

Ending the war on drugs

How to win
the global
drug policy debate



TRANSFORM
Getting drugs under control

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Transform Drug Policy Foundation

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Transform Drug Policy Foundation is an international, charitable think tank with staff in the UK and Mexico. We are working to get drugs under control by advocating for strict regulation of all aspects of the drug trade. We aim to equip policy makers and reform advocates with the tools they need to fundamentally change our current approach to drugs and create a healthier, safer world.

Transform emerged in response to the increasingly apparent failings of current national and international drug policy. We draw attention to the fact that drug prohibition itself is the major cause of drug-related harm to individuals, communities and nations, and should be replaced by effective, just and humane government control and regulation. We provide evidence based critiques of the war on drugs, new thinking on alternatives to the current enforcement-oriented regime of prohibition, and expertise on how to argue for reform. In addition to working with a broad range of media, civil society and professional groups globally, we advise national governments and multilateral organisations, including the Organization of American States, and we hold special consultative status with the United Nations Economic and Social Council. Transform Drug Policy Foundation is a UK-registered charity (# 1100518) and limited company (# 4862177).

Our Vision

An end to the war on drugs, and the establishment of effective and humane systems of drug regulation.

Our Mission

We will play a key role in supporting countries forming a coalition calling for drug law reform on the international stage.

México Unido Contra la Delincuencia

15 years building citizenship, safety, legality and justice

México Unido Contra la Delincuencia (Mexico United Against Crime – MUCD) is a non-profit, non-partisan, secular civil association. Since 1997, the organisation has worked for the construction of an effective citizenship in favour of safety, legality and justice. Born of a citizens» initiative convened by Ms. Josefina Ricaño Nava, the original purpose of the organisation was to look for new ways of organising social efforts to reverse insecurity, and to not remain inactive in the face of increasing degradation of the living environment in the country.

Throughout our more than 15 years of experience in the field of security, MUCD has provided support to tens of thousands of victims, collaborated with local, state and national governments, and advised multilateral agencies. Similarly, we have established the country»s largest programme on the culture of legality, and most recently we have become one of the leading organisations in drug policy reform at the national, regional and international levels.



Our Vision

Having a society that can live and progress in safety and tranquility, within a legal framework where the rule of law prevails, with committed Mexican citizens aware of their social responsibility to demand that authorities and institutions comply with the law, and become professional, honest and effective in the areas of security and justice.

Our Mission

To unite our society, and provide a link to the authorities to join forces in pursuit of safety, legality and justice.

Contents

Introduction 15

- About this guide
- How this book is structured

Section 1

The basics 21

- What are prohibition and the war on drugs?
- Why has this failed policy been so resilient?
- Momentum is building. Change is beginning

Section 2

Audiences, language, framing and messaging 33

- Identifying your audience
- Morals, ethics and values
- Types of audience

Section 3

Establishing common ground as the basis for engagement and debate 39

Six key aims of drug policy. We all want to:

- Protect and improve public health
- Reduce drug related crime, corruption and violence
- Improve security and development
- Protect the young and vulnerable
- Protect human rights
- Base policy on evidence of what works and provides good value for money

Section 4

Critiquing the war on drugs 53

- The failure of the war on drugs on its own terms
- Counting the costs of the war on drugs
 - Threatening public health, spreading disease and death
 - Undermining development and security, fuelling conflict
 - Creating crime and enriching criminals
 - Undermining human rights
 - Promoting stigma and discrimination

- Wasting billions, undermining economies
- Causing deforestation and pollution

Section 5

The benefits of ending the war on drugs 69

- Talking about the benefits of ending the war on drugs
- Reducing, mitigating or eliminating the costs of the war on drugs
- Opportunities created by ending the war on drugs
- Winners and losers
- Potential costs of reform?

Section 6

Cutting through drug-war propaganda and arguments 75

- Localised success
- Short-term localised success
- Process success
- Success on completely meaningless measures
- Success, but only compared with previous disaster

Section 7

How to talk about alternatives? 81

- Claim the middle ground
- How can we regulate?
- Options for regulating different drugs

Section 8

Talking about... particular drugs, and rights and freedoms 91

- Talking about... alcohol and tobacco
- Talking about... cannabis
- Talking about... coca/cocaine/crack
- Talking about... heroin
- Talking about... rights and freedoms

Section 9

Responding to concerns about moves towards legal regulation

123

- Will use rise?
- Who will protect the children?
- Will profit-motivated multinationals take control from the cartels?
- Morals and messages
- What will organised crime do instead?
- What would we do when bad things happen?
- How do we get there?
- Don't the UN treaties mean reform is impossible?
- Can reform take place without the US joining?
- State institutions are not strong enough to regulate drugs

Section 10

Summarising the arguments, further reading and resources

155

- Concise summaries of the key arguments for and against reform
- References and other key resources

Introduction

About this guide

This is a guide to making the case for drug policy and law reform from a position of confidence and authority. It is for every policy maker, media commentator and campaigner who not only recognises that the so-called ‘war on drugs’ is a counterproductive failure, but also wants to convince others to support reform.

With this book you will be able to:

- Reframe the debate, moving it away from polarised positions and putting it squarely in the arena of rational, evidence-based policy thinking
- Provide the framework and language to challenge entrenched 'drug war' policy positions with confidence and clarity
- Put forward the case for alternative policies, including legally regulated drug markets
- Use all the facts and analysis you need to support this pragmatic policy position
- Speak with moral authority in a debating situation

The book will equip you with the constructive arguments, different approaches and nuanced messaging needed to address the concerns and interests of diverse audiences, including the public, members of the media, policy makers, NGOs, political or legal institutions, and other groups. It will enable you to not just win the argument, but to make the new allies needed to turn the current unparalleled support for reform into concrete policy change nationally and internationally.

Building on existing literature, this book provides a critique of the drug war and explores various alternative approaches to drug policy, such as the decriminalisation of personal drug possession and use, and reforms to drug law enforcement that can be made while prohibition is still in place.

However, it is important to recognise that the most far-reaching policy approach, the legal regulation of drugs, has now moved decisively into the mainstream of political and public debate. This shift has been driven by a desire to reduce a range of harms that less fundamental reforms cannot address.

In 2013, Uruguay, along with two US states, Washington and Colorado, took the decision to legalise and regulate cannabis, becoming the first places in the world ever to do so. In the same year, the Organization of American States became the first ever inter-governmental body to seriously consider legal regulation as an option for reform,¹ while in 2014, a report by the Global Commission on Drug Policy – whose members include former UN Secretary-General Kofi Annan and seven former heads of state – made a range of far-reaching recommendations, the most notable of which was: "get drugs under control through responsible legal regulation." Since then, the US states of Oregon and Alaska, as well as the nation's capital, Washington, D. C., joined the list of places that have passed legislation to establish legally regulated cannabis markets.

1 Organization of American States (2013) **The Drug Problem in the Americas: Analytical and Scenario Reports.** http://www.cicad.oas.org/Main/Template.asp?File=/Main/policy/default_ENG.asp 7

As these real-world reforms and high-profile calls for change demonstrate, there is now a growing recognition that the war on drugs is a counterproductive failure and that alternative approaches should be explored. So it is all the more vital that those advocating for change have the tools to engage in the debate in a positive, coherent and meaningful way. Given that legal regulation has only relatively recently become a mainstream issue, there is currently little relevant literature available to inform this debate. This book aims to fill this gap in particular.

Ending the war on drugs: How to win the global drug policy debate is a unique resource. It is the product of Transform's extensive experience of campaigning for drug policy reform, and builds on our previous publications **Tools for the Debate** and **After the War on Drugs: Blueprint for Regulation**. The book has also benefitted from the expertise of our partner organisation, Mexico Unido Contra la Delincuencia (MUCD), and the invaluable peer review and support from many other groups and experts (see [Acknowledgements](#), p. 174).

How this book is structured

This book will lead you through a series of steps to understand, develop and deliver the arguments for reform that are most appropriate for your audience and setting.

— **Section 1 – The basics**

Explains prohibition, the reasons why has it lasted so long, and the main differences of opinion between reformers and prohibitionists.

— **Section 2 – Audiences, language, framing and messaging**

Helps you to identify who your audience is, and to develop and tailor messaging and language for constructive engagement with them.

— **Section 3 – Establishing common ground as a basis for engagement and debate**

Explains how you find common ground with your audiences as the basis for constructive debate.

— **Section 4 – Critiquing the war on drugs**

Explains how to deliver a concise critique of the failings of the drug war.

— **Section 5 – The benefits of ending the war on drugs**

Shows how to deliver an inspiring vision of the benefits of a post-drug war world.

— **Section 6 – Cutting through drug warrior propaganda and arguments**

Outlines how statistics and processes are misused to give the impression that the current approach works.

— **Section 7 – How to talk about alternatives?**

Gives you the tools to describe the alternatives to prohibition, with a particular focus on regulation.

— **Section 8 – Talking about...particular drugs, rights and freedoms**

Explores how to approach key issues, including alcohol, tobacco, cannabis, and coca-based drugs, as well as the issue of rights and freedoms.

— **Section 9 – Responding to key concerns about ending the war on drugs**

Equips you to reassure your audience about a wide range of common concerns that may have prevented them from supporting reform.

— **Section 10 – Summary of the arguments, and further reading and resources**

Provides concise summaries of the key arguments for and against reform, and suggests various sources for further reading.

The basics

What are prohibition and the war on drugs?

Any activity or product can in theory be prohibited by law, and drugs are no different. The current prohibition on drugs was established in international law by the 1961, 1971, and 1988 United Nations drug treaties, and has since been incorporated into the domestic laws of over 150 countries. It mandates criminal sanctions for the production, supply and possession/use of a range of psychoactive substances, although the penalties vary widely between countries.

The stated aim of drug prohibition is to reduce the production, supply and use of certain drugs to ultimately create a 'drug-free society'. As the 1998 United Nations Drug Control Programme once put it: **A Drug Free World: We Can Do It!** It hardly needs saying that such a world has not been achieved: globally, drug use has steadily increased over the last 50 years. But what is more, drug prohibition has had an impact far worse than anyone could have imagined. The unregulated, criminally controlled drugs trade has expanded to become one of the largest commodity markets on Earth, bringing with it disastrous costs. The widespread criminalisation and punishment of people who use drugs also means that the war on drugs is, to a significant degree, a war on drug users – a war on people.

Drug prohibition has its origins in the US temperance movement of the 19th and early 20th centuries. The movement ultimately led to the prohibition of alcohol, which lasted from 1920 to 1933. This experiment failed in dramatic style, and is widely considered to have been repealed because it was expensive, counterproductive, threatened public health and generated high levels of crime. As a result, using the term 'prohibition' to describe current drug policy can, as well as being technically accurate, be a useful way to highlight how and why the harms it is causing are similar to those caused by the US's catastrophic experiment with alcohol prohibition.

Following the failure of alcohol prohibition, the groups that had been in conflict over the issue – whether Puritans, Americans of German, Italian and Irish descent, or US government agencies – were able to reconcile some of their differences by agreeing that the 'foreign' substances consumed by some racial minorities were different in some crucial way and therefore unacceptable. This engendered overtly racist attitudes and actions towards Chinese opium-smokers, cocaine-using African Americans, and cannabis-smoking Mexicans. These groups, and the drugs they were associated with, were scapegoated as the cause of many social ills, in much the same way that drug-using counterculture 'hippies' later were in the 1960s.²

Then, in 1971, President Richard Nixon decided, for domestic political gain, to rebrand the policy of prohibition as a 'war on drugs', one of many military metaphors later employed by successive US governments. This served to fuel a perception that drugs, and those involved in their production, supply and use, were enemies of the US, legitimising the use of extreme measures that would otherwise have been unacceptable.

Despite, or more accurately *because of*, this prohibitionist approach, today's drug problems now closely mirror the problems caused by

2 Jay, M. (2011) *Emperors of Dreams: Drugs in the 19th Century*, Dedalus, pp. 196–207.

alcohol prohibition, except that they encompass many more drugs, and a vastly larger – in fact, global – illegal market. The creation of this market has had disastrous unintended consequences, as identified by the UN Office on Drugs and Crime.

The war on drugs is, to a significant degree, a war on people

The UN Office on Drugs and Crime, the agency that maintains and oversees global drug prohibition, has identified five negative ‘unintended consequences’ of current international policy³:

1. The creation of a huge ‘criminal black market’, along with all its attendant problems
2. ‘Policy displacement’, through which scarce resources are redirected from health to law enforcement
3. The ‘balloon effect’, whereby, rather than eliminating drug production, transit and supply, enforcement measures just shift it somewhere else
4. ‘Substance displacement’, whereby, rather than eliminating drug use, enforcement measures just cause users to consume other substances
5. Stigmatisation and discrimination, which prevents drug users accessing treatment and support

3 UNODC (2008) **World Drug Report 2008**, Chapter 2.5. www.unodc.org/unodc/en/data-and-analysis/WDR-2008.html

This was an inevitable outcome. Basic economic theory dictates that prohibiting a substance for which there remains a high demand, whether alcohol or any other drug, will simply push up prices and generate far greater profit margins, thereby creating a huge financial incentive for criminals to become involved in the trade. This fuels the same kinds of illicit markets with the same kinds of problems.

It is important to understand the distinction between drug prohibition, which puts an absolute ban on the production, supply and use of certain substances for non-scientific or non-medical use, and regulated drug markets, in which some activities are legal and some remain prohibited, such as sales to minors and purchases not made via licensed outlets. Prohibition is an absolutist position, and its repeal opens the door for a wide variety of possible regulatory options which can be far more effective (see Section 7, [How to talk about alternatives](#), p. 81).

Why has this failed policy been so resilient?

Despite the growing consensus that the war on drugs has failed, the drug policy debate often remains driven more by populist politics, geopolitical pressures, and sensationalist media headlines than by rational analysis.⁴

Rather than being treated as a health or social issue, drug use is still presented as an imminent threat to our children, national security, and the moral fabric of society itself. The current criminalisation-led prohibition model is then positioned and implemented as an emergency response to this threat, often using populist political rhetoric such as 'crackdowns' on crime, corruption, and terrorism.

⁴ Primarily coming from the United States, other multilateral organisations within which the influence of American politics remains strong, and most recently from countries defending radical approaches to drugs, such as Russia.

A self-justifying circular logic is now used to support this approach, meaning the *policy-related harms* that result from prohibition – such as drug-related organised crime or deaths from contaminated street drugs – are conflated with the harms of drug use, to bolster the narrative of the 'drugs menace'. This threat-based narrative is then used to justify the continuation, or intensification, of the drug war that caused many of the problems in the first place. This has helped create a high-level policy environment that routinely ignores or actively suppresses critical scientific engagement, and is divorced from most public health and social policy norms, such as evaluation of policy using health and human rights indicators.

However, this misrepresentation of the drugs problem, and refusal to assess the outcomes of drug policy, also results from a number of broader political dynamics.

Many politicians and entire political groupings have committed to 'fighting drugs because they are dangerous', in order to take a 'muscular' approach that impresses key parts of the electorate, or out of fear of being accused of being called 'soft on drugs'. Similarly, there has been a huge financial commitment on the part of both the public and private sectors in the apparatus and infrastructure required to fight the war on drugs in every country. So reform threatens to disrupt the funding and power of numerous groups, from the army, the police and prison guard unions to the companies that build prisons, all of which have influence.

As a result, governments' priorities have often become perverse and unrelated to those of the citizens they serve. The efficacy of drug policy ceases to be the primary concern, as long as its failure is not undermining other purely political goals. Unsurprisingly, the last thing prohibitionist politicians want is an evidence-based examination of the current system that might expose their perverse priorities.

Such problems with the raw politics of prohibition are then often compounded by a misunderstanding or ignorance about the alternatives among policymakers, the public and media. Unfortunately, many of the arguments against prohibition are complex and frequently counterintuitive – as opposed to the simplistic, binary arguments in favour of prohibition. This makes the issue hard to debate, especially in contexts of limited written space or air-time, and puts reform arguments at a relative disadvantage. In fact, until relatively recently,^{5 6 7} there was no clearly expressed vision of what a post-prohibition world could look like, particularly with regard to the legal regulation of drug markets and the benefits it could bring. Without a plan for a post-drug-war world, the debate tended to stall, unable to move beyond agreement that there was a problem.

Equally importantly, there is a widely held view that using illegal drugs is intrinsically immoral. As a result, arguments about the effectiveness of drug policy, as normally understood for other policy areas, have not had much traction (see below), and evidence-based pragmatism has often been replaced by moral grandstanding.

