Global Commission on Drug Policy, 2016

Difficult balances will often need to be struck, between the interests of different stakeholders, between short-, medium- and long-term objectives, and between conflicting priorities. Price and taxation controls, for example, can be used to dissuade or encourage use of certain products in favor of others. Yet tobacco regulation has shown that increasing prices can also foster a parallel illegal market that seeks to undercut prices artificially inflated by taxes or other price controls. There are no perfect answers for such dilemmas. Under a legal regime, however, governments and responsible agencies will have the power to make such decisions – and where necessary rethink and change course, in the interests of the health and welfare of those they serve – rather than abdicating responsibility to an entirely unregulated, profit-motivated criminal economy.

RECOMMENDATION 1

Currently prohibited drugs should be regulated.

The process of legal regulation must be cautious, incremental and evidence-based, guided at all times by the principles of protecting and promoting human rights, public health, sustainable development, and peace and security. The development and implementation of regulation should engage key civil society expertise and communities most affected by punitive approaches, including people who use drugs, young people, and small-scale actors in the illegal market. Particular attention should be paid to the tensions between public health and commercial interests. Lessons learned from existing legal markets for potentially risky substances should be used to mitigate the threats of over-commercialization. Any regulation that is implemented must be accompanied by multidisciplinary scientific monitoring and evaluation, to assess its effectiveness and respond to any unforeseen negative impacts.

RECOMMENDATION 2

Policymakers should seek evidence on the legal regulation of drugs, and must open local and national participatory processes to shape the reforms.

Political leaders, at all levels of government, have a responsibility to initiate wide-ranging and inclusive national debates on major societal issues, including the responsible legal regulation of currently illicit drugs. National and local governments have a duty to collect evidence that they can use to analyze and compare the social, economic, and environmental dimensions of prohibition and regulation. They must then provide this evidence to their constituents and open national participatory processes where evidence and options are discussed. Policymakers should take citizens' preferences into account as they move towards regulation models that are appropriate to local and national contexts.

THE CHALLENGES OF IMPLEMENTING REGULATION

The impact of any transition towards legally regulated drug markets will be significant, but is highly dependent on each country's social, economic and political landscape. This section explores the challenges of regulating drugs in developing states and in regions where institutional capacity is fragile. It also explores how protecting the interests of socially marginalized and economically vulnerable populations currently engaged in the illegal drug economy must be factored into the reform process and the wider sustainable development agenda.

The Illegal Drug Market: Fueling Corruption and Violence

Drugs are now the world's largest illegal commodity market.¹⁷ The collision of rising demand with an inflexible prohibitionist response has fueled the expansion of the global market, by default controlled exclusively by criminal entrepreneurs. As the UN Office on Drugs and Crime (UNODC) noted in 2008, "the first unintended consequence [of the global drug control regime] is the creation of a criminal black market. There is no shortage of criminals interested in competing in a market in which hundred-fold increases in price from production to retail are not uncommon."¹⁸

The scale of the illegal drugs market is staggering; in 2005 it was estimated to turn over \$320 billion at retail level¹⁹ – on a par with the global textiles trade. This vast criminal trade undermines state institutions and hinders sustainable development. These "unintended consequences" of the war on drugs invariably fall heaviest on the most vulnerable regions and communities across the globe, from traditional producer and transit regions in the Global South to socially deprived urban communities in the Global North.

Illegal drug production and trafficking is ruthlessly profit-motivated, yet largely unconstrained by the rules, accountability and institutions that guide legal economies. Flexible and opportunistic criminal organizations are naturally attracted to impoverished communities, fragile states or corruption-sensitive countries. Here the threats to their business from the state can be most easily kept at bay, production or transit costs minimized, and profits maximized. Where state institutions are already disorganized and underfunded, the vulnerability to drug market-related corruption only increases, as organized crime groups seek to secure and expand their control.

In a parallel and equally destructive dynamic, violence and intimidation often become the default regulatory tools for illegal drug economies in the absence of legal regulatory infrastructure. When such violence and intimidation become normalized in daily life, and corruption becomes endemic within the police, the judiciary and politics, citizens lose faith in institutions that they see as ineffectual and unaccountable. The rule of law is critically undermined and organized crime is further strengthened.

Illegal drug markets also undermine economic development more broadly. Illegal drug profits and related money laundering and corruption can create unfair competition, and macroeconomic distortions, while drug-related violence and instability can deter investment and tourism.²⁰

" ...evidence shows that in many countries, drug control policies and related enforcement activities focused on reducing supply and demand have had little effect in eradicating production or problematic drug use. Various UN organizations have also described the harmful collateral consequences of these efforts: creating a criminal black market; fueling corruption, violence and instability; undermining public health and safety; generating large-scale human rights abuses, including abusive and inhumane punishments; and discrimination and marginalization of people who use drugs, indigenous peoples, women and youth. Evidence shows that in many parts of the world, law enforcement responses to drug-related crime have created or exacerbated poverty, impeded sustainable development and public health and undermined human rights of the most marginalized people."

Addressing the Development Dimensions of Drug Policy,
UN Development Programme, 2015²¹

The corruption, violence, and economic destabilization fueled by the war on drugs can become serious obstacles to democratic governance, and will make it difficult, if not impossible to achieve the 2030 Sustainable Development Goals for large groups of citizens in the most affected regions²². In some regions the resources available to organized crime from drug profits may be equal or greater than those available to the government. At this extreme, the illegal drugs economy becomes an existential threat to the state itself, risking the creation of 'narco-states' locked into a spiral of underdevelopment.

Given that the war on drugs is undermining government institutions and sustainable development in many countries with developing economies, to what extent could legal regulation of specific drug markets be part of the solution?

The debate about legal regulation of drugs has been concentrated in wealthy consumer countries and often viewed through a lens of their priorities, with the interests and concerns of developing countries marginalized. As regulation becomes a reality in more and more countries, it is time to consider the viability of regulation models for drugs in regions with developing economies, and the specific challenges they are likely to face as they explore these options.

Regulating Drugs in States with Fragile Institutional Capacity

The historic distinctions in the global drug policy debate between 'producer', 'transit' and 'consumer' regions have become ever more blurred in recent decades. In the face of increasingly globalized trade and culture, alongside rising disposable incomes, use of illegal drugs has become ubiquitous, including in many developing and emerging economies. This change brings the familiar problems of criminal drug supply to a more local level, as domestic demand grows in regions that were historically producer and transit regions. Exploring the potential benefits of reforms in domestic drug markets, as well as in export markets, is therefore of growing importance.

Figure 4: Drug Policy and the Sustainable Development Goals



It is important to note, however, that the source of much of the destabilizing power of drug-related organized crime in traditional producer and transit regions still stems from servicing lucrative markets in rich countries. Should the trend towards regulation continue in rich countries, then criminal production and transit – and many of the problems it brings, as well as certain benefits – will inevitably contract in producer and transit regions, too.

When in-country market regulation, either for domestic demand or production for export, has been proposed as part of the policy response, a concern has often been raised that low- and middle-income countries with fragile institutions and regulatory infrastructure will not have the capacity to regulate effectively. The kind of resources deployed to regulate cannabis production

and availability in Canada, for example, are unlikely to be available to reform-minded policy makers in West Africa. This Pandora's Box argument against regulation in developing economies is often made with reference to the shortcomings of existing regulation of alcohol, tobacco and pharmaceuticals in these countries. Indeed, multinational tobacco companies have aggressively exploited the opportunity to expand in the developing world, as their business has been pressed by a more restrictive regulatory environment in the Global North.²³

**"Who would drug legalization be good for?
Latin America and the Caribbean, for God's sake. Because the illegality
is what's killing people. It's time to seriously
consider legalizing drugs."**

Alicia Bárcena, executive secretary of the United Nations Economic Commission for
Latin America and the Caribbean, 2018

Governments have historically demonstrated greater capacity to regulate risky commodities than wage war against them, however. Even in the richest countries deploying vast enforcement resources, punitive prohibitions have proved largely ineffective or actively counterproductive. In contrast, governments around the world have extensive experience and expertise in successful regulation and management of risky products and behaviors, most obviously alcohol and tobacco.

There is, of course, a huge range of experiences and outcomes have been mixed. Challenges vary greatly from one country to the next, so care is needed in making generalizations. Yet there are examples of both good and bad legal regulation of psychoactive substances in all world regions, including effective regulation in many developing economies. WHO and the UN Development Programme (UNDP) have identified effective alcohol and tobacco regulation as a development issue.^{24,25,26}

WHO produces clear, evidence-based guidelines on best practice in alcohol and tobacco regulation policy that are regularly updated with the latest evidence. For tobacco these guidelines have been formalized into the widely ratified international Framework Convention on Tobacco Control.²⁷ Similar guidelines have been produced to inform best practice in alcohol regulation policy.²⁸ It is no coincidence that the regulatory approaches advocated by WHO, in many key respects, mirror those now being proposed for other drugs by the Global Commission on Drug Policy and public health advocates.

