CHALLENGES FOR A WORLD WHERE DRUGS ARE LEGALLY REGULATED

A consultation held by St George's House and Transform Drug Policy Foundation

TRANSFORM
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INTRODUCTION

In September 2019, Transform Drug Policy Foundation and St George's House convened a meeting of international experts on drug policy to discuss a scenario that many people feel may be edging closer to realisation: a world in which currently illicit drugs are legally regulated. This event provided an opportunity to discuss candidly the challenges and opportunities of this potential reality. Transform is a leading global advocate for the legal regulation of drugs. However, the participants came from a range of backgrounds and brought different views on the question of drug policy reform. Participation did not imply, or require, agreement on the principle of legal regulation and the input of participants reflected this.

There was agreement that the so-called 'War on Drugs' has been waged at a high price in terms of fuelling crime and violence, drug-related health harms and deaths, undermining of institutions through corruption, and the exploitation and abuse of some of the world's most vulnerable communities. This reflects wider shifts in attitudes towards drug policy. Global consensus on the goal of achieving 'drug free society' through the criminalisation of production, supply and possession has decisively fractured, with a growing number of jurisdictions experimenting with both the decriminalisation of possession, and more recently, the legal regulation of cannabis supply (including Canada, Uruguay, Mexico, and 11 US states, including California). Bolivia has also regulated the production of coca.

This consultation sought to grasp that moment and imagine a scenario where the legal regulation of drugs became a more global reality, for different drugs in different regions. The intention was not to anticipate the circumstances through which regulated markets might come to pass, or to rehearse well-trodden arguments for or against prohibition, but rather to imagine what consequences such an eventuality might have for everybody involved in, or impacted by, the global drugs market. It was an opportunity to envision that possible world, and for participants to freely and candidly discuss their responses.

This report summarises the discussions held over the two days of consultation and draws out consensus conclusions which we hope will be useful to advocates, policymakers, researchers and other parties interested in navigating a way forward. It was drafted by the independent rapporteur, Peder Clark, with editorial input from Transform Drug Policy Foundation.

Taking the points of consensus together, we propose seven principles as emerging from the discussion. Rather than focusing on what drug policy should be, these set out some key values on which reform should be based.

STRUCTURE OF THE REPORT

The consultation was divided into four sessions, each of which was initiated by short, themed presentations. The structure of this report reflects the main topics of discussion at the consultation. The first section deals with the geopolitics of drug control. The second envisages how political, economic and other forms of power might be handled in a transition to new regulatory environments. The third section looks at how those currently involved in drug production and supply might respond to change. The final section discusses the potential public health consequences of a legally regulated market. The report concludes with some general principles that emerged from the discussions and which, we hope, capture the key ideas on which there was agreement.

KEY PRINCIPLES OF DRUG POLICY REFORM

Drug policy reform is a means, not an end.

It should be directed towards creating a fairer and more equitable society, as well as reducing risk and harm. Drug policy reformers should be able to express how their goals help actualise their values.

Drug policy operates as part of a complex political and economic system.

Drug policy should be analysed from a system-wide perspective, not in isolation. In particular, we should consider the underlying drivers of social inequality and seek to understand how drug policy interacts with those drivers.

Drug policy is a multidimensional issue.

Prohibition amplifies the criminal justice dimension, but forward-looking drug policy should adopt an interdisciplinary approach that addresses wider issues such as health protection, economic development, sustainability and so forth.

Reformed drug policies must establish means by which communities that have historically been most damaged by prohibition can engage in new markets.

The rights of impacted communities should be protected. They should be given full scope to develop their economic agency, and have a meaningful role in policy development.

Drug policy reform should recognise, and reflect, the specific needs, challenges and aspirations of the communities that are seeking change.

This is especially the case in countries where the establishment of basic human rights and economic security is a priority, and where the potential for economic exploitation is highest.

Mitigating the risks of corporate capture should be a priority in drug policy development.

The drug policy field needs to establish clear positions on industry engagement and the risks of vested interests becoming involved in policy design, research and the activities of civil society groups.