Finally, we must put all of this into a global context. The US in particular has expended huge diplomatic, military and economic capital to ensure that prohibition is a deeply entrenched policy. One of the motives behind this has been the desire to use the drug war as a tool for delivering wider foreign policy goals, with it becoming an excuse and rationale for direct or indirect military intervention in many other countries.

When coupled with a UN system specifically designed to implement and police prohibition, it is no wonder that the punitive enforcement

5 Rolles S. (2009) **After the War on Drugs, Blueprint for Regulation**, Transform Drug Policy Foundation. http://www.tdpf.org.uk/Transform_Drugs_Blueprint.pdf

6 Health Officers Council of British Columbia (2005) **A Public Health Approach to Drug Control**. <http://www.cfdp.ca/bchoc.pdf>

7 The King County Bar Association (2005) **Effective Drug Control: Toward A New Legal Framework**. <http://www.kcba.org/druglaw/pdf/EffectiveDrugControl.pdf>.

approach has become entrenched, institutionalised, and largely immune from meaningful scrutiny.

Consequently, the drug war is often perceived to be an immutable part of the political landscape, rather than just one option from a spectrum of possible legal/policy frameworks, examples of which are already in place for other risky activities and substances. But things are changing.

Momentum is building. Change is beginning

Globally, drug policy reform is becoming a reality (see [box](#), p. 30). This change has been driven in part by the comprehensive failure of the current approach, and the way its impacts are being felt ever further around the globe. Whereas in recent decades the health crisis, particularly relating to HIV and injecting drugs use, has been the catalyst for change, probably the biggest driver of reform is the crisis in Latin America, where attempts to reduce the 'drug threat' have instead created what is by far the greatest security threat in the region – namely, powerful cartels and the corruption and violence that accompany them. As both a primary production and transit region, Latin America is carrying a huge burden, not only from consumption in the US and Europe, but also from drug-war enforcement responses and legal frameworks that have been devised and implemented largely at the behest of the Americans and Europeans as well. From the deadly escalation of violence in Mexico, to the environmental and social impacts of crop eradication in Colombia, and the spread of conflict and corruption across Central America, prohibition's unintended negative consequences are undermining fragile democratic institutions across the region. In some areas, drug cartels have become a genuine threat to the state itself, with seven of the world's eight most violent countries lying along the cocaine trafficking routes from the Andes to the US.⁸

⁸ The Economist, **Inching Forward**, 25/05/13. <http://www.economist.com/news/international/21578382-restless-politicians-are-changing-debate-about-narcotics-liberalisation-inching-forward>

In short, the costs of the war on drugs have become intolerable for Latin America. But this crisis is also creating opportunities and opening up political space to explore alternatives – alternatives that would have been seen as inconceivable even a few years ago.

These prospects for change have been boosted by the declining ability of the US to impose a drug-war approach on other countries, as support for cannabis legalisation within its own borders has increased dramatically. Around 20 US states have decriminalised cannabis possession for personal use, and a similar number have provisions for a legal medical cannabis trade. Most significantly, however, following popular votes in Washington, Colorado, Alaska, Oregon and Washington, D.C., the country is now home to the world's first fully functioning legal markets for non-medical cannabis. In light of all these developments, it could now be argued that the US, so long the cheerleader for global prohibition, has become the unlikely world leader in drug policy reform.

Uruguay, too, is leading the way with the world's first national legal cannabis market. Managed in line with pragmatic public health principles, this market is a real-world example of the kind of strict and responsible drug regulation that was previously discussed in purely theoretical terms by many drug policy reformers, analysts and academics. Progress can also be seen in Spain, where non-profit cannabis social clubs are now being formally recognised under regional legislation.

Against a backdrop of entrenched political narratives and institutions whose express purpose is to fight and perpetuate the war on drugs, bringing about change remains an enormous challenge. But there is no denying that seismic shifts in drug policy have recently taken place. This momentous progress has been achieved through the courageous, ongoing efforts of an ever-growing collection of NGOs, media commentators and policy makers willing to challenge the status quo and promote an exploration of more just and effective alternatives (see [box](#) over page).

Yet these advances are just the beginning. It is still the case that for many people the reform position is counterintuitive, and they need convincing that legal regulation can deliver more, not less, control of drug markets than the current policy of prohibition.

Leadership from politicians is vital, but the time has come for all who recognise the need for drug policy reform to seize the present opportunity to bring about an end to the war on drugs. The world is listening, and change is possible – provided we can get the message right and win over key allies, including the general public. That is what this guide will help you to do.

The time has come for all who recognise the need for drug policy reform to seize the current opportunity to bring about an end to the war on drugs

Global drug policy – a rapidly changing landscape

- 2008** The UN Office on Drugs and Crime acknowledges for the first time that the drug war is having major negative 'unintended consequences'⁹
- 2009** Influential Latin American Commission on Drugs and Democracy report is published¹⁰
- 2010** Academic research shows benefits of Portugal's 2001 decriminalisation of personal possession of all drugs
- 2011** Drug war-related deaths in Mexico since December 2006 top 50,000, and keep rising, driving the debate forward as the failure of President Calderón's hardline approach becomes clear
- 2011** Major international impact as a report¹¹ by the Global Commission on Drug Policy – whose members include numerous international statesmen and women – calls for the decriminalisation of drug possession and experiments with legal regulation
- 2011** 12 Latin American countries, including Colombia, Guatemala, Mexico, Costa Rica, El Salvador, Panama, Nicaragua, Belize, Honduras and the Dominican Republic back calls to explore the legal regulation of drugs¹²
- 2012** For the first time, several member states break with the prohibitionist line at the UN Commission on Narcotic Drugs. Among them is the Czech Republic, which backs the Global Commission on Drug Policy's report¹³
- 2012** Colorado and Washington State vote to legally regulate recreational cannabis production, supply and use, making them the first places in the world to do so. By 2012, 17 US states have decriminalised cannabis possession, and 19 have medical cannabis dispensaries
- 2012** All countries at the Ibero-American Summit in Cadiz, including Spain and Portugal, call for the UN to review global drug policy
- 2012** The UN agrees to a UN General Assembly Special Session in 2016 to review global drug policy
- 2013** Bolivia rejoins the UN drug conventions with a reservation that makes it legal for them to grow coca leaf, against the wishes of the US and 17 other countries

⁹ UNODC (2008) **World Drug Report 2008**, Chapter 2.5. www.unodc.org/unodc/en/data-and-analysis/WDR-2008.html

¹⁰ Latin American Commission on Drugs and Democracy (2009) **Drugs and Democracy: Towards a Paradigm Shift**. www.drogasedemocracia.org/Arquivos/declaracao_ingles_site.pdf

¹¹ Global Commission on Drug Policy (2011) **The War on Drugs**. www.globalcommissionondrugs.org/reports/

¹² Kushlick, D., **11 current Latin American leaders call for exploration of legal drug regulation**, 09/02/12. <http://transform-drugs.blogspot.co.uk/2012/02/12-latin-american-leaders-call-for.html>

¹³ Rolles, S., **Czech Republic backs Global Commission report at the UN**, 29/03/12. <http://transform-drugs.blogspot.co.uk/2012/03/czech-republic-backs-global-commission.html>

- 2013** The Organization of American States, which has 34 countries as members, publishes the first ever inter-governmental report mapping out a credible scenario for the future legalisation and regulation of certain drugs¹⁴
- 2013** With cross-party consensus, New Zealand passes groundbreaking legislation to legally regulate novel psychoactive substances (but runs into political and practical roadblocks during implementation)
- 2013** Uruguay becomes the first nation state to pass legislation to legally regulate the production and supply of cannabis for non-medical use
- 2014** The legal cannabis markets in Colorado and Washington State open to the public and begin trading
- 2014** The Global Commission on Drug Policy builds on its previous recommendations, advocating that it is time to 'get drugs under control through responsible legal regulation'
- 2014** Two states, Alaska and Oregon, as well as the US capital, Washington, D.C., vote to legalise and regulate cannabis
- 2014** William Brownfield, head of the US Bureau of International Narcotics and Law Enforcement Affairs, claims that the UN drug conventions allow for the legalisation of 'entire categories of narcotics', and admits that cannabis legalisation initiatives in the US have weakened its ability to deter other countries from pursuing similar reforms

¹⁴ Organization of American States (2013) **The Drug Problem in the Americas: Analytical and Scenario Reports.** http://www.cicad.oas.org/Main/Template.asp?File=/Main/policy/default_ENG.asp

Section 2

Audiences, language, framing and messaging

The crucial first step towards winning a debate, and convincing people to support reform, is to fit your message to your audience by asking yourself three questions: Who is your audience? What do you want them to do as a result of hearing you? and What content and tone do you need to use?

Different groups and individuals will have different concerns, interests, beliefs and motivations. This section will help you to decide who you are really addressing, and tailor your language, arguments and messaging appropriately.

Identifying your audience

Often, whether in print, for broadcast, or at a public event, you will be addressing a distinct segment of society, such as a professional body, political gathering, religious group, or specific demographic. Even in the case of a mass-media broadcast, you may want to appeal to one section of those listening. In broadcast debates in particular, it is worth remembering that the person who is interviewing you or debating against you *is not necessarily the same as the audience you are addressing.*

Once you have decided who your audience is, it is important to understand their perspective on prohibition, and which arguments will then be most effective at convincing them or, when appropriate, wrong-footing them. To do so, it is crucial to consider what their worldview is, and what their personal priorities are likely to be and how they differ from your own.

Understanding these differences will help you to understand why your arguments sometimes do not engage as you might think they should, and will help guide you in shaping the tone and content of your engagement. Helpfully, the nature of the reform debate is such that you can make a case from a wide range of standpoints – for example, from a more left-wing, social justice perspective (e.g. the drug war hits the poorest and most marginalised hardest), or a more right-wing, traditional law-and-order perspective (e.g. legal regulation will empower the state to control drugs, and help the police deal with organised crime). This is useful as it allows you to address your interviewer or debate opponent with arguments that will appeal to their particular political sensibilities.

So consider how differently you might approach, on the one hand, a liberal politician concerned about being portrayed as 'soft' on drugs if they speak out in favour of reform, and on the other, a socially conservative religious leader who is concerned that drug use is immoral, and that legal regulation will lead to more young people taking drugs.

Such a tailored approach can be helped by quoting or name-checking a public figure from the huge range of supporters of reform who would convince your audience that what you are advocating is sensible and mainstream. It may also lead you to decide that someone else, or another group, is actually better placed than you are to win over some audiences (see [Supporters of Reform](http://www.tdpf.org.uk/resources/supporters-of-reform) at www.tdpf.org.uk/resources/supporters-of-reform).

Morals, ethics, and values

Global drug prohibition is partly rooted in the laudable urge to address the very real harms that drugs can cause. But this admirable motivation has been used to not only present anyone who uses illegal drugs as 'bad', but to also give those who support prohibition a clear and direct moral authority, while at the same time casting those of us who are against it as ethically and politically irresponsible. This can lead not only to the most stringent prohibition being seen as the most moral policy option, but also to some audiences believing that even analysing or questioning prohibition is immoral, and risks painting the reform advocate as 'pro-drugs' or even 'pro-drug dealers'.

Because what an individual or audience believes to be morally right will almost always override any evidence or other arguments you can present to them, this issue has to be addressed, albeit in different ways. The social psychologist Jonathan Haidt states that the views of traditional liberals are grounded in *fairness and compassion*, while the views of traditional conservatives have their basis in *loyalty, authority and sanctity*.¹⁵ Most of this guide is written from a liberal perspective, but supporters of reform can also effectively co-opt the language of supporters of the status quo, to present reform in such a way that better appeals to conservative audiences – for example, by outlining how the drug war has undermined respect for authority and the law.

A useful first step when attempting to engage almost any audience is to make a distinction between the morality of using drugs, and what constitutes a moral policy response to the

The most moral policy response to drug use is one that minimises harms and maximises wellbeing for individuals and society as a whole

¹⁵ For more information, see Haidt, J. (2012) *The Righteous Mind: Why Good People are Divided by Politics and Religion*, Vintage.

reality of drug use as it currently exists. We argue that the most moral policy response to drug use is one that minimises harm and maximises wellbeing for individuals and society as a whole. (For more on this, see Section 9, [Responding to concerns](#), p. 123.)

Types of audiences

Audiences can be divided into four main groups:

- **Passionate supporters of prohibition.** While even the most unlikely people may change their views, it can sometimes be futile to try when you come up against audiences with entrenched ideological commitments, such as those whose belief in the immorality of drug use is so strong that no amount of evidence will convince them. This is perhaps analogous to debating evolution with creationists. Give it a try, but sometimes a strategic decision to direct your energies toward a different audience is wise.
- **Supporters of the status quo by default.** A more significant group support prohibition because they have not been exposed to the arguments for reform, or because they are simply not engaged with the issue. Here your challenge is to first make them think about the failure of the war on drugs (particularly as it affects those they care about), and to then present a credible vision of a better way forward, so they understand the counterintuitive nature of the reform position. Most people soon 'get it' after further reflection.
- **Supporters of reform who are unclear about the alternatives.** This is a significant group who understand the critique and know change is needed, but are yet to be convinced by the proposed alternatives. This group are fertile territory for messaging that reassures them, dispels the common misconceptions and fears about reform and regulation, and outlines the potential benefits.

- **Cynical ‘drug warriors’.** Finally, there are those whose aims are not shaped by meeting the needs of ordinary citizens. This includes some politicians or political groupings driven by a desire to maintain or extend either their power or budget allocations, as well as those with a personal financial interest in continuing the drug war. You can, however, use your engagement with them to make the case to a wider audience. Furthermore, presenting them with arguments for reform both in public and private increases their accountability, as they will no longer be able to claim ignorance of the facts, or of the credible alternatives to the war on drugs. Institutional pressures may also mean they feel unable to express their personal views, which is why so many politicians support reform only before getting into power, or after they retire.

Section 3

Establishing common ground as the basis for engagement and debate

This section will explain how to find common ground with most of your opponents or audiences, in order to demonstrate that you all want the same things from drug policy. By establishing shared aims, you can create a useful starting point from which the debate can then be better explored. It allows you to assess whether current policy actually delivers these aims, and to move the discussion on to possible alternative approaches that could produce better outcomes. It can also be a useful way of exposing those who do not want to prioritise minimising harms and maximising wellbeing, as outlined above.

In order to turn debates from adversarial battles to constructive engagements, we have found it useful to ask 'What are the aims of policy that we can all agree on, and what should our guiding principles be?' Establishing shared aims and principles from the outset can defuse unnecessary conflict by appealing to the concerns of all participants, and can create some breathing room in which a more meaningful discussion can take place. It also immediately clarifies that your motivations for

What are the aims of policy that we can all agree on, and what should our guiding principles be?

reform are genuine, and helps prevent opponents from advancing strawman arguments, particularly those that attempt to portray you as 'pro-drugs'.

Broadcast media in particular will often seek out polarised viewpoints on the drugs issue, either to meet an editorial requirement for 'balance', or more often to create dramatic clashes that boost ratings. Do not feel pressured into pandering to a broadcaster's need for drama; challenging misunderstandings about reform should always be the priority, not entertainment. In the longer term, conciliation and bridge-building is always more constructive than conflict, which creates heat, but not light.

The prohibitionist approach has historically focused on the aim of reducing drug use, the ultimate goal being a 'drug-free world'. All other aims often become subordinate to this one, which is in fact based on the falsehood that all illegal drug use is harmful and socially corrosive. But by focusing too narrowly on reducing use, or by wrongly assuming that under prohibition drug use will be lower than under other legal frameworks, wider policy goals to reduce overall social and health harms can be marginalised or lost entirely.

It is important to emphasise that the overarching aim of drug policy (and indeed, any policy) should be to minimise social and health harms and maximise wellbeing. As part of this general objective, we have identified six, more specific aims that, if achieved, will reduce the harms related to drug production, trafficking, supply and use (see [box](#) below). It should be easy to find agreement on these key policy aims,¹⁶ at least among those audiences whose concerns are genuine.

¹⁶ There are of course others that will be relevant for certain issue specific engagements

Six key aims of drug policy as a basis for a common ground approach

We all want to:

- Protect and improve public health
- Reduce drug-related crime, corruption and violence
- Improve security and development
- Protect the young and vulnerable
- Protect human rights
- Base policy on evidence of what works and what will provide good value for money

Policy should make a distinction between the harms related to drug use and the harms related to drug policies. While all drugs are potentially harmful, there is overwhelming evidence to show that prohibition itself creates enormous harms – not only those relating to drug use (such as the contamination or adulteration of drugs), but also those relating to production and supply (such as the fuelling of organised crime, violence and prison overcrowding).