BOX 1: EXAMPLES OF PUBLIC HEALTH-BASED REGULATION OF ALCOHOL AND TOBACCO

"In 2002, the mayor of Diadema, an industrial city with almost 400,000 inhabitants in the State of São Paulo, Brazil, passed a law to force the 4,800 bars and restaurants in the city to stop selling alcohol between 11 pm and 6 am. Since this law was passed, the number of homicides decreased by 47.4%, the number of car accidents by 30%, the number of attacks against women by 55%, and the number of hospital admissions related to alcohol by 80%".²⁹

"Between 1993 and 2009, total taxes on cigarettes (including excise and sales taxes) in South Africa increased from 32% of retail price to 52%. During the same period, cigarette sales declined 30%, government revenue from tobacco taxes increased 800%, and smoking prevalence among adults decreased 25%."³⁰

In the context of these experiences with alcohol and tobacco regulation, it is worth highlighting the second key concept: Given the manifest failings of eradication efforts, and the existence of established, and in many cases growing demand for drugs and drug markets to meet that demand, a pragmatic reality is that even imperfect or partial regulation of existing markets is better than none whatsoever. The examples of successes in alcohol and tobacco regulation, even if imperfect or partial (i.e. implementing some but not all elements of WHO best practice guidance) still demonstrate the viability of meaningful progress towards better regulation of drug markets in developing economies.

The third key concept is that, as already highlighted, the prohibitionist status quo is not a development neutral position. Rather, it is actively and increasingly destructive, undermining sustainable development on multiple fronts. Progressively reducing or removing drivers of corruption, violence and underdevelopment through moves toward regulation is therefore a fundamentally positive shift – even before any social and economic benefits from regulation are factored into the equation.

While regulation does not build institutions per se (beyond the institutions of the market itself), it can create the space and opportunity for other institutions to grow and strengthen, opportunities that are frustrated or denied in the context of a war on drugs and the chaos it brings. In addition, significant domestic resources, and in some cases foreign aid, currently directed towards punitive drug enforcement can be redirected to further social and community development, and be augmented by the economic benefits of a regulated and taxed market.



Coca farmer in Bolivia. © Aizar Raldes/AFP/Getty.

Cautious, Incremental, and Evidence-Guided Implementation

In contrast to the alarmist proposition that regulation would suddenly make all drugs available overnight, reform is likely to be a cautious and incremental process under any scenario. Such phased change would pragmatically allow for local regulatory capacity and experience to develop and new social norms to evolve, as well as providing space to address cultural and political objections in a less confrontational manner. The key is to start taking concrete steps on the path to reform.

In line with the concept of the risk-availability gradient described in Section 1, a process of exploring regulation in developing economies might, therefore, sensibly begin with regulating retail markets for drugs that present lower public health risks and consequently involve a lighter regulatory burden. This could include regulation of lower-potency plant-based drugs such as cannabis, coca leaf or opium, or other local plant-based drugs with historic/traditional use, cultural heritage and accompanying social norms. These plant-based drugs may have never been subject to regulation or have been prohibited in more recent history. Best practice guidance from international expert bodies would be invaluable in this policy space.

A parallel process could explore or expand regulating the supply of drugs within a medical context for people who use higher-risk drugs, such as the opioid substitution therapy models that have already been successfully implemented on every continent.³¹

Even when guided by shared principles, the trajectory of a reform process and the precise contours of new regulatory frameworks will be locally determined to meet the specific needs of different political, social, and cultural environments. Critically, the design and implementation of regulatory reforms need to involve everyone concerned, including local communities, traditional and subsistence growers, and people who use drugs. There is a risk of key community concerns being lost if control of the reform process defaults to big business, bureaucrats or other external actors uninterested in local concerns. This is a rare opportunity to establish a regulatory framework from scratch – and there is a responsibility to make sure lessons from past legal and illegal drug policy have been learnt and are evaluated when applied to different drugs in a variety of settings.

Very few people who work in the illegal drug economy match the stereotypes of moneyed gangsters who dominate news headlines and TV dramas. The reality is that the illegal drugs market is profoundly iniquitous, with a tiny number of wealthy ‘king-pins’ vastly outnumbered by millions of low-earning farmers, couriers and street dealers.

These lower tiers of the drug market are disproportionately populated by socially and economically marginalized people. They are often displaced and minority populations living in environments of multifaceted social deprivation, for whom the illegal drug economy provides one of the few viable economic options for survival. Their “migration to illegality” is driven by “need not greed”.³²

Policy makers and the wider development sector face a series of critical questions regarding these widely dispersed actors. Responses to the connection between illegal drugs and development, at least in terms of drug crop production, have historically been narrowly focused on the concept of “alternative development”.

Moving from Alternative Development to Sustainable Livelihoods

"Alternative development" was initially envisaged as a tool for substituting drug crops with other cash crops to reduce drug supply. It has since evolved into more comprehensive concepts like "alternative livelihoods", "rural development in a drugs environment," or "sustainable alternative livelihoods development."³³ Alternative development has often been controversial. Interventions have tended to be implemented by drug control agencies and security forces that are guided by eradication targets rather than by the development needs of impacted communities.³⁴ However, some alternative development programs have effectively tackled structural factors driving communities to cultivate illegal crops and helped them transition into the legal economy. They have tended to deploy long-term, carefully sequenced and adequately financed multi-agency support, and to avoid criminalizing small-scale actors.³⁵

But there is arguably a bigger challenge for the alternative development paradigm. Like more overtly enforcement-led supply-control efforts, even successful localized interventions do not change the fundamental supply and demand dynamics of the global criminal market. While demand remains, the profit opportunity for flexible criminal entrepreneurs also remains. Localized supply reduction or transit interdiction "success" merely displaces production or transit routes – and their accompanying costs and challenges – to other regions. This is the "balloon-effect".

Experiences with alternative development do, however, have direct relevance for any transition from criminal to legally regulated drug markets. As ongoing reform enables more demand to be met via legal channels, it promises to deliver the progressive contraction in demand for illegal drug production that prohibition has so conspicuously failed to achieve. The emerging legal cannabis markets in the United States, for example, are already likely to be affecting Mexico's criminal market production.^{36,37}

As this transition continues, the low-level actors in drug crop production will need to establish alternative livelihoods or make the transition to producing drug crops for the nascent legal economy. In either scenario, the lessons of alternative development can be usefully built upon.



Bhang seller in Varanasi. Bhang is an edible preparation of cannabis, used traditionally in India. © 2010 Cosimo Roams.

a need for additional resources and technical assistance to ensure stability of livelihoods, and to cushion and support any transition process. Civil society organizations, governments and intergovernmental agencies working in alternative development need to begin planning how their expertise can be more widely used in such contexts. This could be a natural opportunity for well-established Fair Trade principles and structures to be applied.³⁸

Empowering Marginalized Populations Working in the Illegal Economy

In a legally regulated production regime, drug crops would essentially become part of the wider sustainable development discourse. Even if freed from the negative consequences of prohibition (the parallel threats from organized crime groups and drug law enforcers) making the transition to legal drug crop production could still thrust ill-prepared economic actors into an unforgiving global capitalist economy. In some cases, there may be

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Others have suggested certain drug crops – such as regional coca leaf or regional cannabis varieties – could be subject to some form of protectionism along the lines of the Geographical Indications of the World Intellectual Property Organization (WIPO)³⁹ or the European Union's Protected Designation of Origin (PDO).⁴⁰ Reforms are already moving apace in many developed economies, so it is important for developing economies to engage with these issues sooner rather than later, with support from international expertise where necessary. Otherwise they risk being left behind in what is likely to be a rapidly maturing market sector, and placed at greater disadvantage in terms of expertise, capacity and market penetration.

There are a number of instructive examples where a transition from illegal to legal drug crop production has been realized. The establishment of a formally regulated system of traditional coca crop production in Bolivia provides one such example, as does the formalization of opium production in Turkey (Box 2). The recent Colombian medical cannabis regulation requires businesses to buy at least 10 per cent of their raw materials from small cannabis farmers.

BOX 2: TURKEY'S OPIUM FARMERS MAKE THE TRANSITION TO LEGAL PRODUCTION

Smallholder farmers in Turkey traditionally produced opium for use as a medicine. – Paradoxically, in the era after the 1961 UN Single Convention on Narcotic Drugs, this production was increasingly diverted for non-medical use and refined into heroin, mainly in the US market. After President Richard Nixon declared his “war on drugs”, Turkey’s legal opium production was banned entirely in 1972.