Drug policy reform needs to incorporate the development of clear outcome indicators and measures of success.

These should both guide policy development and be applied in the evaluation of reform as it happens. Outcome indicators should consider benefits as well as harms.

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THE GEOPOLITICS OF DRUG CONTROL AND REGULATION

It was acknowledged that under the current regime, the production, supply and consumption of drugs is predominantly – although not exclusively – characterised by exploitation, stigmatisation and the undermining of basic human rights perpetuated by both organised crime groups in control of the market and state actors attempting to enforce prohibition. This violence and suffering is especially severe in low- and middle-income countries. However, while it was generally recognised that drug policy reform was necessary to tackle these problems, it was unclear which of these inequalities drug prohibition created, which it exacerbated, and which it merely provided an alibi for. For instance, crackdowns in countries such as the Philippines can also be viewed as attacks on marginal populations, for which the 'war on drugs' merely provides an excuse. Similarly, cannabis laws in the USA historically often functioned as the justification for racial injustices that may well have been pursued by other means in different circumstances. It was agreed that, insofar as legal regulation could reduce or remove these mechanisms for stigmatising marginal populations, it could significantly reduce inequalities; but it was also recognised that stigmatisation and scapegoating would by no means be eradicated.

In this sense, existing inequalities may 'boomerang' in a regulated market: that is, the stigmatisation, economic inequalities and social exclusion that characterises current drug policy may re-emerge in new forms under regulation. For example, coca-growing farmers in South America are not inevitably guaranteed a fairer economic deal under a regulated market if powerful corporate actors come to dominate production. From a farmer's perspective exploitation by multinational business may feel little better than exploitation by organised crime – and we have recently seen the negative impact of multinational corporations on local farmers in a number of legalised cannabis-producing regions. Therefore, our thinking around legal regulation must address key sustainable development issues, including the economic needs of farming communities and the specific risks posed by the expansion of multinational producers from the global north into the south – including the potential transfer of cultivation away from traditional regions altogether.

It was noted that the criminalisation of drugs means people who use them often emerge as scapegoats for wider, and deeper, social problems. People who use drugs, especially if dependent and / or poor, are routinely stigmatised – but often for reasons other than their drug use alone. People who use drugs also function as scapegoats in that they are either blamed for causing wider social problems, or in that attacks on them serve to divert attention from the root causes of those issues. Condemning illegal drug use is convenient, whereas addressing structural inequalities that lead to the poverty or despair that underpins much problematic drug use is not.

These observations stimulated a discussion of how we place drug policy in the wider social and economic context and ensure reform is grounded in an analysis of the complex political and economic systems in which drug policy operates. It

was recognised that prohibition creates widespread social injustices, but it does so through its impact on broader social and economic systems not in isolation from them. It is critical, therefore, to understand the role of drug policy within the wider set of social relations – and to consider where it amplifies those problems, where it creates them, and where it has the potential to alleviate them.

Regulation is not a silver bullet. Ending prohibition does not end economic, racial and gender inequalities, nor would it remove all the corruption, violence or health harms associated with drugs – even if it were to significantly reduce them. New frameworks need to address the root causes of the social inequalities that are manifest under current drug policy. Attention needs to be paid to these broader and deeper social challenges as well as the regulatory landscape. Consequently, drug policy should be grounded in clear values and principles. It should not be viewed as an end in itself, but as a means to creating a more equitable society that respects human rights, promotes social justice and reduces health harms. This raises a plethora of practical questions regarding any future international regulatory framework. For example, would it be possible to establish protected status and regions of origin for currently controlled crops? How could we best prevent patent or intellectual property law being used to exploit traditional growers? How might existing international bodies such as the EU, World Trade Organisation or World Health Organisation play a role in ensuring adherence to international standards? The need for careful monitoring of markets was also noted, not only to understand the scale of the trade but also to assess the economic and health impacts across populations.