Conflating the harms caused by drug use that would exist under any approach, with the harms caused by policy, as the prohibitionist narrative routinely does, confuses the issues. Distinguishing them creates a stronger platform for debate and discussion. (Policy harms are explored in more detail in Section 4, [Critiquing the war on drugs](#), p. 53.)

Aim 1

We all want to protect and improve public health

Prohibition creates health harms. Regulation protects.

This aim can also be framed, from a more reactive perspective, as minimising problematic drug use and associated health harms, including drug-related deaths.

Although this sounds uncontroversial, it actually challenges a central tenet of current drug policy – namely, that all illicit drug use is problematic. This assertion ignores the reality that problematic drug users, commonly defined as being in need of health, social or criminal justice interventions, are only a small fraction of the drug-using population.¹⁷ The vast majority of users cause themselves no significant harm, and would in fact assert that they derive benefits from their drug use. Use that is non-problematic should be only a marginal concern for policy makers, beyond efforts to prevent its progression into problematic use. You can use the widely understood distinction between the use and misuse of alcohol to easily illustrate this point.

Adequate provision of support and drug treatment for people seeking help is another key element of effective drug policy that all can agree on. It is, however, important to be clear that support for drug policy reform complements rather than challenges proven public health measures such as prevention, treatment, recovery and harm reduction. Employing punitive measures against people who use drugs, and leaving criminals in control of the drug trade, increases a range of health risks and creates practical and political obstacles that prevent effective responses to problematic drug use.

¹⁷ The 2007 UNODC World Drug Report estimates only 12.5% of total users are 'problematic'.
www.unodc.org/pdf/research/wdr07/WDR_2007.pdf

A comprehensive approach based on public health and human rights principles will also aid the development of government strategies for other serious ongoing or emerging challenges in the drugs field. These include preventing or reducing the misuse of legal substances (such as alcohol, tobacco and volatile substances like aerosols), novel psychoactive substances (sometimes unhelpfully described as 'legal highs'), and increasingly popular stimulants such as crack cocaine or methamphetamine. Highlighting this point can help you to focus the reform debate on the more immediate concerns of a particular community or politician. (See Section 4, [Critiquing the war on drugs](#), p. 53 for more on health-related issues.)

Under this umbrella aim of protecting and improving public health are a number of principles that you can bring into the discussion:

Drug use is primarily a public health and social issue

It is often stated that drugs are primarily a health issue. Indeed, this has become a common refrain in the high-level drugs debate. This is a useful point to emphasise because it highlights just how anomalous the status of prohibited drugs is in the context of wider health policy. It raises the following questions:

- If drugs are primarily a health issue, why is the primary response punitive in nature, involving the police and military, rather than doctors and health professionals?
- In which other areas of public health do we criminalise patients or key populations we are aiming to help?

Drug-related issues cut across a range of policy areas, but for illegal drugs the balance has shifted to the point where consideration of public health has been increasingly marginalised by an excessive focus on enforcement, as the UN Office on Drugs and Crime has itself noted.^{18 19}

All drug use is risky

Making this point clear early on establishes distance between you and any preconceptions or stereotypes about the reform position being 'pro-drugs', 'defending' drugs, or implying drugs are completely safe. It also takes the sting out of many anti-reform arguments that are based on fear-mongering facts and anecdotes about how dangerous drug use is. Getting drawn into debates about the relative harms of drugs is often a distraction from more important issues, not least as such debates rarely lead anywhere useful. Each side will naturally draw on evidence that supports their own position and the audience will be left none the wiser.

Of course, the fact that all drug use involves risk does not mean all drug use involves harm. Risk is simply a *probability* of harm occurring, and while this probability can be quite low (particularly when people know what they are consuming, and have proper information on dosage, potency, etc), it is never zero.

It is more important to be clear that the potential risks of drugs are the very reason why they should be regulated effectively: we need to regulate drugs *because* they are risky, not because they are safe. However risky drugs are, they are more risky when produced and sold by criminals.

¹⁸ "The expanding criminal black market obviously demanded a commensurate law enforcement response, and more resources. The consequence was that public health was displaced into the background, more honoured in lip service and rhetoric, but less in actual practice" – Costa, A. (2008) 'Making drug control "fit for purpose": Building on the UNGASS decade', UNODC. <http://www.unodc.org/documents/commissions/CND-Session51/CND-UNGASS-CRPs/ECN72008CRP17.pdf>

¹⁹ This shift is reflected in the evolution of the UN drug conventions – the 1961 convention was framed as a response to the threat of drugs themselves, with addiction being described as an 'evil' which we must 'combat', establishing the ground for the 'war on drugs' discourse that followed. By contrast, the 1988 convention is a response to the threat from the involvement of transnational organised crime in the resulting illicit drugs markets.

So while it is obvious that if a drug is relatively safe the solution is to legally regulate and control it, it will require some explanation for your audience to grasp why the same solution applies to a drug that is relatively dangerous.

Aim 2

We all want to reduce drug-related crime, corruption and violence

Prohibition creates crimes and criminals – in the same way that alcohol prohibition did.

This aim is particularly important where the dominant concern is drug market-related violence. A key point to highlight, as explored above, is the distinction between the harms related to drug use and the harms related to drug laws and their enforcement.

While public disorder and violence resulting from intoxication – even if mostly related to alcohol – are legitimate concerns that need to be addressed, far more significant problems are caused by criminal drug markets. These illegal markets are created or fuelled directly by the war on drugs: strict prohibitions on products for which there is high demand simply generate lucrative opportunities for criminal entrepreneurs.

A related point that has proved useful for engaging decision-makers is that regulation can return control to the state. This control comes both in the form of direct interventions in the market and greater information. Under a legal regulatory framework, the state will have far more information than it currently has regarding drug production, distribution, consumption and the overall size of the market. This presents an opportunity to better address some of the challenges faced by countries

with weak institutions, such as police reform, judicial reform, and general mistrust of state authorities (for more, see Section 9, [State institutions are not strong enough to regulate drugs](#), p. 151).

Aim 3

We all want security and development

The war on drugs undermines security and development (see also Section 4, [Critiquing the war on drugs](#), p. 53).

This aim often follows on from the previous one, and is particularly important in producer and transit countries where both security and development are clearly being undermined by the illegal drug trade.

Drug law enforcement, especially supply-side enforcement (against drug cartels and traffickers, for example), is often supported on the basis that it helps protect and improve both national and international security. A key element of the critique of the enforcement approach is that, in reality, it achieves the opposite, actively promoting various forms of insecurity – from petty street crime, through to complex challenges associated with transnational organised crime.

It is therefore important to be clear that drugs themselves do not cause security problems; it is the prohibitionist policy framework intended to control them that does. This is simply illustrated by pointing out that legal drug markets – such as those for alcohol, tobacco and legally prescribed medicines including opiates, cannabis and cocaine – are associated with few, if any, security problems.

The concept of development has economic, human, social and international dimensions. You can establish common ground with your audience or opponent by stating that you seek to improve all of these aspects, and then move the discussion on to the role that drug law

enforcement plays in creating and perpetuating the negative development impacts related to drug production, trafficking and supply.

Aim 4

We all want to protect the young and vulnerable

The war on drugs endangers children (see Section 4, Critiquing the war on drugs, p. 53 and Section 9, Who will protect the children?, p. 129).

The aim of protecting the young and vulnerable is one that enjoys universal agreement. Indeed, war on drugs rhetoric is often built on a narrative of imperilled youth and the need to protect them from drugs and drug-related crime. The key argument to make here is that the war on drugs, even if well-intentioned, has delivered the opposite, increasing harms to children and endangering them on multiple fronts.

Far from reformers calling for drugs to be available to children in sweetshops (as less scrupulous opponents sometimes suggest), legal regulation offers the opportunity to control availability in ways that are simply impossible with an unregulated criminal market. Most obviously, age restrictions can be enforced. This sits in stark contrast to the illicit market, where, as has often been said, 'the only ID a drug dealer needs is a \$20 bill'. Regulation also makes it much easier to provide young people with evidence-based treatment, harm reduction and support services, and honest, accurate education about the risks of drug use.

Similarly, the protection of vulnerable communities is a shared goal that can be more effectively achieved through reform. Under current policy, vulnerable communities are both disproportionately impacted by the negative effects of drug use and have a lower chance of overcoming them. They are also disproportionately affected by the unintended consequences

of drug law enforcement, such as criminalisation, social exclusion, coerced involvement in criminal activities, incarceration, extortion and other human right abuses. The regulation of drug markets provides an opportunity to prevent an 'added vulnerability' that further undermines the health and wellbeing of already vulnerable and marginalised groups.

Aim 5

We all want to protect human rights

The war on drugs leads directly and indirectly to human rights abuses (see Section 4, Critiquing the war on drugs, p. 53, and Section 8, Talking about... particular drugs, rights and freedoms, p. 91).

A human rights analysis can provide the basis for a powerful critique of current drug policies, as well as guidance on how they should be reformed. But it is important to be clear that this is not about arguing for a specific legal right to use drugs, which is a quite different issue.

The historic marginalisation of human rights in drug law enforcement stands in sharp contrast to the commitment to human rights among all reasonable parties in the debate, and among UN agencies. In fact, human rights are barely mentioned at all in the three international drug conventions.²⁰

Human rights violations are common in both the treatment of drug users and in much drug law enforcement around the world. At an institutional level, police and military actions are rarely subject to adequate scrutiny, accountability or systematic evaluation of their human rights impacts.

²⁰ Count the Costs (2011) **The War on Drugs: Undermining Human Rights**.
<http://www.counthecosts.org/seven-costs/undermining-human-rights>

However, the concept of human rights encompasses a broad range of issues, so it is often useful to be more specific. For example, you could focus on an area of particular relevance to a given audience (e.g. the right to health for people who use drugs, or the cultural/indigenous rights of coca users), or on a specific policy aim, such as ensuring that drug law enforcement respects human rights, or that the outcomes of policy are evaluated in accordance with human rights indicators.^{21 22}

“Responses to drugs, crime and terrorism that are based on the rule of law must therefore also incorporate human rights law and principles. Too often, law enforcement and criminal justice systems themselves perpetrate human rights abuses and exclude and marginalize from society those who most need treatment and rehabilitation.”²³

Antonio María Costa

Executive Director of the UN Office on Drugs and Crime

²¹ García Sayán, D. **Narcotráfico y Derechos Humanos**, Iniciativa Latinoamericana sobre Drogas y Democracia. www.drogasedemocracia.org/Archivos/narcotrafico%20y%20DDHH_Say%C3%A1n.pdf

²² Espolea (2013) **La política de drogas y los derechos humanos en México: Informe presentado por Espolea ante el Consejo de Derechos Humanos con motivo del Examen Periódico Universal de México**. <http://epumexico.files.wordpress.com/2013/07/politica-de-drogas-y-dh-2.pdf>

²³ Costa, A. (2010) **Drug control, crime prevention and criminal justice: A Human Rights perspective**, UNODC. https://www.unodc.org/documents/commissions/CND-Uploads/CND-53-RelatedFiles/ECN72010_CRP6eV1051605.pdf

Aim 6

We all agree that drug policy should be evidence-based and provide good value for money

Like most wars, the war on drugs is not based upon evidence of its effectiveness or value for money (see Section 4, [Critiquing the war on drugs](#), p. 53).

The aim that drug policy should be based on evidence of effectiveness is at the core of reform arguments, and directly engages with what should be policy makers' primary concern – 'What works?' It is a key point to emphasise, firstly because no one can make a rational argument against it, and secondly because it draws the debate away from more emotional populist territory, and refocuses it on the reality of prohibition's failure and the potential of alternative policies.

There will naturally be disputes over data and how it is interpreted, as well as which indicators of effectiveness should be prioritised. Nonetheless, emphasising the importance of evidence of what actually works is a key part of reshaping the debate into a rational/scientific one, rather than a moral/ideological one.

This does not mean having a morally neutral position. By advocating policies on the basis that they work (and so will help achieve the shared goals we all agree will make the world a better place), we can maintain the moral high ground. Again, it is important to remember that the debate on the morality of actually using drugs is quite separate from what constitutes a moral policy response to the reality of drug use in society.

As discussed earlier, the threat-based narrative of the war on drugs has tended to marginalise established principles of evidence-based policy making. This political context demands a degree of realism. While evidence-based policy is an important guiding principle, and will always

be key to winning any debate, there will inevitably be times when a political analysis is needed too. This is because there are some political groupings or individuals who have different agendas and therefore view evidence of the effectiveness of drug policy as either a secondary concern or an active threat to their power. Hence for them this approach will not work (see Section 2, [Audiences, language, framing and messaging](#), p. 33).

The aim of having drug policy based on evidence of effectiveness is at the core of reform arguments

The related aim that policy expenditure should represent good value for money has a more direct populist appeal for both policy makers tasked with allocating limited budgets and the wider public, who as taxpayers fund drug law enforcement. Emphasising this principle of effective expenditure is also a useful way of focusing the debate on policy outcomes, rather than (often meaningless) process measures like numbers of drug busts or seizures. Because supply-side drug law enforcement offers very poor value for money – being hugely expensive, ineffective, and generating further costs to society – a strong economic case can be made for reform.

Another related principle is that all policy should be based on reality and adapt to changing circumstances. However, this has not been the case with the war on drugs. Prohibition and its legal structures remain rooted in puritanical principles aimed at promoting abstinence. As a result, this model has remained dogmatically inflexible, despite the fact that the social landscape has changed beyond recognition in the more than 50 years since the UN conventions that gave rise to drug prohibition were drafted. Countries around the world are now increasingly demanding a more flexible global drug control regime that would give them the right to explore alternatives to the current punitive approach.

Further reading

- International Drug Policy Consortium (2012) **Drug Policy Guide – 2nd Edition**.
<http://idpc.net/publications/2012/03/idpc-drug-policy-guide-2nd-edition>
- The Global Commission on Drug Policy (2011) **The War on Drugs**, and (2014) **Taking Control: Pathways to Drug Policies that Work**.
www.globalcommissionondrugs.org/reports/

Critiquing the war on drugs

Once some common ground has been established on the aims of drug policy, the next step is to critique the current drug-war approach based on these agreed aims. Generally, this is not difficult because prohibition has failed by almost every measure. The key here is to ensure you have the basic facts and analysis at your fingertips, so that you can use them in a range of ways.

There have been many detailed critiques of the war on drugs, yet as it rages on with ever-increasing ferocity, it remains important to repeat the message that it has failed. There are always three key tools at your disposal:

- 1 You have powerful facts, analysis, and stories to demonstrate the failure of prohibition, and its many negative unintended consequences
- 2 You can point out how much better communities could be if we ended the war on drugs and put in place reforms such as strict legal regulation of drug markets
- 3 You can use a call for a transparent, comprehensive review that compares all policy options in order to get reform on the table and show you are interested in what works (see [box](#), p. 58)

The failures of the prohibitionist model on its own terms, and its unintended consequences, are explored below, and the benefits of reform in the following section.

Why drug prohibition can never work

A basic economic analysis can usefully demonstrate why absolute prohibition can never work. Where high demand exists alongside prohibition, a criminal profit opportunity is inevitably created. Attempts to interrupt criminal drug production and supply are doomed as the effect (if successful – which they very rarely are) will be rising prices.

This then makes the market more attractive for new producers and sellers to enter – which they always do. No matter how many dealers we arrest or smuggling networks we ‘smash’, the void is always filled by the queue of willing replacements, hungry for the extraordinary profits prohibition offers them. Most people will immediately relate to this analysis as it will chime with the experience within their local community.

The failure of the war on drugs on its own terms

The theory behind the war on drugs is simple. The primary aims of reducing availability and use are based on the following rationale:

- On the 'supply side', enforcement will reduce or eliminate production and supply, thereby driving up prices so that drugs become less attractive to users
- On the 'demand side', punitive enforcement against users will reduce levels of drug consumption by acting as a major deterrent, and will support health and prevention initiatives by 'sending a message' about the risks and unacceptability of drug use

Yet after more than 50 years of the war on drugs, it is clear that this theory is not supported by the evidence.

Prohibition has not significantly restricted production and supply:

- Research demonstrates that when enforcement squeezes drug production in one area, it simply moves to another. A prominent example of this is the way coca production has shifted within and between Latin American countries
- Research shows that when enforcement puts pressure on drug transit routes, supply does not stop. Instead, the route simply changes. Increased enforcement in the Caribbean, for example, has meant cocaine transit routes to the US and Europe have shifted to go through Mexico and West Africa
- Research shows even if enforcement against one drug is relatively successful, it often just displaces users to other drugs

This is the so-called 'balloon effect' identified by the UNODC,²⁴ whereby squeezing one part of the drug supply chain does not eliminate the problem; it simply shifts it somewhere else (see [box](#) above).