In 1974, however, cultivation for medical purposes restarted on a significant scale under a strictly state-controlled license system, in compliance with the UN Single Convention, and supported politically and technically by the United States. Unlike the large-scale, highly industrialized legal opium production elsewhere in the world (in Tasmania, for example), legal opium production in Turkey remains in the hands of the 70,000 to 100,000 mostly smallholder farmers who are licensed every year, each cultivating an average of just 0.4 hectares. In 2005, the national opium licensing agency estimated that 600,000 people earned their living from poppy cultivation in Turkey; 95% of production is exported, generating an export income of over \$60 million.⁴¹

Inevitably, the “balloon effect” was observed following Turkey’s transition, with opium production for the European illegal market displaced first to Pakistan, Myanmar and Iran, then to Afghanistan, which now dominates global illegal production. Production for the illegal US heroin market was mostly displaced to Mexico, which was supplying more than half of US heroin as early as 1975.⁴²

While Turkey is no longer a producer of opium for the illegal market, it remains an important transit route to European markets for Afghan opium and heroin. Yet in many respects, the new licensing system has been viewed as a success. It enables oversight of the previously legal and quasi-legal unregulated industry while maintaining traditional producers’ incomes, creating valuable export revenue, and successfully preventing almost all leakage of opium to the illegal market.⁴³ Turkey’s experience demonstrates how, with appropriate support, traditional small-scale drug crop cultivation can make the transition from illegal market production to an “alternative development” in the form of the legal regulated market for the same crop.

Beyond growers of drug crops, a much broader and more diverse group of low-level actors work in the production, transit and retail-selling sectors of the illegal drug economy. As with growers of drug crops, it is vital that no affected individuals or communities are forgotten in the transition to legal regulation. Any reforms must include targeted support for all negatively affected individuals and communities, who must be involved in the design and implementation of new policy models.

It is welcome to see that such thinking is already featuring in recent regulation reforms. California's new legal non-medical cannabis markets, for example, allow for the expungement of convictions for drug offenses that, post-reform, would no longer be crimes. Between November 2016, when the law was passed (by the Proposition 64 ballot initiative), and September 2017, 4,885 Californians petitioned to reduce or void their convictions. Individuals with criminal convictions will also not be excluded from participating in the emerging legal market. In Los Angeles, residents with previous cannabis convictions or who have lived in areas with disproportionately high rates of arrest for marijuana offences will be given preference when licenses to open cannabis retail businesses are granted under the city's "social-equity program".⁴⁴ Jamaica has similarly decided to expunge criminal records of minor cannabis offences.⁴⁵

The Massachusetts Cannabis Control Commission has gone further, developing the most far-reaching equity provisions of any legal cannabis markets so far. In addition to the Economic Empowerment Priority Review for Applicants⁴⁶ (similar to the Los Angeles approach), the Massachusetts provisions include substantial funding to train qualifying applicants and licensees and give them technical assistance so they can participate in the market on an equal basis. Training is available in areas including management, recruitment and employee training; tax and accounting; legal compliance; and industry best practice. All applicants for licenses are required to submit "a diversity plan to promote racial and gender equity and include veterans and people with disabilities; and a plan for how the business will positively impact communities disproportionately impacted by high rates of arrest and incarceration for drug offenses". Funding is also being provided for an outreach program so affected communities are aware of the new provisions and available support.⁴⁷

Some analysts have argued that affected communities could be supported through a post-drug war "Marshall Plan".⁴⁸ The equity provisions being developed in some US states' legal cannabis markets are a first sign of such thinking becoming a reality. It could also be more broadly applied in global drugs and development discourse. A substantial amount of development aid is currently conditional on counterproductive, repressive drug control objectives, a situation that urgently needs to evolve in line with the shift away from prohibition. As part of this realignment of resources, support could be directed to former drug-producing and transit economies. It would help support alternative livelihoods, and foster good governance and institution building. Funding could come from the "peace dividend" that would arrive with the end of the war on drugs, and could be supported by new tax income from legal markets.

Regulation can therefore be seen as a natural extension of the alternative development paradigm, and of the "shared responsibility" concept that historically sought to balance supply reduction in primary producer regions with demand reduction in primary consumer regions in developed economies. While "shared responsibility" was a well-intentioned effort to balance the interrelated challenges of different regions, it ultimately stumbled because of the resilience of illegal supply and demand to conventional punitive enforcement. Moving towards regulation on a global scale offers a more realistic prospect for addressing the challenges faced by all regions – not through a futile quest to create a "drug-free world", but by regaining control and managing markets within the legal sphere to minimize harm and maximize benefits. There is a shared responsibility for all to ensure that these emerging markets function in an equitable fashion that supports sustainable development for all, as well as a responsibility to support those who have been most harmed by the failure of the war on drugs.

RECOMMENDATION 3

States should consider experimenting with the incremental regulation of lower-potency drugs.

Each country must identify pathways to regulation that are suited to its particular context and constraints, and its institutional, social and cultural frameworks. Low- and middle-income economies or fragile institutions must not be considered obstacles to exploring regulation. By reducing the corrosive impacts of the illegal trade, the regulation of drug markets can foster development and create space for the strengthening of institutions. Priority for legal regulation could be given to substances with the highest prevalence of use in a national context; to plant-based drugs such as cannabis, coca leaf or opium; or to other substances that have some form of historic or traditional use, or are part of a cultural heritage.

RECOMMENDATION 4

Policymakers must not leave behind people and communities most affected by prohibition when legally regulating drug markets.

In any transition towards the regulated production, trade and distribution of drugs, priority must be given to the interests of individuals and communities pushed into non-violent illegal activities by poverty, marginalization or lack of opportunities, and to those who were most harmed by punitive drug-enforcement efforts.

REGULATION DISEMPOWERS ORGANIZED CRIME

Prohibition has put criminal organizations in control of the vast illegal drugs trade. Retaking control of this market and disempowering organized crime remains a central motivation for regulation. Yet concerns are frequently raised about how transnational organized crime actors operating in the drugs economy might make the transition into a post-prohibition world.

Focusing on Organized Crime

There is a remarkable consensus – even among key enforcement agencies – that prohibition has empowered and enriched organized crime.⁴⁹ Yet there is no agreement on how to confront the problem. The logical corollary, that if prohibition empowers organized crime, ending prohibition will disempower it, has been a core element of calls for regulation, coming from a wide variety of voices, including those currently or formerly on the front line of repressive approaches.⁵⁰

There have been two dominant themes in the push back against the calls for regulation. The first is that historic failures of enforcement are due not to any fundamental flaw in the prohibitionist paradigm, but to a lack of resources, application and coordination. According to this argument, the war against drug trafficking could be won if only it were better coordinated or fought with sufficient vigor. But overwhelming evidence from decades of experience around the world demonstrates that enforcing prohibition can achieve, at best, only localized, marginal and temporary impacts on drug production and supply. Intensifying enforcement only serves to displace illegal activity, increase criminalization and incarceration, and – particularly when militarized – heighten levels of drug-related violence and human rights abuses. It is invariably the most vulnerable and marginalized who bear the brunt of these “unintended consequences”.⁵¹

Unlike statutory drug laws, the economic laws of supply and demand are not so easily broken. A temporary reduction of supply, for example through arrests along the supply chain, only pushes up prices or decreases purity. Given the often low elasticity of demand for drugs, this reduces demand only negligibly in many cases. Higher prices attract new criminal entrepreneurs to exploit the increased profit opportunities as well as any gap in the market, and a new equilibrium is established. Supply-side enforcement constitutes a tolerable cost of business for organized crime, a “tax” easily absorbed within the enormous profit margins created by prohibition. There is no evidence to suggest that there is some magical threshold of enforcement intensity beyond which the problems of drug-related crime will suddenly improve or disappear, rather than get worse or simply move.⁵²

“Global drug control efforts have had a dramatic unintended consequence: a criminal black market of staggering proportions. Organized crime is a threat to security. Criminal organizations have the power to destabilize society and governments. The illicit drug business is worth billions of dollars a year, part of which is used to corrupt government officials and to poison economies. Drug cartels are spreading violence in Central America, Mexico and the Caribbean. West Africa is under attack from narco-trafficking. Collusion between insurgents and criminal groups threatens the stability of West Asia, the Andes and parts of Africa, fueling the trade in smuggled weapons, the plunder of natural resources and piracy.”

UN Office on Drugs and Crime, 2009⁵³

The second theme running through arguments against legal regulation of drugs relates to a common concern that regulation will simply push organized crime groups out of the drug market and into other forms of illegal activity – the organized crime equivalent of the “balloon effect”. This more plausible line of reasoning demands closer consideration – beginning with some clarity on what is being proposed and what impacts can realistically be aspired to. The suggestion that regulating drugs will entirely eliminate the criminal market or rid the world of organized crime is another straw man argument. More measured reform advocacy has not claimed that regulation will be a “silver bullet” that solves the problems of organized crime, but has instead been clear that a transition towards regulation can progressively reduce the scale of illegal drug markets, organized crime activities and the harm they cause, and organized crime’s overall power and influence.

The impacts of any transition towards legal drug markets will differ in timescale and between countries, for different drugs, and at the different levels of the criminal infrastructure and the environments in which they operate. The extent of any remaining illegal drugs markets will also depend on the nature and scope of the legally regulated markets with which they have to compete. Regulation certainly creates opportunities to reduce the power and harm of organized crime, but the extent of these opportunities will vary widely between places and over time, and the degree to which they are seized will also relate to wider policy choices.



Vigilante group member at the community of Petaquillas, in an operation to apprehend suspected offenders, in Chilpancingo, Guerrero State, Mexico, on February 1, 2015. © Pedro PARDO/AFP/Getty Images.