It was agreed that the legal regulation of drugs has transnational implications, and that these mirror the kinds of considerations needed in establishing trade agreements generally. As for all trade agreements, fairness and equality is not an inevitable consequence; rather it requires regulations that proactively protect vulnerable communities and traditional producers. Ending prohibition also means

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establishing political and economic systems that protect those who, while suffering enormously under current drug laws, stand to lose out if their rights are not defended in the new environment. The move towards regulation may provide an opportunity to do things differently and better, but there are no guarantees this will happen when significant institutional forces are ranged against such an outcome.

The discussions also drew attention to the interdisciplinary nature of drug policy. Prohibition vastly emphasises the legal and criminal dimensions of drug issues, but these are not the ones that take centre stage in a regulated market. Therefore, drug policy debates need to draw on expertise from a wide range of fields: public health, international development, human rights, economics, law, politics and so forth. Currently, the debate on drug control tends to operate in silos, both at a macro level in terms of government departments, but also at the micro level of academic disciplines. Such separation does not reflect the complex nature of drug production supply and use in the real world. Furthermore, much of the political discourse on drugs has little to do with how, practically, to reduce social and health harms; rather, it provides the opportunity for pre-existing political, economic, epistemological or moral positions to be expressed. Taking a step back and reflecting on common issues across disciplines is, therefore, an important step in constructing a way forward.

MANAGING THE TRANSFER OF POWER

In this session, discussion centred on two major issues that have become apparent following the legalisation of cannabis, especially in North America. Firstly, how, in a regulated environment, should the political and economic power of corporate interests be managed? Secondly, how can the needs of communities disproportionately affected by drug prohibition be protected? Here, participants considered what can be learnt from the alcohol industry's record of seeking to shape the regulatory landscape. Alcohol companies have a long history of influencing policy through both 'hard' and 'soft' lobbying, framing the way in which harms are discussed (for example, as an issue of personal, not corporate responsibility), establishing and defending often ineffective systems of industry self-regulation, setting up 'corporate social responsibility' arms, and developing civil society partnerships. Recent developments in the cannabis market demonstrate how quickly corporate influence can emerge, and how similar approaches to policy influence are being used – especially as alcohol and tobacco companies start to invest in the cannabis market.

One critical problem is how to develop frameworks that promote social equity and racial justice as new economic players enter the market. Non-white communities have, for decades, been disproportionately impacted by drug policy. In America, the mass incarceration of young black men has been driven, to a significant degree, by the criminalisation of cannabis and other drugs. As the market becomes legal, states need to address both the damaging legacy of this (through, for instance, the expungement of prior convictions) and the risk that the new, legal markets will exclude people from those communities. Addressing this involves not only ensuring the meaningful participation of impacted communities in newly legal markets, but in the policy-making process itself.

Participants heard how the State of Massachusetts has established regulatory frameworks that promote equity and racial justice by actively promoting participation in the new cannabis industry among people from communities disproportionately impacted by prohibition. This is achieved through targeting training and support, the establishment of a licensing structure that both allows and incentivises people from poorer backgrounds to enter the market (through affordable fees and licensing prioritisation), and the prevention of monopolies through limits on the number of licences that can be held. Some other states have introduced comparable social equity measures. For instance, California has a scheme for expunging prior criminal records; Ohio has sought to introduce quotas for the number of licences held by people from minority communities; and Oklahoma has created 'low-threshold' licensing schemes to ensure people from poorer backgrounds have access.

It was recognised that there is a clear tension between the goal of using regulation to promote social inclusion and the interests of large producers who seek minimal regulatory constraints, low tax burdens, protection against competition, and the maximisation of the profits. It was recognised that there is a unique opportunity, at this early stage, to develop good practice in a system where everyone involved – from regulators to producers – is working from a regulatory blank state. Getting this right, however, is a considerable challenge and it is essential that we monitor closely progress across jurisdictions that have legalised cannabis so that policy learning can be effectively applied.