Prohibition has not significantly reduced use:

- Despite fluctuations in the types of drugs used, the places where they are used, and the people who use them, the global trend is of drug availability and use rising dramatically over the past half-century under prohibition

²⁴ UNODC (2008) World Drug Report 2008, Chapter 2.5.
www.unodc.org/unodc/en/data-and-analysis/WDR-2008.html

- Studies have consistently failed to establish the existence of a link between the harshness of a country's drug laws and its levels of drug use. A 2008 study using World Health Organization data from 17 countries (not including Sweden) found: 'Globally, drug use is not distributed evenly and is not simply related to drug policy, since countries with stringent user-level illegal drug policies did not have lower levels of use than countries with liberal ones.' Many other large-scale studies – including most recently a study by the UK Home Office – have come to the same conclusion^{25 26 27}
- Comparing states within the US and Australia that have very different approaches to dealing with cannabis possession – even comparing states that have extremely punitive regimes with those that have decriminalised possession – again shows no correlation between intensity of enforcement and levels of use²⁸
- The Czech Republic only began criminalising personal drug possession in the year 2000. But after conducting an in-depth cost-benefit analysis, the government decided that criminal penalties had no effect on levels of drug use or related harms, and therefore (re-)decriminalised drug possession in 2010. While an explosion of drug use was predicted by some critics as a result of the reform, this has not materialised²⁹

25 Degenhard et al. (2008) **Toward a Global View of Alcohol, Tobacco, Cannabis, and Cocaine Use: Findings from the WHO World Mental Health Surveys**, World Health Organization.
<http://www.plosmedicine.org/article/info:doi/10.1371/journal.pmed.0050141>

26 UK Home Office (2014) **Drugs: International Comparators**.
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/368489/DrugsInternationalComparators.pdf

27 European Monitoring Centre for Drugs and Drug Addiction (2011) **Looking for a relationship between penalties and cannabis use**.
<http://www.emcdda.europa.eu/online/annual-report/2011/boxes/p45>

28 Harm Reduction International (2012) **The Global State of Harm Reduction 2012**, p.163.
<http://www.ihra.net/global-state-of-harm-reduction-2012>.

29 Rosmarin, A. and Eastwood, N. (2013) **A Quiet Revolution: Drug Decriminalisation Policies in Practice Across the Globe**, Release p.23.
http://www.release.org.uk/sites/release.org.uk/files/pdf/publications/Release_Quiet_Revolution_2013.pdf.

- Portugal decriminalised the personal possession of all drugs in 2001. As in the Czech Republic, the move did not lead to a dramatic increase in the prevalence of drug use. In fact, by two out of three measures, drug use among the general population is now lower than it was pre-decriminalisation³⁰

In summary, evidence suggests that drug use does not rise and fall in line with the severity of the approach taken, and despite its centrality to drug-war thinking, the deterrent effect is marginal at best. In fact, it is other social, cultural and economic factors that are key in determining demand.

So while enforcement increases prices and restricts availability to some degree, it is also clear that, even if some hurdles need to be negotiated, drugs are available to most people who want them, most of the time. Supply has generally kept pace with rising demand, and the interaction between the two has kept prices low enough to not be a significant deterrent to use.

When supply has fallen below demand (whether due to enforcement or other factors) the result will tend to be falling drug purity, or a change in the particular drugs being consumed – both of which have unpredictable consequences for health. Alternatively, prices will temporarily increase until new suppliers enter the market and a new equilibrium is established.

This is why, once an illegal market has become embedded and demand is established, prohibition has not worked anywhere, ever.

So never let anyone claim that the deterrent effect works, or that supply-side enforcement is effective, without a very robust challenge. The evidence disproving this assertion is clear, overwhelming and acknowledged by credible sources, both official and independent.

30 Murkin, G. (2014) **Drug decriminalisation in Portugal: setting the record straight**, Transform Drug Policy Foundation.
<http://www.tdpf.org.uk/resources/publications/drug-decriminalisation-portugal-setting-record-straight>

Calling for a review of drug policy options

As the process that led to the groundbreaking 2012/13 review by the Organization of American States³¹ shows, calling for an independent review of policy options is a useful strategy that can move the debate forward, even against political opposition to reform. It can also help the wider debate become evidence-based rather than politically or ideologically focused, and is particularly useful where divisions on ways forward are polarised and fixed.

Any review process should be:

- As transparent, evidence-based, and independent from political interference as possible
- Not weighted in either direction, therefore including all the main options – from the status quo and tougher enforcement approaches, to reforms such as decriminalisation and legal regulation

Calling for non-reform options (i.e., the status quo or increased enforcement) to be included can get you buy-in from opponents, and shows your audience you are confident that pro-reform options will stand up to scrutiny. It also forces defenders of the status quo to engage in the options debate, because objecting to an evidence-based review appears regressive and dogmatic, as well as making the objector seem afraid of being proved wrong. Calling for a review also gives supporters of reform who are reluctant to speak up (or who are seeking cross-party consensus or wider backing) the cover needed to begin shifting their public position, without having to back a particular policy option that might draw criticism.

Even if the review process and outcomes are not perfect, getting reform options officially on the table, and exposing the public and policymakers to the evidence and analysis, is likely to create future support and opportunities for change.

Keep in mind that sometimes a call for review (which can take a long time) is used as a delaying tactic by politicians reluctant to engage more directly. So a judgement call is needed on when to call for a review and when to push for action.

³¹ Organization of American States (2013) **The Drug Problem in the Americas: Analytical and Scenario Reports.** http://www.cicad.oas.org/Main/Template.asp?File=/Main/policy/default_ENG.asp

Counting the costs of the war on drugs

Below is a summary of the key costs of the war on drugs, divided into seven areas: public health, development and security, crime, stigma and discrimination, human rights, economics, and the environment. The analysis of these costs is based on a report produced by the Count the Costs initiative, a coalition of over 100 NGOs with a shared concern about the negative impacts of the war on drugs. More detailed briefings are available for each of these cost areas at www.countthecosts.org.

The particular audience you are addressing will determine which parts of this critique is most useful (see [Section 2, Audiences, language, framing and messaging p. 33](#)). Making your message relevant to their lives is always likely to have more impact. If you have relevant personal experiences, or stories from others, these often help communicate the critique of the drug war by putting a human face on it, allowing an audience to better understand and empathise with those bearing the brunt of failing policies. Weaving real-world stories into your analytical narrative can be a highly effective way of catching and keeping people's attention, as well as building understanding of the underlying policy challenges and ways forward.

1 Threatening public health, spreading disease and death

While the war on drugs has primarily been promoted as a way of protecting health, it has in reality achieved the opposite. It has not only failed in its key aim of reducing or eliminating drug use, but has increased risks and created new health harms. It has also created political and practical obstacles to the use of effective public health interventions that might reduce these harms.

- By fostering distrust and stigmatisation, the criminalisation of people who use drugs (in particular, young people and problematic drug users) undermines prevention, education and harm reduction messages

- Criminalisation encourages high-risk behaviours, such as injecting in unhygienic, unsupervised environments
- Enforcement tilts the market towards more potent and therefore more profitable drug products. It also fuels the emergence of high-risk products such as crack cocaine, or novel psychoactive substances whose effects are not well understood
- Illegally produced and supplied drugs are of unknown strength and purity, increasing the risk of overdose, poisoning and infection
- The emotive politics of the drug war, and the stigmatisation of drug users (see below), creates obstacles to providing effective harm reduction services, which remain unavailable in many parts of the world despite being highly cost-effective. This increases the risk of overdose deaths and fuels the spread of HIV/AIDS, hepatitis, and tuberculosis among people who inject drugs
- The growing population of people who use drugs in prisons has created an acute health crisis, as prisons are high-risk environments, ill-equipped to deal with severe health challenges
- The development impacts of the war on drugs have had much wider negative impacts on the provision of health services
- Drug-war politics have had a chilling effect on the provision of opiates for pain control and palliative care, with over 5 billion people having little or no access to them

The evidence suggests that neither supply-side nor user-level enforcement interventions have significantly reduced or eliminated use. Instead, as enforcement intensifies, drug-related risk is increased and new harms created, with the greatest burden carried by the most vulnerable populations.

2 Undermining development and security, fuelling conflict

Criminal drug producers and traffickers naturally seek to operate in more marginal and underdeveloped regions, where vulnerable populations can be exploited and weak authorities kept at bay. The resulting

corruption, violence, conflict and instability undermines social and economic growth and can lock regions into a spiral of underdevelopment.

- Illegal drug markets are characterised by violence between criminal organisations and the police or military, or between rival criminal organisations. The intensification of enforcement efforts simply fuels this violence.³² Drug profits also provide a ready supply of income for many insurgent, paramilitary and terrorist organisations
- Criminal organisations seeking to protect and expand their business invest heavily in corrupting, and further weakening, all levels of government, the police and the judiciary
- These problems discourage investment in affected regions, while limited budgets are directed into drug law enforcement, and away from health and development
- The resulting underdevelopment contributes to the spread of HIV and produces wider health costs
- Fragile ecosystems are destroyed by producers in order to grow drug crops, and by chemical crop eradications carried out by law enforcement
- Human rights violations carried out in the name of drug control become commonplace
- Enforcement, at best, just displaces problems to new areas, further harming development

While there are some marginal economic benefits from the illicit drug trade in producer and transit regions, these are hugely outweighed by the wider negative development costs, which are frequently overlooked. This needs to change, and domestic governments, UN agencies – in particular, the UNODC and the UNDP – and NGOs working on development and security issues have a key role to play in making this happen.

³² In Mexico alone, it is estimated that potentially more than 100,000 people were killed in drug-war-related violence between 2006 and 2013.

3 Creating crime and enriching criminals

Squeezing the supply of prohibited drugs in the context of high and growing demand inflates prices, providing a lucrative opportunity for criminal entrepreneurs. The war on drugs has created an illegal global trade that now turns over more than \$330 billion annually, an amount greater than the GDP of 158 countries.³³ The high level of criminality associated with this illegal trade is in stark contrast to the low levels associated with the parallel legally regulated trade for medical uses of many of the same drugs.

- Drugs are now the world's largest illegal commodity market, and are strongly linked to money laundering and corruption
- A significant proportion of street crime is related to the illegal drug trade, with rival gangs fighting for control of the market, and dependent users committing robbery to pay for drugs
- Millions of otherwise law-abiding, consenting adults who use drugs are criminalised for their lifestyle choices, regardless of whether they cause harm to others
- The criminal justice-led approach has caused a dramatic rise in the prison population of drug and drug-related offenders³⁴
- Violence is the default form of regulation in the illegal drug trade. Aside from conflicts with police and military, it is used to enforce payment of debts and to protect or expand criminal enterprises. Research shows that more vigorous enforcement actually exacerbates violence
- Drug profits also fuel regional conflict by funding insurgent, paramilitary and terrorist groups
- The war on drugs has provided a smokescreen for various forms of illegal government action, including the torture and judicial corporal punishment of drug offenders

³³ See: <http://databank.worldbank.org/data/download/GDP.pdf>

³⁴ TNI/WOLA (2010) *Sistemas sobrecargados: leyes de drogas y cárceles en América Latina*. http://www.druglawreform.info/images/stories/documents/Sistemas_sobrecargados/sistemas_sobrecargados_web2.pdf

- While the costs of drug law enforcement are high, they are dwarfed by the reactive costs of dealing with the crime it has fuelled
- There is little evidence of a deterrent effect or of significant impacts on drug availability from enforcement – at best criminal activity is displaced to new areas

Using drug-related crime as a justification for the war on drugs is unsustainable given the key role of enforcement in fuelling the illegal trade and related criminality in the first place. Separating the health and social costs created by drug misuse from the crime costs created by drug policy is a vital first step towards achieving the shared goal of safer communities.

4 Undermining human rights

Human rights are only mentioned once in the three UN drug conventions, reflecting how they have historically been marginalised in drug-law politics and enforcement. The war on drugs is severely undermining human rights in every region of the world, through the erosion of civil liberties and fair trial standards, the demonisation of individuals and groups, and the imposition of abusive and inhuman punishments.

- The criminalisation of drug use, a practice engaged in by hundreds of millions of people worldwide, impacts on a range of human rights, including the right to health, privacy, and freedom of belief and practice
- Punishments for possession/use are frequently grossly disproportionate, leading to incarceration or coerced/forced 'treatment' in many countries
- The erosion of due process when dealing with drug offenders is widespread, involving parallel justice systems, the presumption of guilt (reversing the burden of proof), and detention without trial
- Various forms of torture, inhuman or degrading treatment or punishment are widespread for arrested or suspected drug offenders. These include: police beatings, death threats to extract information,

- extortion of money or confessions, judicial corporal punishment, and various abuses in the name of 'treatment', such as denial of access to healthcare, denial of food, sexual abuse, isolation and forced labour
- The use of the death penalty for drug offences – which is illegal under international law – is still retained by 32 jurisdictions around the world, leading to more than 1,000 deaths each year. Illegal extrajudicial killings of drug traffickers are also common
 - In some countries, punitive drug law enforcement has led to a dramatic expansion in the prison population, with growing numbers also held in mandatory 'drug detention centres' on the pretense of being provided with treatment
 - Drug law enforcement measures, in particular the use of the military, has become an active threat to public security in some countries³⁵
 - The right to health, in terms of access to healthcare and harm reduction, is frequently denied to people who use drugs, particularly in prison environments
 - Attempts to protect children's rights through drug law enforcement, however well intentioned, put them in jeopardy on multiple fronts (see Section 9, [Who will protect the children?](#), p. 129)
 - Cultural and indigenous rights have been undermined through the criminalisation of traditional practices (such as coca chewing) by laws formulated without the participation of those affected
 - The control of entire regions by drug cartels has also undermined the right to free transit through highways, towns and villages. Basic conditions for business and economic activities are not met, and many businesses are obliged to pay for protection in order to operate

The main claim for any human rights benefit of 50 years of prohibition is that while it has not prevented overall drug use from rising, it has kept levels of use lower than they would otherwise have been, thereby contributing to the right to health. However, this argument is unsustainable given the overwhelming evidence of the significant health

35 Pérez Correa, C. (2012) *Desproporcionalidad y delitos contra la salud en México*, CIDE, México.

harms created and exacerbated by the war on drugs itself, and the evidence showing that punitive law enforcement has, at best, little to no deterrent effect.

5 Promoting stigma and discrimination

Criminalisation remains a primary weapon in the war on drugs. Yet using the criminal justice system to solve a public health problem is not only ineffective, but also socially corrosive, promoting stigmatisation and discrimination, the burden of which is carried primarily by already marginalised or vulnerable populations.

- The criminalisation of people who use drugs fuels various forms of discrimination, and this is exacerbated by populist drug-war rhetoric and media stereotyping and misinformation
- Criminalisation limits employment prospects and reduces access to welfare and healthcare, further reducing life chances and compromising the health and wellbeing of vulnerable populations
- At its most extreme, the stigma associated with drug crimes can dehumanise and provide justification for serious abuses, including torture
- Drug law enforcement has frequently become a conduit for discrimination or institutionalised racial prejudice, with certain minorities massively overrepresented in arrests and prison populations
- Vulnerable women drawn into trafficking are subject to disproportionately harsh sentencing, while women who use drugs are also frequently subject to abuse, denied access to healthcare, and arbitrarily denied parenting rights
- Children and young people carry a disproportionate burden of the costs of the war on drugs. As drug users, they are exposed to additional risks and denied access to healthcare, and through involvement in, or contact with, illegal markets, they are subject to violence and abuse from both criminals and law enforcement officers

- International law has effectively criminalised entire cultures with longstanding histories of growing and using certain drug crops
- Poverty and social deprivation increase the potential negative impact of drug use, the likelihood of being involved in the illicit trade, and the likelihood of coming into contact with law enforcement

Some argue that criminalising and stigmatising drug users sends a useful message of social disapproval, yet there is little evidence that this has any significant deterrent effect. And even if there was, it is not the role of criminal law to educate the public on health issues.

6 Wasting billions, undermining economies

Ever-expanding drug law enforcement budgets have squeezed supply while demand has continued to grow. The result is inflated prices and the creation of a profit opportunity that has fuelled a vast illegal trade controlled by criminal entrepreneurs. This has a range of negative impacts on local and global economies.