Reducing Illegal Market Opportunities and Undermining Organized Crime

The argument for regulation in this context is essentially about restricting one of the largest and most accessible criminal opportunities, affecting not just existing criminals but, significantly, future generations of criminals. Ending prohibition holds the prospect of diverting millions of potential young drug producers, traffickers and dealers from a perilous and destructive criminal lifestyle.

Those already working within the illicit economy are likely to respond to a contraction in illegal drug markets in any of four ways.⁵⁴ Some may forgo participation in the criminal market altogether – indeed this seems a likely outcome for many low-level actors, or those on the periphery of the trade. This is what happened with many of the tens of thousands who had been drawn into illegal production and supply of alcohol under prohibition in the United States between 1920 and 1933. Some, however, where opportunities exist, may seek to move into emerging legal markets as legitimate entrepreneurs. Others may attempt to continue servicing the smaller illegal markets that continue to exist in parallel or in competition with emerging legal markets. After prohibition ended in the United States, some bootleggers continued to produce and sell their products using forged liquor tax stamps, or by using coercion to force their way into the newly legal supply chain. The final, and most concerning option, is that energies are redirected into other forms of organized crime.

It would be irresponsible to disregard the inevitable reality that some illegal drug market participants will move into other forms of criminality – particularly those higher up the organized crime hierarchy and those most embedded in the criminal culture and lifestyle. However, there are strong reasons to believe this risk should not be overstated, and that regulation will be a vitally important element of any strategy for reducing the overall harm caused by organized crime.

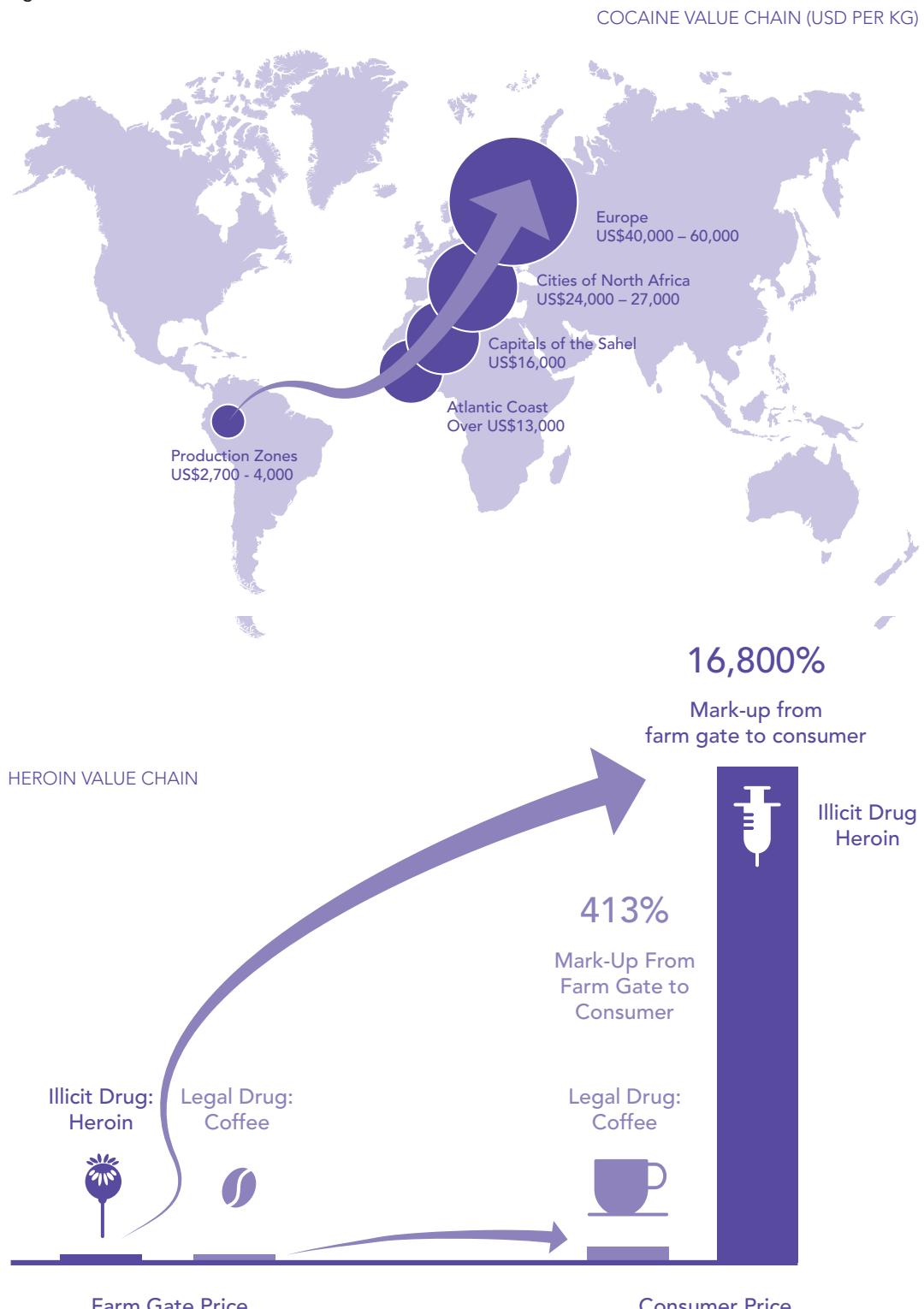
“The first [aim of our new cannabis policy] is to protect our kids. Right now we know that young people have easier access to marijuana than just about any other illicit substance. It’s easier to buy a joint for a teenager than it is to buy a bottle of beer. That’s not right. Secondly, we know that criminal organizations and street gangs are making billions of dollars off of the sale of marijuana. We feel that regulating it, controlling it will bring that revenue out of the pockets of criminals and put it into a system where we can both monitor, tax it and ensure that we are supporting people who are facing challenges related or unrelated to drug use.”

Justin Trudeau, Prime Minister of Canada, 2017

Criminality thrives on opportunity, and prohibition of drugs in the face of ever-rising global demand has created an opportunity unprecedented in its scale. The Organization of American States (OAS) has described⁵⁵ how organized crime groups involved in the drugs trade in the Americas are involved in international arms trafficking, contraband, counterfeiting and people trafficking, and domestic control and exploitation of sex work, robbery and the sale of stolen goods, kidnapping, extortion, and the victimization of migrants. Europol has similarly described how 65% of organized crime groups involved in Europe’s drug trade are also involved in other forms of criminality.⁵⁶

The potential for displacement into other forms of criminality should be seen in this context; it is unrealistic to envisage other as-yet untapped criminal opportunities that could absorb the

Figure 5: Value Chain of Cocaine and Heroin



Source: Frintz, Anne (2013) Drugs: the new alternative economy of West Africa, Le Monde diplomatique. <http://mondediplo.com/2013/02/03>
 Home Office United Kingdom / Matrix Knowledge Group (2007) The illicit drug trade in the United Kingdom. <http://webarchive.nationalarchives.gov.uk/20110220105210/rds.homeo@ce.gov.uk/rds/pdfs07/rdsolr2007.pdf> and West Africa Commission on Drugs (2014) Not Just In Transit – Drugs, the State and Society in West Africa, http://www.globalcommissionondrugs.org/wp-content/uploads/2017/02/WACD_En_Report_WEB_051114.pdf

organized crime resources operating a \$320 billion illegal drugs market. Where the post-Prohibition US mobsters later expanded into the virgin territory of the lucrative emerging illegal drug markets created by the prohibition of drugs other than alcohol, the contemporary retreat from drug prohibition offers shrinking rather than expanding opportunities in the drug business.

The economic dynamics of illegal drugs markets also make them fundamentally different from most other forms of organized crime – and these differences have specific relevance to the concerns about displacement. There is a perceived qualitative and moral difference between working in drug markets, where the trade is mutual and consenting between buyer and seller, and other forms of organized crime (such as kidnapping or extortion) which are intrinsically violent and exploitative. This means that many working in the drug economy, particularly lower-level participants, are likely to be reluctant to transfer their energies to other forms of organized crime. This consideration exists independently from other obstacles to such a transition, including lack of opportunity, and the different skill sets involved in other forms of criminality.

Another notable difference is that under absolute prohibition, the illegal drug market has an absolute monopoly, with most drugs having few, if any, legal alternatives or substitutes. Within this captive market, with demand rising, drugs consistently offer extraordinary profit margins compared with other illegal commodities. Products that cost little more than ordinary spices or cold remedies to produce can literally be worth more than their weight in gold by the time they reach consumer markets.

Replacing the Social Vacuum Currently Filled by Organized Crime

The social harm and disruption caused by illegal drug markets vary greatly from region to region, and many are not significantly associated with violence.⁵⁷ Illegal drug markets can even have some social and economic benefits, and in some cases provide political and social stability in the absence of effective state institutions.⁵⁸ However, the huge profits on offer not only underpin the extraordinary resilience of drug markets in the face of even the most intense enforcement efforts. They also create a unique potential and incentive for violence – between and within criminal organizations, and between criminal organizations and law enforcers – as well as corruption. They foster de-legitimization of the state, alongside potential legitimization of criminal and political actors challenging state power. Evidence shows that breaking up and arresting drug gangs has little or no impact on drug supply. In destabilizing local markets, it may increase violence.⁵⁹ By contrast, when a robbery, kidnapping or extortion gang is broken up by police, justice can be done for their victims, and there is a reasonable expectation that the rate of those crimes will fall. Commodity markets can be regulated, violent crime cannot be.