We also need to recognise the fact that, in any regulatory structure, significant power is afforded to those who can best find their way around the system – which means, in many cases, those who can afford the best lawyers and

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accountants. For regulators, especially in local licensing environments, often the biggest fear is being sued – which can have a chilling effect on the willingness to go up against powerful interests. Regulatory systems, by their nature, are complex and tend to have loopholes that can be breached or manipulated. As the legal market grows, so does the need for capacity building among all stakeholders so that they are able to both design and navigate licensing systems effectively. New regulatory frameworks should not be static; rather they should be flexible, carefully evaluated, and responsive to evolving circumstances and lessons learnt.

Participants not only considered how licensing regimes might actively protect against the power of large corporations, but also the extent to which corporate power should be viewed as a threat to good policy. It was agreed that opposition to corporate influence needed to be based on more than a simple assertion that profit seeking was inherently problematic. Rather, the specific risks to public health, or social justice, or political ethics needed to be articulated and addressed.

The question of how drug policy actors should engage with the emerging and increasing powerful, cannabis industries was the subject of much discussion. Most, though not all, participants expressed serious concern about the increasing influence of corporate actors in the drug policy environment. Most recognised the need for rules and protocols to be developed that could guide relationships between researchers, advocates and industry – and it was acknowledged that much work had been done on this issue in the tobacco and alcohol fields, which could provide helpful guidance. The precise nature of such protocols was beyond the scope of the meeting, but the urgent need for their development was agreed.

Participants also recognised that discussions on the impact of regulatory regimes needed to recognise that the options for control are not the same in all countries. More developed economies often have much greater scope for regulatory innovation than those in lower-income regions. Effective regulation depends on the ability of governments to implement and enforce the law. However, very many of the countries significantly involved in drug production or transit are characterised by weak governance, high levels of corruption and a porous boundary between licit and illicit actors. Although it is well understood that drug prohibition can exacerbate corruption and undermine the rule of law, we have to recognise that legal regulation would create new administrative burdens that many countries are not currently well-equipped to deal with. Weak legislative design, poor implementation and inconsistency across borders has the potential to allow agile multinational actors opportunities to exploit such weaknesses as well as creating new opportunities for corruption. Participants agreed on the responsibility to recognise the needs, challenges and aspirations of different countries, especially those most disastrously affected by drug prohibition, as they move towards effective drug policy alternatives.

WHAT IS THE FUTURE FOR THOSE INVOLVED IN ILLICIT DRUG ECONOMIES?

A regulated drug market would, in principle, largely remove organised crime from the supply chain. This session discussed the degree to which we might expect such a shift to occur, how organised crime networks might respond to the challenge, and what policy questions this raised.

Illicit drug economies are dominated by transnational crime networks, which have adapted to, and are adept at, exploiting mechanics of globalisation. Many have structures and systems that closely parallel legal multinational businesses. Organised crime groups are motivated both to maximise influence within their territory and to mobilise through strategic associations. The diversity of these activities predicts the extent of this networking: groups that are involved in drug trafficking and are strongly networked will most likely be involved in interrelated activities such as human trafficking.

It is, therefore, important not to isolate the activities of organised crime networks to just one area, but to take account of where particular activities fit within a larger system. This also makes it difficult to predict the precise impact of legal regulation on such networks. We can be confident that legal regulation would help reduce one of the primary routes by which people enter crime networks. We may also expect it to disrupt networks, but to what extent? Would organised crime networks move into legitimate supply, or diversify into alternative illicit activities?

Under legal regulation organised crime networks are likely to shift their resources

into other areas (though a proportion of both the alcohol and tobacco trade remains illicit, so regulation should not be expected to entirely close that market). Diversification might in itself involve licit and illicit activities: crime networks already invest in providing financial resources for nominally legitimate actors such as politicians or football clubs. The ability of organised crime to diversify into myriad other areas is not, it was agreed, an argument for leaving drug supply unregulated. Rather, it is a reminder of the need to recognise that drug policy impacts on wider systems rather than constituting the system itself. Effective drug policy would not to remove organised crime from society, but it should significantly reduce the opportunity for organised crime networks to develop, create profit, and maintain structures of exploitation.