- While estimating global expenditure on drug law enforcement is difficult, the total is likely to be well in excess of \$100 billion annually
- In terms of achieving the stated aims of enforcement, this spending has been extremely poor value for money, displacing – rather than eradicating – illegal activities and failing to prevent both falling drug prices and rising availability
- Enforcement spending incurs opportunity costs by diverting resources that could be deployed elsewhere – e.g. on other police priorities or drug-related health interventions
- The global illegal trade is estimated to turn over more than \$330 billion annually
- Profits from this trade undermine the legitimate economy through corruption, money laundering, and the fuelling of regional conflicts, particularly in the vulnerable regions where illicit drug activity is concentrated

- The illicit drug trade creates a hostile environment for legitimate business interests, deterring investment and tourism, creating sector volatility and unfair competition (associated with money laundering), and producing wider macroeconomic distortions
- There are some economic benefits from the illicit trade, although profits are mostly accrued in consumer countries by those at the top of criminal hierarchies. Aside from criminals, the main beneficiaries of the war on drugs are military, police and prisons budgets, and organisations with technological and infrastructural interests

7 Causing deforestation and pollution

The war on drugs has put a heavy emphasis on 'upstream' supply-side actions, including drug crop eradication. While this has proved futile in reducing the total level of drug production (which has more than kept pace with growing demand), it has had disastrous consequences for the environment.

- Aerial fumigations of drug crops continue in Colombia, the world's second most biodiverse country. The chemicals used kill plant life indiscriminately, destroy habitats of rare and endangered animals, contaminate waterways and also impact on human health
- The unregulated processing of drugs entails unsafe disposal of toxic waste, polluting soil, groundwater and waterways
- Eradication does not eliminate production. As long as a profit opportunity remains, production simply moves elsewhere (the so-called 'balloon effect'), exacerbating deforestation and environmental damage, often in protected national parks

There is an urgent need to meaningfully count these costs and build environmental impact assessments into all drug law enforcement programmes.

Further reading

- Count the Costs initiative – thematic briefings on all the above drug-war harms available www.countthecosts.org
- Transnational Institute Drugs and Democracy project – comprehensive archive of factual and analytical resources www.druglawreform.info
- The Global Commission on Drug Policy – a range of expert reports available www.globalcommissionondrugs.org
- Kushlick, D. (2011) **International security and the global war on drugs: The tragic irony of drug securitisation** www.opendemocracy.net/danny-kushlick/international-security-and-global-war-on-drugs-tragic-irony-of-drug-securitisation
- International Institute for Strategic Studies (2011) **Drugs, insecurity and failed states: The problems of prohibition** <https://www.iiss.org/en/publications/adelphi/by%20year/2012-e76b/drugs--insecurity-and-failed-states--the-problems-of-prohibition-sh-bbb4>

Section 5

The benefits of ending the war on drugs

After detailing the ‘common ground’ aims for drug policy that you share with your audience, and showing that prohibition has failed disastrously to deliver them, you can present an inspiring vision of what the world – and your audience’s part of it in particular – will be like after the war on drugs has ended.

Talking about the benefits of ending the war on drugs

There are different ways you can approach this challenge. As a way of framing the broader reform argument, it can be very positive to describe an inspiring picture of a world, say five years after the war on drugs has ended, in which most of the demand for drugs is met through legally regulated production and supply. In this vision of the future, there will be a series of dramatic benefits relative to where we are now. Most of the harms of prohibition will have disappeared and a range of new opportunities will have opened up.

You can also emphasise that there would be huge benefits for drug-producing regions, even if they do not regulate drug markets themselves. This is because consumer regions such as Europe and North America

would switch to sourcing their drugs from legitimate producers rather than organised crime. Indeed, public figures from Latin America have supported cannabis legalisation campaigners in several US states, arguing that legal regulation there would significantly reduce the financial resources available to cartels in, for example, Mexico and Colombia, and thereby limit their ever-increasing power.

Reducing, mitigating or eliminating the costs of the war on drugs

As criminal drug markets are gradually replaced by state regulation, the opportunities for criminal profiteers will progressively diminish, along with the associated costs outlined in the previous section. The extent, nature and pace of specific reforms will define the scope of the benefits and their potential impacts on illegal markets. But in general terms that can easily be adapted to your engagement or messaging requirements, this overwhelmingly positive narrative includes:

- Less drug-related crime and fewer people involved in it
- Less violence at all levels, including between authorities and cartels, and between rival cartels
- Fewer criminal profits available to fuel corruption, and reduced incentives to corrupt institutions in the first place
- A reduced prison population, which will improve social cohesion at the community level
- Less pressure on the criminal justice system generally
- Huge financial savings, especially from reduced criminal justice and military spending
- Reduced money laundering, and related economic distortions
- Improved health outcomes for communities and users
- Less stigma and discrimination against drug users, young people, women, and poor or marginalised groups
- Fewer drug law enforcement-related human rights abuses

- Improved natural and local environments as unregulated drug production and drug crop eradication declines

These benefits can be expanded into a more detailed narrative with localised examples or human stories relevant to your audience. Or alternatively (as suggested in Section 3, [Establishing common ground as the basis for engagement and debate](#), p. 39), they can be further simplified into more positive 'soundbite' messages that you can tailor to your particular audience.

Some examples include:

- As violence falls, we will see safer communities for our kids to grow up in
- Street dealing will stop across most of our city
- Cartel turf wars related to drug trafficking and dealing will stop
- Massive reductions in corruption will halt the undermining of many of our institutions
- We will see improved health outcomes that benefit everyone in the long run
- We will save billions in taxpayer money
- Fewer fathers and mothers will be incarcerated for drug crimes, greatly strengthening families and improving social cohesion

Opportunities created by ending the war on drugs

It is important to highlight that the benefits of reform go beyond merely reducing the costs of the drug war:

- Communities devastated by drug-war violence will have the opportunity to rebuild

- As the corrupting influence of cartel money falls, we will be able to strengthen state institutions and restore public trust in them, promoting the rule of law, human rights, good governance and accountability
- Rather than ideology, policy will be based on evidence of what works, focusing on real measures of success like reducing health and social harms, not just process measures like seizures and arrests
- There will be a huge 'peace dividend': resources spent on drug law enforcement can be redirected into other areas, either within the police, or for other social, health, institutional and economic programmes
- Tax revenue from drug production and supply will become available, most obviously from legally regulated cannabis markets, which already deliver hundreds of millions of dollars for governments in the US and the Netherlands
- There could be reductions in health harms as people switch to less potent and harmful drugs, or to less harmful methods of drug consumption, as has occurred in places that have established decriminalisation policies, such as Portugal
- Governments will be better able to address new challenges like high-risk stimulant use or novel psychoactive substances
- Drug policy can become genuinely public health-based, delivering more effective health-led prevention, education, harm reduction, and treatment responses
- Countries currently being devastated by drug-war violence and crime will become more attractive destinations for business investment and tourism

Winners and losers

Another way to tailor these benefits for a particular audience would be to present them in terms of winners and losers.

Winners would include:

- Parents, who are less likely to lose their kids to drug-war violence or to substances that have been cut with dangerous adulterants, and who could see more money spent on their education instead
- Taxpayers, who are no longer funding state versus cartel violence
- Doctors, nurses and the sick they treat, who can see extra funds spent on healthcare
- Businesses, who will see greater inward investment, less extortion, and a level playing field without competitors funded by drug money laundering

Losers would include:

- Cartels and street drug dealers
- Corrupt politicians, officials and bankers
- Private prison contractors and employees in the prison sector, as money is diverted to other projects, such as hospital and school construction
- Firearms dealers, as the market for their weapons diminishes
- Police agencies, military and security forces dedicated to enforcing drug laws

Potential costs of reform?

You should not pretend everything about the drug policy reform process will be smooth, even if the overall benefits are substantial (see Section 9, [Responding to concerns about ending the war on drugs](#), p. 123)

- Police and military budgets are likely to contract (at least in drug law enforcement)
- Elements of the banking and finance sector could be forced to restructure as business related to illicit drug profits contracts
- Relations with the US could shift in unpredictable ways – most obviously in terms of trade relationships and aid budgets
- There is the potential for diplomatic tensions with states or international bodies that maintain prohibitions (such as Russia and China)
- There is the potential, at least in the short term, for localised spikes in rates of violence as criminals fight over shrinking drug market opportunities
- In the short term, some vulnerable populations involved in drug production and supply will see their incomes fall

Section 6

Cutting through drug-war propaganda and arguments

Bear in mind that no policy which has been such a spectacular failure for so long could have been sustained without a huge propaganda effort to prop it up. As you deliver your critique, you should be aware of the fog of misinformation, myth, and statistical trickery that your opponents may confront you with, and be ready to cut through it.

Those attempting to defend the status quo frequently cite statistics that give the misleading impression that prohibition is working, when the exact opposite is true. It is hard to think of another area of social policy where the waters are so muddied by statistical chicanery. This sort of misleading evidence, attempting to dress up failure as success, usually comes in one of five varieties.

1 Localised success

Example

“Cocaine production in Colombia has fallen this year.”

The statistics behind this claim may well be true (they may not, but let's assume they are). However, local production is largely irrelevant in the context of a globalised market, as falls in production in one region will quickly be made up by rises in another. This pattern has been observed repeatedly in regional shifts in the production of coca, opium and cannabis – in fact, it is so frequently observed that it has become known in official shorthand as the 'balloon effect' (because if you squeeze a balloon on one side, it expands on the other).

The key point is that global production has always kept pace with global demand, which has risen steadily over the last 50 years (see box [Why drugs prohibition can never work](#), p. 54). Illegal drug markets are not confined by geographical boundaries, and localised successes should not be allowed to disguise the larger-scale systematic failure to control global production. This is the worst form of cherry-picking. Keep the focus on the bigger picture, using official national and international statistics that are not in dispute.

2. Short-term localised success

Example

“Street drug dealing fell by 10% in the last six months in Chicago.”

Again, this may well be true, but short-term changes often mask longer-term trends. They can also be due to (non-policy-related) external factors, changes in statistical collection or methodology, or sometimes, in the case of marginal changes, due to random variation within statistical error parameters. This sort of cherry-picking can be countered by bringing the focus back to the bigger-picture statistics that show the failure of current policy both nationally and internationally. Be careful to make sure the criticism is aimed at the policy makers, not those who are implementing the policies (the police may be doing the best job they can, it just happens to be an impossible one). It is also important to remind policy makers that it is the policy of prohibition that created the crime and illegal markets in the first place.

3. Process success

Examples

“We have set up a new agency, appointed a new Drug Tsar, started a partnership project with Jamaican police, invested millions in a, b and c, announced ambitious new targets on x, y and z.”

These are age-old exercises in distraction. Policy must be judged on outcomes, not inputs or process indicators. Challenge policy makers on their record – the outcomes of the policies they are supporting. Do not let them get away with announcing yet more headline-grabbing new enforcement initiatives. Have these new changes made any difference to the bigger picture on supply, availability, crime, or problematic use? The problems with prohibition are fundamental and cannot be solved

with superficial tweaks to policy which, at best, might marginally reduce the harms created by the policy in the first place, or more likely will cost governments and taxpayers more money without any additional benefits.

4 Success on meaningless measures

Examples

“The volume of drug seizures is up, the number of dealers jailed has increased, we have ‘smashed’ record numbers of drug gangs.”

These are measures that primarily reflect the level of expenditure on enforcement and the size of the illegal market. They rarely, if ever, translate into the policy outputs that prohibition is striving for – i.e. reduced drug production, trafficking, availability, or use, let alone reduced harm. They sound great in the media – catching criminals, intercepting nasty drugs etc. – but they give the misleading impression of success where there is in fact none.

Again, challenge people who use these sorts of statistics to show what impact they are having on meaningful indicators, and keep to the bigger picture. Do not let officials who talk about 'x quantities of drugs prevented from reaching the streets' go unchallenged. Point out that such seizures have no long-term impact on overall supply and that drugs are cheaper and more available than ever.

Policy must be judged on outcomes, not inputs or process indicators

Always bring these claims back to the long-term, ongoing, systematic failure of prohibition and the relative effectiveness of decriminalisation or regulation when measured against key indicators.

5 Success, but only compared with previous disaster

Example

“Crack use has fallen since last year.”

When compared to a policy as disastrous as heavy-handed enforcement and large-scale incarceration, almost any change in intervention will start to look like progress. A good example is the improved outcomes from coercing drug using offenders into abstinence-based 'treatment' as opposed to sending them to jail. The point here is that imprisonment is so expensive and counterproductive that any alternative spending would produce better results – burning the money, giving offenders juggling lessons; in fact almost anything.

The crack example can also illustrate the important point that drugs come in and out of fashion largely independently of policy and law. Prevalence of one drug may fall after an epidemic, while another simultaneously rises. It is relatively easy for policy makers to cherry-pick some positive statistics and misleadingly hold them up as representative of wider progress. Again, the way to counter this is to focus on the longer-term bigger picture. Globally, drug use has risen steadily for decades under prohibition, especially use of the most problematic drugs. And the harms from criminal drug markets have risen even more alarmingly.

Beginning over a century ago with opium dens, before moving on to 'reefer madness', and then panics around cocaine, crack, meth and most recently various 'legal highs', policymakers and the media have historically demonised particular drugs, their effects and their users. This has in part been to shock the public into supporting extreme and repressive measures, and to make them think any action is a success, without actually considering the evidence properly.

How to talk about alternatives?

Although it is important to expose the shortcomings of current drug policy, no amount of devastating criticisms of prohibition or discussion of the potential benefits of reform will achieve much unless a convincing case for an alternative can be made. There is a great deal of ignorance and misinformation about what the alternatives to prohibition might look like, so we have always found it useful to prioritise informing and reassuring audiences by spelling out very clearly what the alternatives, including regulation, really mean.

Below are general guidelines we have found helpful:

- **Be clear about the differences between the decriminalisation of personal possession, legal regulation, and a number of other terms** (see [Definitions](#) box over page)
- **Be clear about the difference between a legally regulated market and 'legalisation'. 'Legalisation' is a process, not a policy, and used in isolation the term can lead to misunderstandings.** The goal of a legalisation process is a transition to an appropriate system of regulation for controlling drug production,

products, supply and use. Where possible, it is more useful to talk about 'regulation' or 'moving towards a legally regulated market' rather than just 'legalisation'

- **Emphasise that the decriminalisation of drug possession for personal use is the norm in many countries in Latin America, Europe and elsewhere, and systems for the legal supply of cannabis are already in place in the US, Europe and Uruguay.** It is important to emphasise that reform is already a reality, and that exploring the wider legal regulation of some drugs is simply the logical and sensible next step in a process aimed at delivering better policy outcomes
- **Emphasise the concept of retaking control.** It is important to dispel the idea that moves towards market regulation are signs of weakness or surrender. It is the opposite: governments will be retaking control from, and disempowering, organised crime – as happened after US alcohol prohibition ended
- **Legally regulated markets are not 'free markets'.** It is important to challenge the myth that legalisation is a free-market libertarian position, or will inevitably lead to an unregulated 'free-for-all'. This is the opposite of what is being advocated; controlled availability does not mean increased or free availability. Some products and activities will still remain prohibited under a regulated market model
- **Current prohibitionist approaches to prohibition in fact constitute a form of 'total deregulation'.** Illegal drug markets are pervasive, but completely uncontrolled. Implementing regulation would reduce their size and the harms they cause

Definitions

Prohibition

Prohibition, as a public policy or as a synonym for what is sometimes officially called the 'international drug control system', refers to the fact that the production, trafficking, supply and possession of drugs for non-medical or scientific purposes is illegal and therefore subject to criminal penalties. Although the UN drug conventions define such prohibitions for specified drugs as global in scope, the domestic laws, enforcement approaches, and the nature of sanctions applied for different offences and for different drugs varies significantly between jurisdictions.

Legalisation

Legalisation is a process by which the prohibition of a substance is ended or repealed, allowing for its production, availability and use to be legally regulated. 'Legalisation' is a process of legal reform, rather than a policy model in itself; the nature of the regulation model that follows the legalisation process needs to be specified separately (see Section 7, [How to talk about alternatives](#), p. 81).

Regulation

Regulation describes the way in which government authorities intervene in the market to control a particular legal drug product or activities related to it. This control can take the form of regulations on, for example, a drug's price, potency, and packaging, as well as various aspects of its production, transit, availability, marketing and use. There is no single regulation model; there are a range of regulatory tools that can be deployed in a variety of ways, depending on the product, context, key populations and institutional framework (see Section 7, [How to talk about alternatives](#), p. 81).