These unique dynamics of illegal drug market economies mean that enforcement that targets other forms of organized crime can reasonably aspire to deliver more positive outcomes than the historic failings of drug enforcement. This analysis naturally has implications for making the pragmatic case for regulation, even given displacement by some actors into other criminal activities. If illegal drug markets contract, resources previously directed towards combating them can be used to fight other forms of criminality or, better still, tackle their root causes.

Drug-related organized crime is most socially corrosive when aligned with structural vulnerabilities such as poverty, conflict, fragile social and political institutions, and particularly, militarized enforcement responses.^{60,61} Here it becomes clear how interlinked the discussions on regulation, confronting organized crime, and wider social and economic development really are. Prohibition creates the profit opportunity for organized crime, and structural vulnerabilities facilitate the exploitation of such opportunities.

Regulation can limit these opportunities, but it is important to be realistic about the time scale and effects of reform. In most scenarios, change will be incremental, unfolding over many years as more countries explore regulation of different drugs. Correspondingly, criminal drug enterprises will experience a protracted twilight period of diminishing profits, rather than face a cliff edge. Where changes in the market can be anticipated, preparations can be made by enforcers to retrain and retarget resources where risks of increased criminality are likely.

In developing economies where the impacts of organized crime have been most profound, governments will be able to progressively introduce measures that significantly and sustainably improve the relationship between governments and society – particularly the most affected but also most neglected and marginalized communities. Embracing a responsible and phased regulation agenda will ultimately be only part of an interlocking set of reforms required to confront organized crime in the longer term. Other vital pieces of the jigsaw include strengthening the rule of law, carrying out reform of policing, and increasing accountability for police abuse and corruption. Drug-related organized crime undermines all of these processes. Reducing its pernicious influence does not rebuild institutions, but it creates opportunities for such rebuilding to take place.

RECOMMENDATION 5

States must maximize the development opportunities offered by regulation of drug markets. This requires redeploying resources to mitigate anticipated changes in organized crime activity.

Governments must deploy institutional mechanisms against money laundering, corruption and transnational crime as part of wider efforts to strengthen rule of law, reform law-enforcement practices, and build institutional capacity. Criminal organizations are already active in illegal activities other than drug trafficking, thus the potential displacement of organized crime from drugs to other forms of criminality should not be overstated. Regulation holds the promise of substantially undermining the power and influence of organized crime, as well as liberating resources to counter its root causes and other forms of criminality.

MODERNIZING THE INTERNATIONAL DRUG CONTROL SYSTEM

The international drug control system, formulated in a different era, needs to evolve. Growing numbers of member states are calling for or implementing moves towards regulation that are incompatible with the current institutional framework. There is a need to recognize that the current control system is failing to achieve its own objectives; to identify the conflicts between countries' international obligations and the reality on the ground; and to help countries overcome the challenges they face in attempting to implement effective drug policies.

Recognizing the Tensions in the International Drug Control Regime

In 2014 the Global Commission on Drug Policy highlighted the need to modernize the antiquated and dysfunctional international drug control system within the United Nations. It argued that "the strength of the UN treaty system is based on the consensus of support from member states and the legitimacy of its goals. For the drug control treaties this consensus has fractured, and their legitimacy is weakening owing to their negative consequences. More and more states are viewing the core punitive elements of the drug treaties as not merely inflexible, but outdated, counterproductive and in urgent need of reform. If this growing dissent is not accommodated through a meaningful formal process to explore reform options, the drug treaty system risks becoming even more ineffectual and redundant, as more reform-minded member states unilaterally opt to distance themselves from it."⁶²

The drug control system's negative consequences were a key reason why the UN General Assembly convened a special session (UNGASS) on the global drug problem in 2016. Many historically challenging issues, such as human rights, harm reduction and decriminalization, were tackled at the UNGASS. But the limits of the latitude permitted by the treaties vis-à-vis regulation were also very clear, restricting the scope of the formal agenda and the debate that followed. Questions about regulation and reforming the UN drug control institutions were raised at the UNGASS⁶³ but, disappointingly, the much-needed substantial discussions were marginalized. The treaty tensions surrounding the moves in some countries toward legal regulation have become the "elephant in the room" in key high-level drug policy forums.

"Current efforts have fallen short of the goal to eliminate the illicit drugs market. With the United Nations General Assembly Special Session consensus as our blueprint, we can promote efforts to stop organized crime while protecting human rights, enabling development, and ensuring rights-based treatment and support."

António Guterres, UN Secretary-General, 2018

Nonetheless, the UNGASS debates did, crucially, demonstrate the fracturing of the consensus behind a punitive paradigm, and the wider shift of emphasis in drug policy thinking towards health, human rights and development-based approaches.⁶⁴ As the momentum for reform continues to build, high level forums will no longer be able to ignore the regulation question. Honest reflection by member states and UN agencies is now overdue on the longer-term implications of this global shift for drug control structures and institutions. It is time to systematically review the institutional and legal reforms required to bring the international drug control system's original goal of securing "the health and welfare" of humankind closer to reality.

These are challenging questions, but the necessity will ultimately demand that the UN forge a modernizing path to preserve the integrity and any utility of the drug control system. What, then,

are the ways to inform, facilitate and optimize this process so that it works for all stakeholders – maintaining and enhancing the critical elements of the system, while also implementing flexibility and change where needed? How, as the senior management of UNODC asked in 2008, can the system be made “fit for purpose”?⁶⁵

Mindful of the strong views on this question within multilateral forums, and the pace and nature of institutional and treaty reforms within the UN drug control system, it is important to outline what reforms of the system can aspire to, alongside steps that can be taken in the short to medium term to help realize this longer-term vision.

The new paradigmatic thinking and realignment of priorities implicit in such treaty reform would also affect the roles and responsibilities of the UN agencies that develop, implement and oversee drug policy. Any such reorganization or restructuring would usefully support the principle of “system-wide coherence” – reflecting the inter-sectoral nature of drug policy, and the centrality of input from the UN health, human rights, and development agencies that emerged as such a positive contribution to the UNGASS.

Any such evolution is likely to be the result of a protracted and difficult political process, and the realistic timescale such reforms entail may be incompatible with the more immediate needs and aspirations of many reform-minded member states. In weighing up the different options, a set of interrelated principles can help guide the necessary decisions.

First, decisions should be guided by promotion of the health and welfare of humankind, and the wider goals and values of the UN charter. Second, all efforts should be made to engage in and facilitate dialogue between member states, UN agencies and other key stakeholders within the relevant multilateral forums. Such dialogue should be based on open and honest declaration of intent, and justification for any actions in pursuit of UN charter commitments. Third, coordinated, collective action by like-minded states will be the most positive and constructive basis on which to approach the reform process. And fourth, any implementation should be rigorously monitored and evaluated against explicitly stated objectives.

“Drug conventions provide states with some flexibility to adopt measures such as treatment and rehabilitation. However, flexibility has limits ... It does not extend to any non-medical use of drugs. [Legalization is] in clear contravention of the conventions ... You — the states parties to the conventions — have a responsibility to address this challenge.”

Werner Sipp, President of the International Narcotics Board, 2016

Exploring Reform Options

Option A: A New Framework Single Convention

One such compelling vision is to work progressively towards a new single convention designed to meet the contemporary needs and aspirations of all member states. Such a convention could ultimately replace, through a process of functional unification and modernization, the three existing conventions (as envisaged in the OAS “Pathways” scenario).⁶⁶ In some respects this process would mirror the original 1961 Single Convention on Narcotic Drugs,⁶⁷ which consolidated a series of multilateral drug control treaties dating back to 1912.

A contemporary unified treaty would be able to introduce the possibility for member states to regulate domestic markets. It could also establish the rules and parameters for such innovations, such as minimum standards, monitoring and reporting requirements, and international trade and border controls. In this way, a new unified drug treaty could – as proposed by the Global Commission in 2014 – “extend the ambitions of the [1961] treaty to regulate medical and scientific uses of drugs...to embrace the regulation of drugs for non-medical uses, in pursuit of the same set of UN goals”.⁶⁸

A new unified drug treaty could also seek to remedy several structural shortcomings evident in the increasingly antiquated existing framework. Such reforms could, for example, include a structured periodic review mechanism (conspicuously absent from the current framework)⁶⁹ and an improved scheduling procedure that strikes a better balance between ensuring availability of controlled substances for legitimate uses and preventing problematic use. Such a treaty could incorporate elements of the 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances,⁷⁰ which addresses organized crime and corruption, into the other relevant treaty frameworks with which the 1988 drug treaty is already closely aligned.