By way of considering a real-world model of alternative regulation, participants discussed the Bolivian system of regulated coca production. The legal regulation of coca production in Bolivia followed years of conflict arising from forced eradication activities, which created enormous hardship in already poverty-stricken coca-growing regions. Since 2004, however, registered coca farmers have been allowed to legally cultivate a limited crop to ensure a minimum income for all registered growers. This has allowed a degree of crop diversification, since farmers are assured an income from their coca. Legalising and regulating coca cultivation has not encouraged trafficking, and most coca grown for the illicit market is produced elsewhere.

Bolivia, of course, represents a distinct example in which coca occupies a very specific cultural space. However, it remains a unique demonstration of how a functioning system of legal production can be established to the benefit of both producers and wider society. It is also an example of drug policy developed with the interests of the most marginal communities in mind, as well as an illustration of the scope countries have to move beyond the strictures of the existing international treaties.

How, practically and politically, the Bolivian model might be adopted in other coca-growing regions (or areas that cultivate other controlled drugs) is a key question – not least as one of the principles of the Bolivian system is that policy should reflect local conditions. Once again this raised the question of how smoothly drug policy innovation can be transferred across jurisdictions. While overarching principles of fairness, equality, and the protection of human rights should inform all drug policy development, the political and economic context of any given country constrains what is practical in the short term, shapes the sequencing of reform, and should determine the way policy is designed.

THE PUBLIC HEALTH IMPLICATIONS OF A REGULATED MARKET

In the final session of the meeting, participants looked at the implications of a regulated drug market from a public health perspective. What challenges and potential health risks may arise, and how should they be assessed and mitigated? What opportunities for better health promotion does regulation create, and how can they be established? These challenges and opportunities are,

of course, different for various substances: the public health risks of cannabis, MDMA, heroin, cocaine or LSD are distinct, and proposed models of regulation need to reflect this.

In approaching these challenges, three key questions were proposed:

- What are the current industrial and market-related vectors of substance-related harm, and how they might be affected by regulation?

- How do we evaluate the public health outcomes of drug policy, and what does success look like?

- In what ways would a new policy landscape have implications for how we embed public health across different policy domains?

It was, once again, noted that the fundamental drivers of public health outcomes are usually social and economic. The risks of any behaviour are mediated by poverty, and the risk of substance use disorders is closely related to other factors such as adverse childhood experiences. In this respect, as with questions of social justice, the legal status of drugs is important in regard to whether, and by how much, those associated risks and harms are amplified or reduced. Nevertheless, from a public health perspective regulation could also have specific, and critically important, impacts. It could, most crucially, significantly reduce risks related to toxicity. Differing (and often highly unpredictable) levels of strength is a major issue for consumers of drugs, as is illustrated by the recent spike in MDMA overdoses and opiate-related deaths. Legal regulation would mean that, as is currently the case for alcohol, formulation could be standardised and strength clearly identified. It would also allow for packaging that provided clear content information, and health information including warnings where appropriate.

At the same time, as with drugs such as alcohol, legal markets are characterised by the need for suppliers to expand and sustain a consumer base. Alcohol and tobacco markets demonstrate clearly that, given the opportunity, business interests will seek to maximise profits by increasing use - with heavy, high risk use being particularly profitable. Regulation, therefore, means not just allowing legal supply, but putting the necessary constraints in place (such as controls on price, availability and marketing) to control market exploitation that impacts negatively on public health.

In order to assess and monitor public health impacts under legal regulation a clear framework of health and social outcomes needs to be developed. Identifying potential harms may be relatively simple, building on existing indicators such as those used by the European Monitoring Centre for Drugs and Drug Addiction; however, measuring and quantifying potential benefits would require substantial new thinking. The tendency in public health monitoring of substance use is to look almost exclusively at health harms, but a comprehensive analysis would need to go further. It should also, however, consider the social and personal benefits of use (which are very often overlooked in the monitoring of other substances, such as alcohol). Furthermore, as is increasingly the case in innovative impact measurement, evaluation should consider the potential unintended outcomes of regulations (such as, for example, the risk of economic exclusion within affected communities discussed above).