Decriminalisation

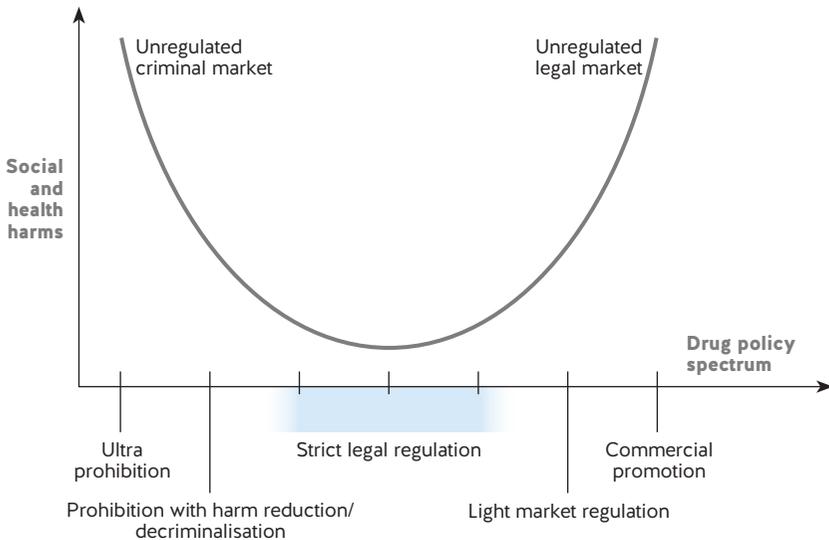
Decriminalisation is not a clearly defined legal term in drug policy discourse (and is often mistakenly confused with legalisation), but is generally understood to refer to the removal of criminal penalties for the possession of small amounts of certain specified drugs for personal use.³⁶ Under a decriminalisation approach, possession remains an offence that can be subject to a civil or administrative sanction such as a fine or mandatory treatment assessment. There is also considerable variation in how decriminalisation is implemented in different jurisdictions, in terms of quantity thresholds (for possession/dealing), the nature of civil sanctions, how sanctions

³⁶ Decriminalisation generally refers to possession for personal use but is sometimes applied to other less serious drug offences including cultivation of cannabis for personal use, small scale not for profit drug supply or sharing.

are enforced, and by whom (e.g. the police, judges, social workers, or health professionals).³⁷ Unlike legalisation and regulation, decriminalisation of this kind is permitted within the UN drug conventions.

Claim the middle ground

As illustrated in the graphic below, there are a spectrum of legal/policy frameworks available for regulating the production, supply and use of non-medical psychoactive drugs. Either end of this spectrum involves effectively unregulated markets – the criminal markets of a blanket prohibition at one end, and legal, commercial free markets at the other. At both the prohibition and commercial ends, profit is the primary driver, with other outcomes of little importance. In the middle lies an optimum level of government regulation – a point at which policy is both ethical and effective, because it represents where overall harms are minimised.



Graphic adapted from the work of Professor John Marks.

³⁷ See Rolles S. and Eastwood N. (2012) **Drug decriminalisation policies in practice: A global summary**, Harm Reduction International. http://www.ihra.net/files/2012/09/04/Chapter_3.4_drug-decriminalisation.pdf

The reform position is based on the proposition that both of these extremes are associated with unacceptably high social and health costs. But between these poles exists a range of options for legally regulating different aspects of the market. ***Strict government regulation models can legitimately claim to be the pragmatic centre-ground position*** – it is absolutely the norm for almost all other forms of social and health policy. ***Prohibition is the radical policy, not regulation.***

Given the reality of continuing high demand for drugs, and the resilience of illicit supply in meeting this demand, we argue that the regulated market models found in this central part of the spectrum are best able to deliver the outcomes we all seek. Contrary to the suggestion this is 'liberalisation', drug market regulation is a pragmatic position that involves rolling out strict government control into a marketplace where currently there is none.

It is interesting to note that many governments that remain strongly resistant to legalisation and regulation are, nonetheless, at least claiming to be moving towards the centre ground on this graphic. For example, the US has been particularly vocal on the international stage in promoting what it calls a 'third way' or 'middle-ground' approach between the 'extremes' of legalisation and a war on drugs. Although mainly rhetorical, this approach emphasises alternatives to incarceration, including diversion into treatment for drug offenders, often via so-called 'drug courts'.³⁸

While such measures are often supported by evidence that they are at least more effective than previous incarceration approaches, they may not actually involve any significant shift in spending priorities. In the case of the US, the proportions of drug budgets allocated to enforcement and health have remained roughly constant, despite the rhetoric suggesting a reorientation or better 'balance'. The drug courts approach also remains

³⁸ For more information on drug courts, see: <http://www.nacdl.org/drugcourts/> <http://www.justicepolicy.org/research/2217> and <http://www.drugpolicy.org/drugcourts>

There is a great deal of ignorance and misinformation about what the alternatives to prohibition might look like

coercive in nature, blurring the boundaries between criminal justice and health in ways that are ethically questionable. Although nominally 'patients', drug users are still treated as criminals, and the threat of criminal sanctions is still used to ensure compliance. This may

appear more balanced relative to what existed before, but with no other medical intervention could patients be treated in this way.

The wider problem is that claims of evidence-based health spending can often provide a smokescreen for the absence of evidence supporting enforcement. In the context of evidence-based health approaches on the one hand, and actively counterproductive enforcement on the other, the suggestion that the two need to be 'balanced' is nonsensical given they often are working in opposite directions. While moves of this kind clearly represent progress over harsher forms of enforcement, without regulated markets most of the harms associated with the illegal trade will remain.

That said, it is sometimes striking how much crossover there is in thinking and rhetoric between these models and models of strict legal regulation, at least in terms of goals. There is often more common ground than people are aware of, and views on either side of the reform debate are generally closer to the centre, and to each other, than the polarised media caricatures would suggest.

How can we regulate?

All aspects of the market can be regulated – from production through to use. Many of the drugs in question – such as cannabis, amphetamines, cocaine, and various opiates, including heroin – are already produced legally for medical uses without significant problems. These medical production models indicate clearly how drug production can be carried out in a safe and controlled fashion.

In terms of availability and use, legal regulation allows controls to be put in place over:

- **Products** (dose, preparation, price, and packaging)
- **Vendors** (licensing, vetting and training requirements)
- **Marketing** (advertising, branding and promotions)
- **Outlets** (location, outlet density, appearance)
- **Who has access** (age controls, licensed buyers, club membership schemes)
- **Where and when drugs can be consumed** (e.g. not in indoor public places, not after specified trading hours)

Options for regulating different drugs

Rather than a universal model, a flexible range of established tools is available for regulating different drugs within different populations. Naturally, the riskier the product, the more restrictive the controls over it need to be, and any activities that violate these controls will remain prohibited (sales to children being the obvious example). We have suggested five basic models for regulating drug availability, all of which have been applied to various existing products and markets:

- **Medical prescription model or supervised venues**, for problematic users of the most risky products

- **Specialist pharmacist retail model**, trained and licensed vendor, potentially combined with named/licensed user access and rationing of volume of sales
- **Licensed retailing**, including tiers of regulation appropriate to product risk and local needs. Examples include off-licences, tobacconists, or front-of-counter sales in pharmacies
- **Licensed premises for sale and consumption**, like bars or cannabis 'coffee shops' in the Netherlands
- **Unlicensed sales**, for the lowest-risk products like coffee or coca tea

Lessons can be drawn from the successes and failings of alcohol and tobacco regulation, with particular attention needed to ensure availability is controlled rather than increased. It is important to prevent over-commercialisation and profit-seeking marketing or other promotional activities that aim to increase consumption. On the graphic above, for example, in many countries tobacco could be said to be moving from the right of the x-axis into the centre, just as illegal drugs are also moving towards the centre, but from a starting point on the left. But whatever the starting point, the goal is the same: effective regulation and reduced social and health costs. (For more information, see Section 8, [Talking about alcohol and tobacco](#), p. 91, and [Talking about cannabis](#), p. 99.)

Finally, it is important to be clear that:

- 1 **There is no one-size-fits-all solution.** Models of regulation will need to be flexible to accommodate different drugs, different groups of users, and the needs of local environments. Unlike dogmatic and inflexible blanket prohibitions, they will also need to adapt in response to changing circumstances and evidence of their impacts, both positive

and negative. The detail of how such models operate will need to be locally determined and guided by local evidence, rather than imposed from above.³⁹

2 It is important to acknowledge the limits of what regulation can achieve – it is not a silver bullet or panacea. Ending prohibition does not get rid of the 'drug problem', only the 'prohibition problem'. Specifically, it reduces the problems associated with the illegal trade, and the criminalisation of users. Nonetheless, ending the drug war would, in the longer term, create a far better environment in which drug misuse and a range of related social issues could be addressed. The benefits of regulation will be significant, but felt gradually as the reform process unfolds. While not eliminated entirely, drug-related crime and violence will be substantially diminished. As opportunities for such criminality decrease, there is likely to be some displacement into other forms of crime, even if there is a net fall in criminality overall. A transition period, as the market readjusts, could even lead to short-term increases in crime in some areas (see Section 9, [What will organised crime do instead?](#), p. 135)

3 Reform of markets by consumer countries would have profound impacts for producer and transit countries. It is sometimes suggested that a major barrier to regulation is the fact that developing countries and others do not have the infrastructure to regulate drugs effectively. For a detailed discussion on this topic, see Section 9, [State institutions are not strong enough to regulate drugs](#), p. 151. But ultimately, any country that struggles to regulate drugs perfectly is going to suffer a lot more if they leave them entirely in the hands of organised instead. As previously noted (see Section 5, [The benefits of ending the war on drugs](#), p. 69), the establishment

³⁹ See Rolles S. (2009) [After the War on Drugs, Blueprint for Regulation](http://www.tdpf.org.uk/Transform_Drugs_Blueprint.pdf), Transform Drug Policy Foundation.

of regulated markets in key consumer regions will produce significant benefits for producer and transit countries, even if they do not have the ability or political will to regulate fully themselves.

Further reading

- Rolles, S. (2009) **After the War on Drugs: Blueprint for Regulation**, Transform Drug Policy Foundation. <http://www.tdpf.org.uk/resources/publications/after-war-drugs-blueprint-regulation>
- The Global Commission on Drug Policy (2014) **Taking Control: Pathways to Drug Policies that Work**, section 2.5. www.globalcommissionondrugs.org/reports/
- The Health Officers Council of British Columbia (2011) **Public health perspectives for regulating psychoactive substances: what we can do about alcohol, tobacco, and other drugs**. <http://drugpolicy.ca/wp-content/uploads/2011/12/Regulated-models-Final-Nov-2011.pdf>.
- The King County Bar Association (2005) **Effective Drug Control: Toward A New Legal Framework**. <http://www.kcba.org/druglaw/pdf/EffectiveDrugControl.pdf>

Talking about... particular drugs, rights and freedoms

Any convincing case for reform will need to address a range of specific issues and concerns that come up regularly relating to alcohol, tobacco, cannabis, and coca-based drugs – as well as the issue of personal rights and freedoms.

Talking about... alcohol and tobacco

As the two most widely used legal drugs, experiences with alcohol and tobacco are inevitably a common feature of the debate around potential legal models for currently illegal drugs. The huge variety of historic and current policy responses to these two drugs creates both opportunities and challenges in the debate, with advocates and opponents of reform drawing on different experiences to support their positions.

Both tobacco and alcohol are often talked of as if they are not 'real' drugs – or sometimes not drugs at all. This is underlined by the often-heard phrase 'alcohol and drugs', rather than 'alcohol and other drugs'. Obviously both alcohol and tobacco are powerful psychoactive drugs associated with substantial health risks. Yet for reasons unrelated to

any scientific assessment of actual risk, they are both legally produced, supplied and consumed,⁴⁰ albeit under a regulatory framework in which some prohibitions remain (e.g. drinks with an alcohol content over a certain percentage, or sales to children).

For reform advocates, alcohol and tobacco policy provide invaluable lessons for the wider drug regulation debate precisely because there have been a range of policy approaches to both, from total prohibitions through to effectively unregulated commercial markets.

For advocates of prohibition, the starting point is that the high levels of alcohol and tobacco use are a direct result of their legality, and use of other drugs could rise to similar levels if their supply was legally regulated.

Here are some general points to make:

- The distinction between legal and illegal drugs is not based on any scientific or public health criteria; it is purely the result of social and political history. If alcohol and tobacco were to be classified under the UN drug scheduling system they would be ranked alongside the most harmful drugs
- No one is calling for alcohol and tobacco prohibition. This is because handing 100% of these markets to criminals would be a disaster, as alcohol prohibition in the US demonstrated. Yet that is exactly what we have done with other drugs
- It is a fundamental inconsistency of the law, and clearly unjust, that some people are free to use one drug while others are criminalised for using another of similar or lower risk. (This argument needs to be used very carefully – see [Talking about... rights and freedoms](#), p. 118)

⁴⁰ Alcohol prohibition remains in place in a number of countries: Afghanistan, Bangladesh, Brunei, some Indian states, Iran, Kuwait, Libya, Saudi Arabia, Sudan, UAE, Yemen and Pakistan.

Private producers and suppliers of alcohol and tobacco see their respective markets from a commercial, rather than a public health, perspective, their main motivation being to generate the highest possible profits, primarily by maximising consumption. Public health issues are secondary to this goal. Unsurprisingly, both industries have therefore historically fought to minimise market regulation aimed at moderating consumption. As discussed below, the situation has changed significantly with regard to tobacco in many countries, less so for alcohol.

General points to make on alcohol and tobacco regulation:

- Alcohol and tobacco are at the over-commercialised end of the drug control spectrum, and this is entirely inappropriate given the harms they can cause. In fact, in many countries, controls over these two drugs are so loose that they are sold in food stores and sweetshops, have no ingredients lists, and, in the case of alcohol, do not even carry proper health warnings. When coupled with hundreds of years of active promotion, it is unsurprising that levels of use are so high
- For alcohol and tobacco, policy makers are now struggling to impose optimal regulatory frameworks onto already well-established and culturally embedded legal commercial markets. Worse still, this is being attempted against fierce resistance from well-resourced industry lobbying that has successfully defeated numerous attempts to improve regulation
- In contrast, currently illegal drugs offer a blank slate – an opportunity to replace criminal markets with models of strict regulation built around public health and wellbeing goals from the outset, thereby avoiding the many historic failings of alcohol and tobacco regulation
- Other legal drugs – such as cannabis in the Netherlands, or glue and solvents – are not nearly as widely used as tobacco and alcohol. The

suggestion that legality alone is the key driver of levels of use, or that use of legalised drugs will inevitably rise to match that of alcohol and tobacco, is clearly wrong (see also Section 9, [Will use rise?](#), p. 124)

- It is entirely consistent to call for improved or increased regulation of alcohol and tobacco *and* the legalisation and regulation of currently illegal drugs. This is about applying the same evidence-led public health and harm reduction principles to all drugs, and developing the optimum level of regulation for each. This would, for example, mean that no drug was sold in food stores or sweetshops

This last point is also a useful way of showing your audience you are not 'pro-drugs', but purely interested in getting the best mix of controls to minimise harm and maximise wellbeing in society.

Tobacco

Despite the exceptionally high risks tobacco presents (around half of smokers will die prematurely as a result of using the drug), the low level of intoxication produced by nicotine means it has not attracted the moral indignation that has shaped punitive prohibitionist thinking on other drugs. As such, tobacco consumption has assumed a unique role in society: it is a form of highly visible dependent drug use, with a high risk of chronic health harms, and yet has been aggressively commercialised throughout much of the world during the last century. In fact, in most countries it remains socially acceptable.

The public health disaster caused by smoked tobacco has, however, ultimately led to a range of more pragmatic public health and regulatory responses in a number of countries. There is now a clear consensus around the types of interventions and market regulation that are likely to deliver

improved outcomes. The World Health Organization's Framework Convention on Tobacco Control⁴¹ (FCTC) provides a good summary of these, which include:

- Bans on tobacco advertising, promotion and sponsorship
- Regulated packaging and labelling with health risk information
- Bans on consumption in public spaces
- A ban on sales to minors
- Tax and price controls to dissuade use
- Support for alternative, economically viable sources of income for tobacco workers, growers, and individual sellers

With 168 signatories, the level of international support for the FCTC is similar to that for the UN drug treaties, which of course support a parallel system for the outright prohibition of most other non-medical drug markets.

In the context of arguing for the wider legal regulation of currently illegal drugs, the key points to highlight are:

- The FCTC represents a powerful international consensus behind a legal framework specifically designed to deliver effective market regulation of a high-risk non-medical drug. So there already exists a coherent and functioning international legal and policy model for precisely the kind of regulation that we advocate for other drugs of comparable or lesser risk (see Section 9, [Don't the UN treaties mean reform is impossible?](#), p. 143)
- The regulatory controls contained in the FCTC, combined with effective public health education, have dramatically reduced smoking and related health harms in recent decades in many countries. This fall in tobacco use contrasts starkly with the huge rise in use and harms from many

⁴¹ Available online at: www.who.int/fctc/es/index.html

unregulated illegal drugs over the same period. For example, in Uruguay, tobacco use fell by almost 20% between 2005-11, as a direct result of legal regulatory measures⁴²

- This shows how public health education and sensible legal regulation, using precisely the sort of product controls and market interventions that are impossible under prohibition, can reduce use and harms from a risky legal drug, without criminalising users or imposing blanket bans on production and supply
- It also shows how it is possible to learn from the failures of overly commercialised models and introduce stricter regulation. So the suggestion that there is 'no way back' after a change in policy is clearly not the case, and the assumption that a 'big tobacco' model is an inevitable outcome of legalisation is clearly not true⁴³ (see also [Talking about... cannabis](#), p. 99)

What about the illegal tobacco trade?