Opening ceremony for the signing of the Narcotics Drugs Protocol at Palais de Chaillot in Paris, 19 November 1948. © United Nations.

Option B: Amending the Existing Drug Control Conventions

As with all treaties, the drug conventions include mechanisms for their amendment and reform. In theory, the conventions could be amended to introduce sufficient flexibility for member states to experiment with and evaluate regulation models. There are notable precedents for substantive amendments. The 1961 Single Convention was amended with the 1972 Protocol, after a multilateral conference was convened. The U.S. government argued that it was “time for the international community to build on the foundation of the Single Convention, since a decade has given a better perspective of its strengths and weaknesses.”⁷¹ The latitude under the 1961 Convention with regard to “alternatives to incarceration” – creating the space for the recent wider

debates on decriminalization – only exists due to a treaty amendment agreed in the 1972 Protocol. However, such amendments require a consensus among state parties. Given the polarized nature of views on regulation at the United Nations, achieving such a consensus to allow for regulated markets seems highly unlikely.

The treaties also contain mechanisms for the modification of the scheduling of a particular drug (following the recommendation of WHO or a state party) requiring only a majority vote,⁷² rather than consensus. Such modification could, in theory, remove specific drugs from the treaty framework altogether, and in doing so facilitate legal regulation for member states who wish to explore it. Yet current political realities mean this option also appears out of reach. In the absence of any realistic short-term prospect of achieving reform via amendment or modification, reform-minded member states face a narrower menu of options.

Option C: Withdrawal and Reservation

Perhaps the simplest option would be to withdraw from the treaties, at which point questions of breach or non-compliance would no longer apply. Such a radical step would not only incur diplomatic and reputational costs, however. It would also jeopardize the important parallel role of the treaties in regulating the scientific and medical use of drugs, one that, unlike prohibition, still commands a strong consensus among member states.

A related possibility is to withdraw from the relevant treaties, and then re-join with a reservation on the specific articles preventing regulation of a given drug. This is the strategy adopted by Bolivia regarding the treaty prohibition on traditional use of the coca leaf, having initially failed to achieve a consensus for amendment.⁷³ While Bolivia was successful in its strategy, there are questions about how widely this approach could be applied to other drugs (coca is one of a small number of drugs, alongside cannabis and opium, specifically mentioned by name in the main treaty text).

Option D: Respectful Non-Compliance

Given the potentially severe implications of withdrawal, and limitations of the withdrawal-re-accession option, another option is to remain a party to the treaties but proceed with domestic reforms, in the knowledge that they will inevitably mean non-compliance with the specific treaty articles that mandate rigid prohibitions on regulation for non-medical use and obstacles for scientific research. How a member state could manage the implications of such a move raises further difficult questions.

Of the countries that have already moved to regulate cannabis, Canada is the first to make a clear formal acknowledgement that it is "in contravention of certain obligations related to cannabis under the UN drug conventions."⁷⁴ With reference to the second principle of enhanced collaboration outlined above, an acknowledgement of legal realities such as Canada's appears preferable to denial, avoidance, or somehow attempting to hide behind questionable legal arguments concerning flexible interpretation.

It is important to acknowledge that periods of partial non-compliance are a common prelude to treaty evolution within the wider UN framework.⁷⁵ However, the credibility of proceeding on this basis will undoubtedly be enhanced if certain conditions are met. It is important for the reasoning behind the decision to pursue regulation options to be clearly elucidated in key multilateral forums, and, as Uruguay has done in reference to its cannabis regulation model, frame this explanation in terms of promoting the health and welfare of humankind and the core values of the UN charter.⁷⁶

Potential tensions will be minimized further if the regulatory norms of the drug treaties are adhered to, including comprehensive monitoring and regular reporting to the treaty bodies; ensuring regulation models are established under the auspices of a national government agency; and paying particular attention to border issues and the concerns of neighboring states. On this basis, a temporary period of what some analysts have described as “principled” or “respectful” non-compliance, in parallel with ongoing dialogue and efforts to resolve the tensions with treaty obligations, appears to be a viable option for unilateral action.⁷⁷

Option E: Inter se modification of the conventions?

In keeping with the spirit of the United Nations, a legally grounded and coordinated collective response has many clear benefits compared with a potentially chaotic scenario of a growing number of different unilateral defections, reservations and questionable re-interpretations. One such reform option that is not constrained by the requirement for consensus is inter se treaty modification – an established mechanism within the 1969 Vienna Convention on the Law of Treaties⁷⁸ for a group of member states to modify a treaty “amongst themselves”.⁷⁹

The drafters of the 1969 Convention considered the option of inter se modification as a core principle for international law. As the International Law Commission discussed in 1964, “the importance of the subject needed no emphasis; it involved reconciling the need to safeguard the stability of treaties with the requirements of peaceful change.” Inter se may, therefore, offer an ‘elegant’ and legally viable pathway forward, and one that provides a useful safety valve for collective action to adjust a treaty regime arguably frozen in time.

In the longer term the lessons and shifting dynamics that result from both unilateral and collective action can serve to prepare the ground for a more flexible post-drug war consensus, and a modernized drug control system to support it.



15 November 2015, from left: David M. Malone, Rector of the United Nations University; Anarfi Asamoah-Baah, Deputy Director-General of the World Health Organization; Yury Fedotov, Executive Director of the UN Office on Drugs and Crime; UN Deputy Secretary-General Jan Eliasson; Zeid Ra'ad Al Hussein, High Commissioner for Human Rights; Michel Sidibé, Executive Director of the Joint United Nations Programme on HIV and AIDS; and Magdy Martínez-Solimán, Assistant Administrator and Director of the Bureau for Policy and Programme Support of the United Nations Development Programme, brief Member States on the work of the United Nations on the world drug problem, in preparation for the special session of the General Assembly (UNGASS) in 2016.

© United Nations.

Renewed Governance for an Improved International Drug Control Regime

Calls from the Global Commission on Drug Policy, many governments and civil society groups to make better use of the UN system as a whole come from a real need for improved functioning of the international drug control regime's governance. The current regime, as guided by the three international drug control conventions, has limited the perspectives of drug control to the elimination of non-medical drug use, with a skewed emphasis on punitive measures aimed at reducing demand and supply. The regime has not evolved to face major global shifts that have significantly affected drug control, including the HIV/AIDS epidemic the globalization of world's economy, and corresponding new dimensions of national border control. Instead a dysfunctional enforcement paradigm has become entrenched when a new health-led approach was needed. In 1997 the United Nations Drug Control Programme and the Centre for International Crime Prevention were merged to create UNODC, the technical agency for building capacity and providing technical expertise to countries in the design and implementation of their drug policies. This decision to directly link drugs and crime within the same office, with two separate governing bodies – the Commission on Narcotic Drugs (CND) and the Commission on Crime Prevention and Criminal Justice (CCPCJ) – has created an unsustainable imbalance within UN drug policy thinking and leadership towards crime and away from equally important concerns for sustainable development, agriculture, public health and human rights.

The governance model of this already highly problematic policy area has also impeded the use of existing mechanisms to address transnational organized crime, such as the UN Convention against Transnational Organized Crime, or the Convention against Corruption. These conventions would prove more useful to tackle the illegal production and trafficking of drugs than the 1988 UN Convention against Illicit Drug Trafficking, as they would provide a holistic approach that targets criminal groups and the entirety of their illegal activities, instead of the current separate responses that have proven unable to undermine the illegal economy or to reduce the illegal drugs market.

How can the existing institutional framework adapt to changing circumstances, meet current needs and align with the sustainable development agenda? Some precedents provide best practice examples in such governance reforms. The governance model for the unique joint UN program on HIV/AIDS (UNAIDS), established by the UN Economic and Social Council (ECOSOC), includes 11 UN entities as co-sponsors and has civil society representatives on its board. This represents one credible source of inspiration for a potential new joint UN program on drug control.⁸⁰ Another instructive precedent is the superseding of the Commission on Human Rights with the Human Rights Council,⁸¹ allowing for the mainstreaming of human rights concerns through all UN mandates, better representation of member states and periodic reviews of countries' implementation of their international obligations. Review and modernization of governance structures is the pathway that member states and the UN Secretary-General should pursue to address the current shortcomings of the international drug control regime.

RECOMMENDATION 6

UN Member States should urgently consider the different options for modernizing the international drug control regime, in order to meet the needs of everyone with a stake in drug policy.

Member States, civil society and the scientific community should begin formal and informal dialogues in key multilateral forums to plot a pathway to reforms and bring the world closer to the goal of the drug conventions of protecting the “health and welfare of humankind”. If the international drug control framework is to be efficient, it must move away from the current repressive paradigm and better reflect the emerging focus on health, human rights and sustainable development. Crucially, reforms must introduce the possibility for member states to regulate drugs. Until this happens, reform-minded member states should consider options that allow domestic and international progress on this issue, while respecting the core tenets of the UN charter and remaining mindful that dialogue and collective action constitute the most productive approach.

RECOMMENDATION 7

The UN Secretary-General should take the lead on reforming the governance of the international drug control regime.