Public health policy on drug use has to be placed in the wider context of the social and economic determinants of health. Drug consumption occurs in social contexts, and the harms associated with consumption will always be significantly determined by inequality (not just economic, but also around gender, race and other key social factors). Rather than focusing on the rights and wrongs of substance use, policy should focus on addressing the social determinants of health and embedding a public health approach across our response to all substance-related harms.

CONCLUSIONS AND CONSENSUS

Discussions over the two days of this consultation were wide-ranging and detailed. There remained key divergences on how reform should be pursued, and on the risks and benefits of legal regulation as distinct from alternatives that stopped short of full legal incorporation. There was, however, a high degree of consensus on the fundamental values that should underpin reform. In the final discussion, we sought to capture these points of consensus by asking groups to complete the following statement:

If you are going to regulate drugs, then make sure you…
This produced a range of responses which both captured many of the key principles that had been addressed in the preceding discussions. They are presented here in full.

IF YOU ARE GOING TO REGULATE DRUGS, MAKE SURE YOU...

Identify priorities

Establish indicators

Establish a monitoring and evaluation framework

Include flexibility and review
Consider sequencing and increments of phased change

Ensure integration with wider policy and institutions

Understand the world and context in which you deliver it

Understand the introduction of regulation may change the world in which it is delivered

Think of regions and collaborations

Consider and assess divergent priorities

Remember regulation exists at multiple levels of governance

Embed monitoring and evaluation and assess at different levels

Map the systems that will be affected by regulation

Include sunset clauses

Be aware of implications on e.g. free trade

Retain what already works

Understand prioritisation objectives

Ensure a well-resourced infrastructure

"Don't integrate into a burning house"

Be sure that corporate harms don't outweigh prohibition harms

Don't let the cannabis model dominate

Ensure long-term planning

Address intellectual property issues

Map out possible negative unintended consequences

Don't over-medicalise the system

Accept that an illegal market will exist

Don't redirect harsh measures towards the illegal market actors

Ensure non-discrimination

Ensure meaningful involvement of affected communities

Respect and protect human rights

Be led by a desire to reduce inequalities

Make reparations for harms under prohibition

Incorporate gender equity

Don't ignore social ills beyond drugs

Assess continued stigma

Don't ignore pleasure as a motivation for drug consumption

Support and retrain people in the illicit trade

Expunge prior criminal records for drug-related offences

Adequately consider the impact of corporate capture

Don't forget harm reduction

Educate the health workforce

Invest tax revenue in health and social services

Focus governance and resources towards addressing the global pain epidemic (imbalance between North and South)

Do no harm

Make corporations pay taxes

Prevent corporate capture

Make it culturally / locally sensitive – not one-size-fits-all

Focus on vulnerability and marginalisation

Don't repeat mistakes from 'legal' regime of access to controlled medications

Legislate against corporate capture

Redesign the international drug control system

Avoid drug 'exceptionalism'

KEY PRINCIPLES

Imagining the scenario of a world in which drugs are legally regulated gave us an opportunity to think through many of the issues that might impact on the production, supply and consumption of drugs in this new environment. While there was debate and disagreement on some points, there was also considerable consensus on a number of key issues. These can, tentatively, be set out as a series of key principles.

Drug policy reform is a means, not an end.

It should be directed towards creating a fairer and more equitable society, as well as reducing risk and harm. Drug policy reformers should be able to express how their goals help actualise their values.

Drug policy operates as part of a complex political and economic system.

Drug policy should be analysed from a system-wide perspective, not in isolation. In particular, we should consider the underlying drivers of social inequality and seek to understand how drug policy interacts with those drivers.

Drug policy is a multidimensional issue.

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These should both guide policy development and be applied in the evaluation of reform as it happens. Outcome indicators should consider benefits as well as harms

PARTICIPANTS

Participants engaged in these discussions under the Chatham House Rule. While this report seeks to capture the broad focus of the conversation, it does not set out specific contributions in detail. The overall consensus described here is our best attempt to capture those areas where views were broadly shared. It does not represent, or fully describe, the specific views of individual participants and should not be read as such.

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