Prohibitionists often argue that the existence of the parallel illegal tobacco trade demonstrates that legal markets are ineffective at eliminating criminality. This is a strawman argument, based on the myth that reformers claim a legal trade will completely eliminate or displace an illegal one. We don't make that claim.

- We do, however, argue that the illegal trade will be substantially reduced over time. This is, of course, precisely what we see with tobacco, where the illegal trade constitutes between 5-25% of the total

⁴² Abascal W. et al. (2012) **Tobacco control campaign in Uruguay: a population-based trend analysis**, *The Lancet*. <http://www.ncbi.nlm.nih.gov/pubmed/22981904>

⁴³ This is an argument increasingly being used by opponents of cannabis regulation in the US. See for example: <http://learnaboutsam.com/marijuana-is-like-tobacco/>

market in different countries. 75-95% legally regulated and taxed is clearly preferable to 100% criminal, which is the default situation under prohibition

- The scale of the illegal tobacco market is largely determined by levels of taxation. There is a balance to be struck between dissuading use by keeping prices high, and reducing incentives to smuggle or counterfeit cigarettes by keeping prices low. There are no perfect solutions, yet because tobacco is legal and regulated, governments can decide their priorities and intervene in the market to set prices accordingly. This is impossible with illegal drugs, the price of which is entirely determined by supply and demand in an unregulated criminal market
- It is also worth noting that most smuggled tobacco is at least legally produced in the first instance

Alcohol

Like tobacco, there are some key differences between alcohol and other drugs that need to be considered when thinking about transferring policy lessons. Unlike many drugs – particularly pill – and powder-based drugs – alcohol is not just consumed for its intoxicating effects. It has historically been consumed for its calorific value, and has a history as old as human civilisation, with its use deeply rooted in a wide range of social contexts and cultural rituals across the world. With around 2 billion consumers worldwide, the scale of alcohol use and its global cultural penetration helps explain why its negative public health impact is exceeded only by tobacco's.

There is a substantial body of research examining the various policy approaches that have been used to control alcohol. These approaches include unregulated free markets, licensed sales, state monopolies, and prohibition. While there is not yet an alcohol policy tool equivalent to the Framework Convention for Tobacco Control, the World Health

Organization's 'Global Status Report on Alcohol Policy' advocates similar measures for reducing alcohol-related harms. As with the FCTC, this report clearly describes the broad approach to alcohol policy and regulation being advocated for other drugs by the reform movement.

A technique that is often effective in debates or discussions is to read out authoritative texts about alcohol control policy, changing the words 'alcohol' to 'drugs', and 'drinking' to 'drug use' – or, when reading the FCTC, changing the word 'tobacco' to 'cannabis'.

Further reading

- World Health Organization (2014) **Global status report on alcohol and health 2014**. http://www.who.int/substance_abuse/publications/global_alcohol_report/en/
- World Health Organization (2011) **Global strategy to reduce harmful use of alcohol**. www.who.int/substance_abuse/activities/globalstrategy/en/
- International Harm Reduction Association (2008) **50 best collection: Alcohol Harm Reduction**. <http://www.ihra.net/alcohol-harm-reduction>

Talking about... cannabis

Cannabis is relatively easy to produce, requires little processing, and carries relatively low risks compared to other (legal or illegal) drugs. It is also by far the most widely used illegal drug, accounting for an estimated 80% of all illegal drug use, and is correspondingly at the forefront of current drug policy debates.

Those required to enforce cannabis prohibition face an impossible challenge. Both supply-side interdiction and punitive measures against users have proven not only utterly futile, but actively counterproductive.

You can highlight how the current approach is:

- Draining huge resources from already overstretched police budgets
- Criminalising key populations of young people, who enter a cycle of increasing criminal activity as they enter into the criminal justice system
- Fuelling a growing criminal trade increasingly characterised by the kind of violence more commonly associated with heroin and cocaine markets
- Alienating young people and minorities from the police and others in authority
- Providing a 'gateway' to other, more risky drugs by putting users in direct contact with criminal dealers who sell them

Cannabis regulation

Cannabis has been at the forefront of real-world experiments with a range of policy models. These now provide evidence on everything from punitive prohibitions, the decriminalisation of personal possession, through to legal and quasi-legal regulated markets.

The regulated market models in particular (see [box](#) below) offer invaluable lessons.

Cannabis regulation in practice

Cannabis 'coffee shops' in the Netherlands

The Netherlands has had a *de facto* legal cannabis supply and use since 1976, with a well-developed system for sale and consumption via licensed outlets. While the system has functioned very effectively overall, it has struggled with the constraints of the international legal framework, which have led to the 'back door problem', whereby the absence of legal production and supply to the coffee shops means cannabis is still sourced from the illicit market – and therefore linked to criminality. And because the Netherlands' system has been implemented unilaterally, there have been problems with so-called 'drug tourism' in some of Dutch border towns (recently leading to coffee shops becoming members-only clubs in some regions).^{44 45}

Spanish cannabis social clubs

The hundreds of so-called 'cannabis social clubs' (CSCs) found in Spain take advantage of the country's informal decriminalisation policy which tolerates the personal possession of small amounts of any illicit drug. With regard to cannabis, this decriminalisation policy has extended to production too, with Spanish law typically being interpreted in a way that permits private cultivation of the drug for personal use. Legal experts have identified several criteria that CSCs must meet in order to comply with precedents set in case law. Among other conditions, the clubs must be run on a not-for-profit basis; be closed to the public (with membership granted only upon invitation by an existing member); enforce limits on the quantity of cannabis that members can purchase; distribute cannabis for more or less immediate consumption; and register with the authorities. The clubs have historically been self-regulating, but in 2014, several places adopted legislation to formally license and regulate CSCs broadly in line with the rules that they were already following. This should provide a more solid legal basis for the clubs' operations. The CSC model has advantages over more commercial cannabis markets, in that it does not actively promote cannabis, and reduces the potential for new (and typically young) users to be initiated into cannabis use.⁴⁶

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- 44 Rolles, S. and Murkin, G. (2013) **How to Regulate Cannabis: A Practical Guide**, Transform Drug Policy Foundation. www.tdpf.org.uk/resources/publications/how-regulate-cannabis-practical-guide
- 45 Rolles, S. (2014) **Cannabis policy in the Netherlands: moving forwards not backwards**, Transform Drug Policy Foundation. www.tdpf.org.uk/resources/publications/cannabis-policy-netherlands-moving-forwards-not-backwards
- 46 Murkin, G. (2011) **Cannabis social clubs in Spain: legalisation without commercialisation**, Transform Drug Policy Foundation. www.tdpf.org.uk/resources/publications/cannabis-social-clubs-spain-legalisation-without-commercialisation

Medical cannabis

A number of Canadian and US states, and some European countries, have well-developed models for the regulated production and supply of cannabis for medical uses. In many cases, these are largely indistinguishable from the proposed regulated supply models for non-medical use. Somewhat controversially, a proportion of the 'medical' supply has become a *de facto* non-medical supply infrastructure, the boundaries between the two being particularly blurred in some of the more commercial US operations.

Cannabis legalisation measures in the states of Washington and Colorado

In November 2012, Washington and Colorado became the first US states – and jurisdictions in the world – to approve the regulation, control and taxation of cannabis for recreational purposes. Both of these cannabis markets are now in operation, and in 2014, the states of Alaska and Oregon, as well as Washington, D. C., all voted to implement similarly regulated markets.

Washington: Initiative 502 legalised the possession and use of up to 28 grams of cannabis for people over 21 years of age, and provides for the creation of a legal market based largely on the state's existing regulation of alcoholic beverages. The regulatory model enables the state liquor control board to grant licences to private companies for the production, processing, and sale of cannabis. It applies a 25% tax to each transaction in the supply chain – from producer to processor, processor to retailer, and retailer to customer – with a proportion of the revenue allocated to programmes for drug prevention, research, education and health. It should be noted that the new regulations do not allow at-home cultivation and make no changes to the state's existing medical cannabis industry.

Colorado: Amendment 64 legalised the possession of up to 28 grams of cannabis, as well as the cultivation of up to six cannabis plants for use by adults over 21 years of age. It also authorised the state tax agency – which already regulates alcohol, snuff and medical cannabis – to regulate the production, distribution and sale of cannabis. A 15% excise tax is applied from cultivation to processing or retail, as well as a 10% excise tax on sales (in addition to any existing local sales tax). The first \$40 million of tax revenue was earmarked for public school construction. As in Washington, advertising and marketing are permitted, although special labelling on packaging – detailing health risks, content and potency – is required. Both states also treat the public consumption of cannabis as an administrative offence, subject to a fine.

Uruguay

In 2013, under the leadership of President Jose Mujica, the Uruguayan government passed a bill to legally regulate cannabis through a state-controlled monopoly. The main objective of the law was to reclaim the cannabis market from drug cartels, in order to improve security and reduce crime. It was also intended to separate the cannabis market from the markets for other, riskier drugs, such as cocaine base, which is widely used in the country. The proposal was the first time a national government formally supported the legal regulation of cannabis for non-medical use.

Uruguay's cannabis market will be operational at some point in 2015, and is set to be much more tightly regulated than the cannabis markets established in the US. Only a few private companies will be licensed to legally produce cannabis, with retail sales of the drug managed by licensed and regulated pharmacies only.

It is expected that around four grades of herbal cannabis will be made legally available for purchase, with potency ranging from around 5% THC to a maximum of 15% THC. The cannabis will be sold in plain, unbranded packaging, and retail prices will be set at, or just below, current illicit-market rates. Cannabis edibles or other cannabis-infused products will not be available for retail sale, and there will be a comprehensive ban on all forms of cannabis advertising and marketing.

A national registry of cannabis users will be maintained, in order to track purchasing patterns and limit sales to 40 grams per user per month (10 grams per week). The Uruguayan reforms also include provisions for a medical cannabis trade, the home growing of cannabis, and cannabis social clubs.

As with alcohol and tobacco, these experiments have both successes and failures that can be learned from. The key points to make are:

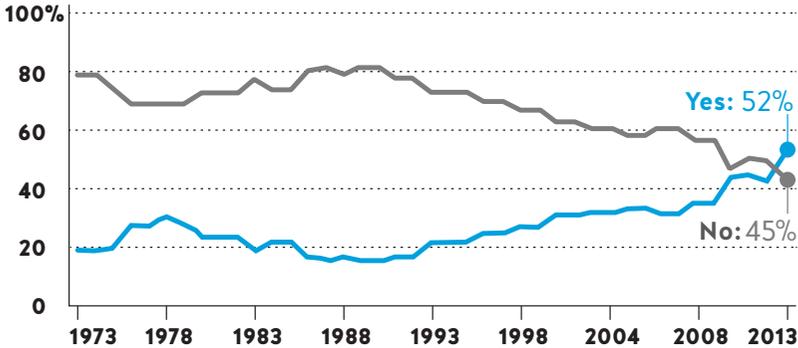
- The legal regulation of cannabis is already a reality, and with ever more US states leading the way, global change is now inevitable
- We can now confidently point to these experiences to show that the key elements of effective cannabis regulation have already been implemented, fears around regulation are misplaced, and the argument that such reform would be a 'leap in the dark' is false (see Section 9, [A leap in the dark?](#), p. 140)

- The evidence clearly demonstrates that fears that legally regulated cannabis markets (or less punitive approaches in general) will inevitably lead to an explosion in use are misplaced (see Section 9, [Will use rise?](#), p. 124)
- A framework that prioritises public health over profit and puts in place strict controls on marketing would minimise the risk of over-commercialisation. Spain's cannabis social clubs and Uruguay's government-controlled system of regulation are two examples of such non-commercial models (see Section 8, [Talking about... alcohol and tobacco](#), p. 91 and Section 9, [Will profit-motivated multinationals take control from the cartels?](#), p. 131)
- The increasing potency of cannabis is sometimes raised as an objection to its legalisation and regulation. But the potency of cannabis (like the alcohol content of drinks) can be regulated under a legal regime, with information on strength and potential risks clearly displayed on packaging. In Uruguay, cannabis will be sold with maximum limits on THC content

Public opinion

Levels of support for cannabis decriminalisation or legalisation and regulation have risen steadily in much of the developed world. This is particularly striking in the US, where national support for legalisation reached a majority in 2012, despite a context of ongoing bi-partisan political hostility (see graph over page). This sets an extremely positive precedent for the drug policy reform movement as a whole. What is clear is that exposure to informed debate on the cannabis issue invariably pushes opinion away from prohibition and towards reform. The same is certainly true for the debate around drug policy reform more broadly.

Do you support the legalisation of cannabis?



Source: Pew Research Center
Original graphic by Julie Sheer

Avoiding the cannabis pitfalls

There are pitfalls in how the cannabis debate has been handled historically that mean caution needs to be taken when approaching the issue.

Regulate because it's safe?

It is sometimes argued that cannabis should be legalised and regulated 'because it's safe'. This is not a helpful line to take as it is demonstrably untrue. Like all drugs, cannabis has its risks, and even if these risks are relatively low compared to most other widely used drugs, a small but not insignificant minority of cannabis users experience real problems with it (there are particular risks for people with mental health problems, teenage users, and some heavy users).

If you do talk about cannabis risks, try and use relative rather than absolute terms, such as 'less risky', 'safer', 'relatively safe compared to' etc. Claiming cannabis is 'safe' in absolute terms (especially on the basis that it is 'natural', or 'just a plant') can potentially sound every bit as unscientific

as some of the more outlandish 'reefer madness' claims made by advocates of the drug's continued prohibition. While most cannabis use is occasional, moderate and not associated with significant problems, it is nonetheless precisely *because of* its potential risks that it needs to be properly regulated, not least to protect more vulnerable groups.

The legal regulation of cannabis is already a reality

Regulate because it's less dangerous than alcohol and tobacco?

A similar argument is often made that cannabis should be legal because it is less risky than the legal drugs alcohol and tobacco. While the observation on relative risk is correct, and it can be useful to highlight the inconsistency and hypocrisy of the law (given the frequently heard assertion that 'drugs are illegal because they are dangerous'), this argument, while useful in some contexts, can also be problematic. Not only could it potentially be used to argue for the prohibition of alcohol and tobacco, but it also undermines the idea that drugs need to be regulated because of their risks, rather than because of their safety.

Regulate just cannabis? What about other drugs?

This raises the question of how much the debate around cannabis legalisation and regulation should be separated off from the wider debate around the regulation of other drugs, including those that are certainly more risky. Given current developments, there will often be a need to approach the cannabis question independently, but it can also be useful to get people thinking about the wider issues around drug law reform, especially since there are many people who support the legalisation of cannabis but not other drugs.

Remember that the overarching aims of policy (namely, to reduce social and health harms) and the logic that underpins the regulation argument

are essentially the same regardless of the drug – and in fact, arguably the riskier the drug, the more important it is that it be properly regulated. It is therefore relatively easy to challenge the substantial 'cannabis, yes; but not the rest' audience in a way that encourages them to think about the bigger picture. A simple way to do this is to ask which drugs would be better left in the hands of organised criminals rather than governments.

Recreational and medical cannabis debates

The debate around policy and law regarding recreational cannabis use often gets entangled with parallel debates around the medical use of cannabis (and also occasionally with the commercial/industrial use of the hemp plant). Since the arguments for the recreational and medical uses of the plant are very different, and since the potential medical effects of cannabis are not relevant to the risks the drug poses when used recreationally, it is generally not useful to confuse or conflate them. There is a strong argument that the politics surrounding recreational use have hindered medical access and research, but generally we would suggest trying to keep them separate where possible, leaving the medical side of the debate to medical experts.

Further reading

- Caulkins, J. et al. (2012) **Marijuana Legalization: What Everyone Needs to Know**, Open University Press.
- Rolles, S. and Murkin, G. (2013) **How to Regulate Cannabis: A Practical Guide**, Transform Drug Policy Foundation. <http://www.tdpf.org.uk/resources/publications/how-regulate-cannabis-practical-guide>

Talking about... coca, cocaine, and crack

The issue of coca-based drugs is key, particularly in Latin America, but it is unhelpful to generalise about coca, cocaine, crack and pasta base, even if they are linked by the stimulant properties of a shared psychoactive alkaloid (see [box](#)). There are distinct (if interlinked) policy and regulatory challenges and arguments.