Such a reform should aim at using existing international mechanisms more effectively to protect human rights and public health, promote sustainable development, and prevent corruption, money laundering and organized crime.



TESTIMONIES

DIEGO CANEPA

Deputy Chief of Staff of the Presidency 2010-15, Uruguay

Uruguay has never criminalized the use alone of any drugs, although it was left up to the discretion of the judge. This did lead to people who use drugs being criminalized. We shifted to an approach that focuses on public health and the well-being of our citizens - and didn't see this being achieved through criminalization or imprisonment of the users. The decision to legalize and regulate cannabis came out of this philosophy.

There were two key elements to this decision. The first was public health. What we now know is that we had a sustained increase in consumption under prohibition. All that we achieved was handing control of the market to organized criminal groups. The new reality with regulation is changing that. Cannabis products will be safer because the producers are licensed by the government under strict standards, and cannabis is sold through pharmacies or licensed outlets. We control the potency, the price, health information on the packaging, and who can access the market. We have also learnt from historic problems with tobacco and have banned branding and advertising. We want to displace the illegal market - not encourage more use, and we have used taxes to help fund new public education campaigns.

The second element was about community safety and respecting human rights - curtailing the threat of organized criminal groups and the violence associated with the illegal drug trade. Latin America has been the hardest hit by prohibition and we need to look for internal solutions that can help the region: such as regulated markets. We are seeing this philosophy take off in other places such as Colombia, Chile and Mexico. We also understand that the rights of people who use drugs should be taken into account and respected. We believe that human rights obligations take precedence over drug control efforts. We strongly advocate that security will improve when we respect human rights and when we see this as a development issue in the region.

In this context we hope people will see that by creating a regulated market for cannabis, we are not liberalizing it. On the contrary, international experience suggests that a regulated market is about having greater oversight and more visible controls than we can under prohibition.

Some of our neighbours, and people at the UN were not happy with Uruguay's decision. But our reasons for reform were the right ones and more and more countries are following us now. We are pleased with the changes taking place in Canada and around the world. As President Mujica (40th President of Uruguay, 2010-15) said at the time, someone had to go first.

SEAN BERTE

From a Federal sentence to the regulated marijuana market, Massachusetts, United States of America

In my early twenties I became a Boston firefighter. That profession brings a host of medical conditions, with the most prevalent being cancer and heart disease. Before either of those become a problem most firefighters deal with musculoskeletal ailments that often require surgery, as well as elevated stress levels due to going from a sedentary state to being highly active within seconds on a regular basis. A lot of calls firefighters receive, such as suicide attempts or hurt children, also take their toll mentally. It's because of these ailments that I decided to use a more benign substance to combat the pain and stress of my new career. After all, I had been a marijuana user since high school where I graduated from one of the most prestigious public schools in the country and marijuana hadn't affected me negatively.

Being a civil servant with the surrounding stigma of marijuana use was difficult, which is why I started to grow my own plants. Within a couple of years the DEA and local police joined forces to raid my home and firehouse, simultaneously. I was found with 131 marijuana plants. I pled guilty in Federal court and served 8 months in Federal prison. I lost my career, my life savings, my pension, and I nearly lost my house too. I served my time and the subsequent probation (3 years). I declared bankruptcy in order to keep my home. After 5 years of post-incarceration I was barely making above minimum wage.

The legalization and regulation of marijuana in my home state is poised to correct some of the wrongs of the Drug War. I have qualified for priority in licensing due to my marijuana offense but I am having a difficult time obtaining funding for such a venture because of the financial hardships I sustained after prison. I am not entirely sure that the legal market will present the opportunities it should to those who've suffered the most from prohibition.

I have personally chosen to enter the legal marketplace because it is what I've always wanted. I never enjoyed doing something that the government considered illegal. I also had the added incentive of entering this new industry after I saw the police officer (who first arrested me for marijuana) join a company trying to open a legal marijuana dispensary in my hometown. Because I am still suffering the consequences of being a lifelong felon I now feel obligated to succeed in this new industry to show the general population that those who have made mistakes in the past are truly worthy of second chances and just maybe get back on my feet after all these years.

HON. PETER DUNNE

Associate Minister of Health 2005-13 and 2014-17, New Zealand

In July 2013, the New Zealand Parliament, by a margin of 119 votes to 1, voted to create the world's first regulated market for psychoactive substances. In essence, the Act established that only those substances that met a pharmaceutical grade of testing as low risk could be manufactured and sold in designated stores to persons over the age of 18 years, with severe restrictions on their marketing and promotion. It was passed against a backdrop of approximately 350 different products and combinations already being freely sold over the counter at more than 4,000 corner stores, convenience shops and adult stores across the country.

The Act required all products to be withdrawn immediately, and then resubmitted for testing for confirmation as low risk before they sold to the public. Only 153 designated R18 shops would be able to sell such products. It was estimated that it would take a few weeks for the details of the new regulatory regime to be finalised, so, to ease the transition process, some 41 products that had been on the market for some years already without deleterious effect were allowed to remain available until the regime was finalised, at which point they too would have to be withdrawn and submitted for testing.

Immediately, the Act was hailed as a far-sighted and sensible approach, but within a few weeks, the problems that very nearly destroyed the Act altogether, and certainly have stalled its full implementation, came to the fore.

The first, and by far the most serious, was that the Ministry of Health had massively underestimated the complexity of establishing the new regulatory regime, and had not advised the Government beforehand that there would be a problem. So, rather than there being just a few weeks away, the reality was that it was not finalised until November 2015 - almost two and a half years later. In the meantime, that delay had led to literally "all hell breaking loose".

This had several aspects. The first was that a certain amount of stockpiling took place of substances about to be withdrawn, and with it, some binge usage. Reports of a surge of presentations to hospital

emergency departments from people using psychoactive substances were both exaggerated and misleading. Where such presentations had occurred they were often from people misusing illicit drugs, who previously would not have come forward for fear of prosecution, now feeling they could come forward and blame their misadventure on legal psychoactive substances. But the longer the interim period dragged on, the worse the noise became, with almost daily horror stories appearing on the evening television news, and public confidence consequently rapidly reducing.

Second, the restriction to R18 stores drew attention to previously unaware citizens that such outlets even existed. In the major cities, this was not a major issue, but in provincial cities and towns the response was rather different. People were horrified to see these hitherto unobtrusive outlets and furtive customers had been replaced by large queues of people lined up outside each morning to buy their drugs. Local government elections due in October 2013 gave every budding Mayoral and Council candidate in rural and provincial New Zealand a ready-made issue to campaign on.

In this environment, rather than the reduction in retail outlets from over 4,000 to around 150 being hailed, the perverse reaction was that were now 150 designated drug selling stores across the country. When these substances were being sold everywhere over the counter, completely unregulated alongside the chewing gum and the newspapers, no-one apparently had noticed, (although that had not been the reaction then) yet now we were seen to be encouraging the sale of drugs in every town across the country, such was the hysteria of the time!

Then, around the start of 2014 the expert committee advising the Ministry of Health on the testing regime reported that the level of animal testing contemplated (rats and mice) was not adequate, and that tests regarding the impact of these substances on the human reproductive system required a higher level of animal testing, in particular lagomorphs. The thought of "cuddly bunnies" being used to test psychoactive substances was simply too much for many people. At the same time, a Parliamentary Committee had been looking at the issue of animal testing more generally from an animal welfare perspective and was moving towards recommending stricter controls.

Through all this upheaval Parliamentary support for the legislation remained largely intact, as it was generally accepted that a total ban on psychoactive substances was impractical and would likely drive the market underground. However, from early 2014, with a General Election looming later in the year, that ground started to shift as well. Government Members of Parliament from rural and provincial areas were coming under increasing pressure from their constituents, and the Opposition was becoming ever tempted to play the populist card of calling for a total ban. So, just before Easter 2014 I therefore proposed to the Prime Minister that we introduce two simple amendments to the Psychoactive Substances Act to remove the interim approvals for the 41 products still on the market, and to ban animal testing of psychoactive substances. This legislation was adopted unanimously by Parliament in early May. The public "noise" died away almost immediately, but the ban on animal testing has meant that the Act has been unable to be implemented and is therefore largely in limbo.

In retrospect, two factors led to this situation. It was a mistake to have had an interim regime for the 41 products. Had they been removed from the shelves immediately like all the others, the public hysteria that built up during the latter part of 2013 and early 2014 would not have occurred to nearly the same extent. But the delay in finalising the regulatory regime, with or without the interim regime was far more critical. Had that been in place by around the end of July 2013 as originally envisaged, the transition would have been smoother.

The Psychoactive Substances Act is due for review during 2018, around the same time as the 1975 Misuse of Drugs Act is also being reviewed. With public attitudes to drug use changing, and the prospect of a referendum on recreational cannabis use in the next year or so, the concept of the

regulated market it introduced still has merit and relevance, despite the difficulties encountered to date.

ROXANA ARGANDOÑA

Coca Grower, Bolivia

My name is Roxana Argandoña. I come from the province of Chapare located in the tropics of Bolivia. My family isn't wealthy and I never completed school because my family couldn't afford it. For decades my family has made its living from growing coca leaf, it has always played a central role in our day to day lives.

Our fight for the coca leaf isn't new, it dates back many, many years. Previous governments have condemned coca and said it had no place in Bolivia, however on an ancestral level, the coca leaf is and always has been an important part of our culture.

Different governments have had different attitudes to the coca leaf during my lifetime. There have been several military efforts to enforce a complete ban on coca production, eradicating by force. Each time it's happened it's led to deadly, violent confrontations. I witnessed them first as a young woman and later on as a mother. Extreme violence, murder, the imprisonment of so many young men from our community, and the abuse of women. This was our day to day reality. Without coca, we had no means of subsistence. We were forced to react, to fight back.

We spent more time in roadblocks and in marches than at home, yet no one listened. The military would fire gas and bullets at us. Lots of people died. Life in the Chapare was horrible! We couldn't even sleep at ease. The military would come into our homes at any time of night, and day. We were constantly being sprayed with gas. We had gas for breakfast, lunch, and dinner. I would never want to relive that or have my children or grandchildren witness what we suffered.

Thankfully, we stopped witnessing these atrocities since 2005 when Evo Morales came to power and changed things. We are now allowed to grow a small plot of coca leaf per family. We can finally live and sleep in peace. We can walk around freely and grow coca leaf and hold meetings without fear of violence or repercussion.

Banks are now for the first time offering loans with low interest to farmers and producers like me. This has enabled us and many families to have money to build our own houses, and get a car.

In the past, women from my village would go to the city to give birth. Three of my children were born in Cochabamba because hospitals in the tropics were ill equipped. I was scared of delivering my babies there. One of my sons died here because of the lack of medical aid. He was stillborn. After that, I didn't want to deliver my children here. However, now that the municipality has experienced a lot of growth, more hospitals are being built and the conditions are improving. My youngest was born in Villa Tunari.

Education has improved tremendously as well. Before we didn't have proper schools. The roofs in the classrooms were made out of mud or straws. Now we have schools. In the past, younger people from the Chapare suffered discrimination, especially at universities. Society didn't want or expect our children to go to university, but we are seeing changes now. Now both men and women are aware of their rights. Our children are attending university and receiving degrees.

Producing coca leaf doesn't lead to violence or instability or to any of the horrors that I've observed in my life. It's government bans and the military approaches used to fight us that has caused me the greatest horror.

DR RITA ANNONI MANGHI

Doctor of Psychiatry, Addiction specialist at a Heroin-Assisted Treatment Clinic, Switzerland

When I started working 25 years ago as a psychiatrist and psychotherapist in the area of addictions, I was filled with apprehension and preconceived ideas. I was afraid of the violence that I believed characterized most patients. I was wary of their state of intoxication that I thought would inhibit any chance of connecting with them. I did not understand the absurd pattern of chronic relapsing and suffering.

I met all kinds of people – some who were imprisoned by silence, others who were interested in reaching out to me. And some who were just busy living with their dependence. All had in common an ability to share their experiences with me, and have thereby shaped the person I am today.

I tried to reach out to them, on their terms, with respect and humility. I could only admire them, as I watched them fight – first for survival, then to learn how to live, thanks to harm reduction measures and opioid substitution treatment – and reflected on the lives they would have liked to have led. To live with a chronic illness that arouses stigma and rejection becomes a daily challenge. Caring for people living with dependence must involve a degree of activism, which aims to change people's perceptions.

I met pharmacists who were the first in the late 1980s to provide sterile needles to limit the virulence of the HIV epidemic. I still recall the heated debates among therapists who were for and those who were against opioid substitution therapy. And I remember the first administrations of methadone in the early 1990s – some even earlier – by the same doctors who were reanimating at least three people a day from overdoses in the Letten park in Zurich. I saw the first patients arrive at the Heroin-Assisted Treatment (HAT) program in Geneva in 1994, pioneers who were so surprised at being provided with legal heroin and associated care, all reimbursed by their health insurance.

I think about Laura*, one of the first to benefit from this program prescribing medical-grade Diacetylmorphine (DAM or heroin) and who, ten years later, helped set up a similar experimental center in Spain. I remember Jacques*, who followed a harm reduction program for people dependent on alcohol, and who told me: "Finally a place where I can say that that I drink, where I am accepted as I am." Twenty-five years later, I talk to Denis*, who is married with two children, and who is living proof of the effectiveness of HAT, which allowed him to build a future and not die of an overdose several years ago.

Programs based on the restricted legal distribution of heroin have saved these individuals' lives. The different programs that treat dependency have allowed us – patients and doctors – to age together, and ensure that they do not live in shame with their dependency but experience it as a chronic illness, with its periods of crisis and remission. This is why today, in 2018, I can talk to them not only about their consumption, but also and most especially about their holidays, their family problems, the jobs they have lost or found, and of their daily joy.

I have come to realize that a one-size-fits-all approach to health care leads patients to hide and not seek help – not to trust us. That abstinence is in no way an end in itself. That consumption, when it is not stigmatized and criminalized, can be approached from an educational point of view in a way that can make it less problematic, perhaps even no longer unpleasant. That what is most important is how each person wishes to lead their life, with or without substances. In this way, as they reach 50-60 years of age, Jacques, Laura, Denis can look back and consider that their lives weren't so bad after all... or at least good enough. That the case of Cyril*, who died at the age of 70 surrounded first by his family then in a hospital setting under palliative care, is not an exception.

* Not real names

MEGAN KEY

Consumer who moved from the illegal to legal market, Colorado, United States of America

I come from a religious family that doesn't really use anything, so I have always hidden my cannabis use from my family. That hasn't changed since Colorado transitioning to a legal market. However, I do feel much more comfortable being open about using with my peers and it seems like most of the adults I know smoke, vaporize or eat cannabis products.

Before marijuana was legal, it was easy enough to get but I didn't talk to anyone about my consumption, particularly since I worked at a church. Even if we were at a party, we would sneak off to smoke pot. With prohibition, I didn't really buy any marijuana, it was my husband who would buy it which was how it was before too. I think being a woman means that you often rely more on men to buy drugs when they are illegal. When I did buy, I was always nervous about the quality, about whether it was being weighed appropriately and also with the dealers since I didn't really know them at first. At one point, we grew pot for our personal consumption, but I was worried about people smelling it or one of my kids telling someone.

When marijuana first became legal in Colorado, we were all so excited and we didn't know the rules at first, so we assumed you could smoke anywhere you could smoke tobacco. Of course, now that we all know the rules, we would be shocked by that because it is not allowed. But at first, we smoked in public places and even the waitresses didn't know the rules yet. Once it became clearer, the social (and legal) norms are firmly in place.

I love the legal market. I have two places where I tend to shop, and I get to pick out which strains work for me. Regulation has meant that I can pick and choose what I want, as an adult. Now I am starting to try CBD with low THC to see whether that works for me. Under prohibition, I would not have had that kind of freedom, or that security. My previous nervousness about buying is completely gone. I would never go back to the illegal market. I prefer this 100 percent because I know what I am getting, and I can get additional information from the people at the dispensary.

Although I am comfortable speaking about my consumption with peers, there is still quite a bit of stigma, particularly because I work at a school in a conservative part of the state. I don't talk about it there, just like I wouldn't talk about any alcohol use either. It is more about avoiding an awkward situation with parents or colleagues. I think the mood is slowly changing though. Now it is worse to smoke tobacco than marijuana. And it appears that the evidence backs this up.

I am still working on how I talk to my 15-year-old son about these issues. It is hard to tell a young person that something has now changed from being illegal to legal because they tend to see the world in black and white. I've been honest about my use with my older son, but I haven't started talking about this with my 9-year-old daughter. How do you explain this? You don't want to lie to your kids. So, I have been telling them to treat it like alcohol. That it is something that adults do and that they have to wait to decide whether they will use when they are older.

Regulation has made having the conversations easier, but it is still complex. I think there will be a generational shift in the next years that will help us to have these conversations. I am very grateful that I now have full control over what, how and when I consume because of a legal, regulated market. Adults should be provided the opportunity to make their own decisions, even if the conversations with young people continue to be a process.

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ADDITIONAL RESOURCES

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www.beckleyfoundation.org
www.countthecosts.org
www.druglawreform.info
www.drugpolicy.org
www.genevaplatform.ch
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www.hri.global
www.hrw.org
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www.idpc.net
www.inpud.net
www.incb.org
www.menahra.org
www.ohchr.org/EN/HRBodies/HRC/Pages/WorldDrugProblem.aspx
www.talkingdrugs.org
www.tdpf.org.uk
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GLOBAL COMMISSION ON DRUG POLICY

The purpose of the Global Commission on Drug Policy is to bring to the international level an informed, science based discussion about humane and effective ways to reduce the harm caused by drugs and drug control policies to people and societies.

GOALS

- Review the base assumptions, effectiveness and consequences of the punitive drug policies
- Evaluate the risks and benefits of different national responses to the drug problem
- Develop actionable, evidence-based recommendations for constructive legal and policy reform.