The range of coca and cocaine products

Coca leaf

The unprocessed coca leaf can either be chewed (with an alkali such as quinoa ash) or consumed in lightly processed forms such as tea. It has a mild stimulant effect (the leaf contains < 1% cocaine alkaloid), with no known health risks, and some nutritional and functional benefits. Coca has a long history of non-problematic traditional use among indigenous Andean populations.

Cocaine powder

Cocaine hydrochloride is the refined extract of the coca leaf. It is produced both legally, for medical use (processed in the USA from imported Andean coca), and illegally, for non-medical use (being produced mostly in Bolivia, Colombia and Peru). To increase profits, illegal cocaine is invariably cut with adulterants –such as lidocaine, caffeine, amphetamines and levamisole – and bulking agents.⁴⁷ Purity therefore varies greatly, from < 10% to > 80%. It is generally snorted (it cannot be smoked, but is sometimes injected). Moderate or occasional use is relatively low-risk, while frequent/heavy or injected use is associated with a range of potentially serious risks, including overdose and dependency.

Crack cocaine

(Note - Pasta base (see below) is also called 'crack' in some regions). Crack is freebase cocaine prepared from cocaine powder using simple kitchen procedures that involve heating ('cooking up') cocaine with either bicarbonate of soda or ammonia, to create crack 'rocks'. These rocks are then smoked, meaning the speed of onset is much faster and the intensity of the effect much greater (but

⁴⁷ Cole, C. et al. (2010) **A guide to Adulterants, Bulking agents and other Contaminants found in illicit drugs**, Centre for Public Health, Faculty of Health and Applied Social Sciences, Liverpool John Moores University. <http://www.cph.org.uk/wp-content/uploads/2012/08/cut-a-guide-to-the-adulterants-bulking-agents-and-other-contaminants-found-in-illicit-drugs.pdf>

shorter lived) than with snorted cocaine powder. It is correspondingly more likely to be associated with dependency, problematic or risky patterns of use than cocaine powder.

Pasta base

Also known as paco, basuco, or crack (see above), pasta base (or pasta base de cocaine – PBC) is an intermediate stage product in the unregulated illicit processing of coca leaf into cocaine. It contains freebase cocaine, as well as chemicals used in the processing, such as kerosene, and adulterants, most commonly caffeine, which is thought to enhance the effects of the cocaine and thereby contribute to its high potential for dependency. Like crack, it is smoked. These factors, in combination with its relative low price, have led it to rapidly become associated with problematic dependent use among certain low-income marginalised populations. The impurities and adulterants contribute further to the high risks associated with use.

Questions around coca regulation are dealt with elsewhere and, as explained below, responses to the use of base cocaine (crack, paco etc.) focus on scaling up treatment and harm reduction programmes rather than regulated market models.

So this section mainly focuses on the possibilities for cocaine regulation, an issue that remains one of the greatest challenges for advocates of drug law reform, and one that often appears to be a political minefield. However, it is a question that will be asked and demands a coherent answer. This is especially the case in the Latin American region, which not only faces various challenges associated with cocaine production, but also those posed by the use of cocaine, crack and pasta base.

Two key points to make at the outset of this debate are:

- There is already high and established demand for cocaine. We need to be clear that this demand *will be met illegally* if not via some regulated source

- We know from decades of experience that this is not a market that can be eliminated through enforcement. Production and transit are simply displaced to other areas because while high demand remains, so too does the profit opportunity and motivation for criminals

Transform has previously explored the possibility of regulating cocaine production, supply and availability in more detail in **After the War on Drugs: Blueprint for Regulation**. The thinking which informed that work is summarised below:⁴⁸

- Regulation could reverse the harm-maximising dynamic of the illegal trade, whereby the market is skewed towards the more risky (and profitable, because they are more potent) cocaine products like crack and pasta base. This could be achieved over time by making less risky cocaine preparations – such as coca leaf or minimally processed coca leaf products – more available, while at the same time enforcing much more restrictive controls on cocaine powder and maintaining a prohibition on the legal availability of crack or pasta base (with users dealt with via treatment and harm reduction measures)
- Legal coca production already takes place on a significant scale. Coca is produced for traditional use, for food and drink flavourings (including the flavouring used in Coca-Cola), and for pharmaceutical cocaine in the US. These examples demonstrate how quality control and security concerns around legal coca production can be addressed,⁴⁹ and suggest that the expansion of legal production systems for non-medical use would not present a major challenge for regulators
- While there are well-established models for regulating legal cannabis markets, as well as models for the medical provision of opiates

⁴⁸ Additional feedback from discussions with NGO colleagues in the Latin American region has also been incorporated.

⁴⁹ In 2013, Bolivia rejoined the 1961 UN Single Convention on Narcotic Drugs with a reservation that allows it to grow coca leaf without being in violation of the international drug control system.

to dependent users (including injectable heroin), regulation of some stimulants has also been tried in several places. For example, prescription/pharmaceutical models have been used to control the availability of amphetamines, and New Zealand has established regulation for some 'legal highs' with stimulant properties. Other countries have also made traditional plant-based stimulants, including coca, legally available

- Still, given this relatively limited experience, a cautious approach would be necessary, beginning with the regulation of lower-potency coca products such as lozenges and coca-based energy drinks similar to Red Bull. These could also potentially replace a small amount of the (more risky) powder cocaine market
- Legally regulated access to powder cocaine could be explored under a strictly controlled retail model (probably a specialist pharmacy sales model – see Section 7, [How can we regulate?](#), p. 87). This model would, for example, involve the licensing of buyers. In a similar way to how driving licences are granted, users would first have to demonstrate they understood the potential risks of cocaine use and how to minimise them, before being granted a purchaser licence. Sales rations would also be enforced in order to minimise the risk of secondary sales. A state monopoly model might be required to implement such a regulatory framework, at least at first
- Crack cocaine would not be available for sale directly, although regulated legal access to cocaine powder would mean it could be manufactured relatively easily by determined users, or within informal markets between users (which could be tolerated as a form of harm reduction)
- Provision of supervised consumption venues for crack users could help reduce the harms associated with the drug's use, bringing them

into more regular contact with healthcare and treatment professionals. Informal experiments with such facilities have already been tried in a number of countries

- Paco or pasta base, the most risky cocaine product, is a by-product of prohibition and illegal production. The availability of less risky cocaine products (or other stimulants) could, at the very least, help prevent the further growth of this high-risk market
- Measures for dealing with problematic users of cocaine, crack or paco should be evidence-based and guided by public health and harm reduction principles. While the evidence underpinning harm reduction interventions in this area is limited, it is growing, and a number of programmes are exploring whether substitute prescribing (using cannabis and coca) for crack and pasta base users could function as a form of harm reduction
- There is considerable scope for displacement between stimulants, depending on their relative price, quality, effects, availability and legal status. As suggested above, making less risky products more available and more risky products less available creates opportunities to shepherd patterns of use in a positive direction in the longer term
- The emergence of novel psychoactive substances (NPS or 'legal highs') – which are not covered by existing international legal commitments – is creating opportunities to experiment with regulation models free from the constraints of international law. There is some evidence that the emergence of NPS stimulants has led to a reduction in the use of cocaine where they have become popular. There are, however, risks stemming from the lack of knowledge about the potential harms associated with these drugs

Further reading

- Vargas, R. et al. (2013) **From Repression to Regulation: a Proposal for Reform of Drug Policies and the International Drug Policy Regime**, FES. www.fes-europe.eu/attachments/391_Final_FES_Drug%20Policy%20Reform.pdf
- Hurtado-Gumucio, J. (2011) **Coca leaf chewing as therapy for cocaine maintenance**, TNI. www.undrugcontrol.info/en/issues/safer-crack-use/item/4532-coca-leaf-chewing-as-therapy-for-cocaine-maintenance
- Labigalini, E. et al. (1999) **The therapeutic use of cannabis by crack addicts in Brazil**, Journal of Psychoactive Drugs, Vol. 31, No. 4. www.undrugcontrol.info/en/issues/harm-reduction/item/449-therapeutic-use-of-cannabis-by-crack-addicts-in-brazil
- Haden, M. (2008) **Controlling illegal stimulants: a regulated market model**, Harm Reduction Journal, Vol. 5. www.harmreductionjournal.com/content/5/1/1

Talking about... heroin

Heroin is often characterised as a hugely destructive drug, one whose use invariably leads to addiction and death. But it is important to be clear that, although heroin use carries significant risks, many if not most of these risks are a direct result of prohibition. There are a range of public health interventions that have been shown to dramatically reduce the harms associated with injected illicit heroin use. These include opioid substitution therapy (with methadone or buprenorphine); needle and syringe exchanges; increasing the provision of naloxone, a drug that can reverse the effects of opioid overdoses; and encouraging use in safer environments such as supervised injection facilities (see below). But again, all of these interventions are primarily addressing harms created by criminalisation and prohibition. Hence despite being increasingly widespread (as of 2012, there were 97 countries with formal harm reduction policies), such harm reduction measures exist within a wider legal and policy context that maximises harm. Current policy is at war with itself.

There is the potential to go further than simply reducing the harms caused by prohibition, but the idea of legalising a drug as historically demonised as heroin is one that naturally provokes emotional and fearful reactions. It is therefore important to be clear what is actually being proposed. No reform advocates are suggesting that heroin be made freely available in a commercial market – the idea of heroin in supermarkets is a classic opposition scare tactic. However, 100% legal and regulated heroin can be, and in fact already is, made available to some people who inject within dependence treatment programmes. Such ‘heroin-assisted treatment’ (HAT) is considered a medical intervention, so is legal under the international drug conventions and does not require heroin to be formally ‘legalised’⁵⁰ – even though for the user moving from an illicit to prescribed supply, the effect will be the same. There is strong evidence from many places, over many decades, demonstrating that providing existing heroin users with a strictly controlled, legal supply of the drug can be an effective way of reducing the harms it may cause, both to the user and wider society.

HAT, in which dependent heroin users obtain prescribed medical-grade heroin (usually called by its chemical name, diamorphine) from licensed pharmacists or doctors, are in operation in a number of countries, including the UK, the Netherlands, Switzerland, Canada, Denmark and Germany. Trials of such programmes have also been run in Spain, Belgium and Denmark. Research into these initiatives shows that they are associated with a range of positive outcomes. A systematic review carried out by the Cochrane Collaboration (widely considered the ‘gold-standard’ source of evidence-based healthcare information) found that, for long-term, dependent heroin users who have proven resistant to other forms of treatment, HAT can⁵¹:

50 At least in countries where diamorphine is currently a licensed medicine; it is widely used for pain control around the world.

51 Ferri, M., Davoli, M. and Perucci, C. (2011) ‘Heroin maintenance for chronic heroin-dependent individuals’, the Cochrane Collaboration. <http://onlinelibrary.wiley.com/doi/10.1002/14651858.CD003410.pub4/full>

- Reduce the use of illicit substances
- Reduce criminal activity
- Reduce the risk of incarceration
- Reduce the risk of death
- Increase the likelihood of staying in treatment

So while supporters of the status quo will often cite the dangers of heroin as a reason why drug policy reform is reckless and irresponsible, you can be confident that the evidence is firmly on your side. Explaining how HAT works, and emphasising that such programmes are, fundamentally, a form of medical treatment that is in many cases already legal, should help dispel any misconceptions people have when prohibitionists simplistically and provocatively describe reformers as ‘wanting to legalise heroin’.

To further clarify what legal heroin regulation might actually entail, you can also discuss the evidence for the effectiveness of supervised injection facilities (SIFs). Such facilities offer a space where people can consume legally or illegally obtained drugs in a safe and hygienic environment, under the supervision of trained medical staff who provide clean injecting equipment and advice on how to use or inject more safely. Crucially, staff also provide first aid in the event of an overdose or wound, and at most facilities, treatment and other health and welfare services are also available. This kind of supervised use is generally a key element of prescription-based HAT programmes, and again, is supported by strong evidence. Since 1986, more than 90 SIFs⁵² have been set up in nine countries,⁵³ and research has found that they^{54 55}:

52 Hedrich, D., Kerr, T. and Dubois-Arber, F., 'Drug consumption facilities in Europe and beyond', EMCDDA. http://www.emcdda.europa.eu/attachements.cfm/att_101273_EN_emcdda-harm%20red-mon-ch11-web.pdf

53 Denmark became the ninth country to introduce SIFs in 2013.

54 Debeck, K. et al. (2011) 'Injection drug use cessation and use of North America's first medically supervised safer injecting facility', *Drug and Alcohol Dependence*, vol. 113, no. 2-3, pp. 172-6. <http://www.ncbi.nlm.nih.gov/pubmed/20800976>

55 Zobel, F. and Dubois-Arber, F. (2004) 'Short appraisal of the role and usefulness of drug consumption facilities (DCF) in the reduction of drug-related problems in Switzerland', Lausanne: University Institute of Social and Preventive Medicine. http://www.iumsp.ch/Publications/pdf/inject_inhalation04_en.pdf

- Reduce risky behaviour likely to lead to the transmission of infectious diseases
- Reduce the incidence of fatal overdoses
- Help establish and maintain contact between drug users and social-service and health-care networks
- Reduce public order problems, as drug use in public places declines
- Do not increase the number of people who use drugs, or the frequency with which they use drugs
- Do not reduce the number of people entering or remaining in treatment

But perhaps the most powerful piece of evidence you can cite is that, despite thousands of overdoses taking place in supervised drug injection facilities around the world, not one has been fatal.⁵⁶

While most people, when presented with the evidence, can be persuaded of the merits of SIFs, as well as HAT as an option for long-term injectors (particularly those who have failed in other programs), the question often arises: ‘But what about people who just want to try heroin?’ Answering this question requires that we make a distinction between dealing with use as it now exists – through treatment, harm reduction and prescription supply options – and questions of where we go in the future.

Enabling existing heroin users to switch from illicit markets to a health-based system of support immediately reduces the initiation of new users. Not only does street dealing (and illicit availability) decrease, but there is also less of an incentive for dependent users to sell to new initiates in order to support their own use. However, demand for the effects of opioids used non-medically is unlikely to disappear, so the longer-term challenge is to find a way of meeting demand while at the same time

⁵⁶ For an idea of the scale of this achievement, there were 1,418 overdoses at a SIF in Vancouver, Canada, between 2004 and 2010, but staff were able to successfully intervene in every case.

reducing overall harms. Ideally, policy should encourage those who are likely to become heroin injectors (and those who currently are) to use lower-risk opioids in safer ways. It may therefore be appropriate to make legally available, under strict conditions, some slower-release opioid-based oral preparations, or lower-potency opioids that can be smoked (potentially including opium), in order to discourage injecting – a method of consumption, driven by prohibition, that is intrinsically more risky.

The potential benefits of a regulated market for such products obviously need to be weighed against the potential costs of initiating opioid use among people who are otherwise not at risk of becoming injecting heroin users. But clearly if no lower-risk products are available, then illicit heroin, or perhaps even more risky opioids such as fentanyl, may become the default entry point to the opioid market. A sensible starting point would be to assess the impact of introducing or increasing the availability of HAT (alongside more conventional opioid substitution treatments such as methadone and buprenorphine) on the illicit heroin market; if availability and prevalence of use do not decrease sufficiently, then a strictly regulated supply of lower-risk opioid-based products may be appropriate. This could take the form of, for example, supervised venues that sell such products to registered users, for on-site consumption.

Parallel examples of two heroin users

To make the case for legal heroin regulation even more forcefully, you can illustrate its benefits by comparing the fates of two injecting heroin users – one forced to use illegal heroin under prohibition, the other using legally supplied heroin in a supervised medical environment. This is not theoretical – the two scenarios take place in parallel already.

The user of illegal heroin:

- Commits high volumes of property crime and/or street sex work to fund their habit, and has a long – and growing – criminal record
- Uses ‘street’ heroin of unknown strength and purity, with dirty and often shared needles, in unsafe marginal environments
- Is supplied by a criminal drug dealing network that can be traced back to illicit opium production in Afghanistan
- Often has HIV and hepatitis C

The user of prescribed heroin:

- Uses legally manufactured and prescribed pharmaceutical heroin of known strength and purity
- Uses clean injecting paraphernalia in a supervised medical setting where they come into contact with health professionals on a daily basis
- Is not implicated in any criminality, profiteering or violence at any stage of the drug’s production or supply, and does not offend to fund their use
- Has no risk of contracting a blood-borne infection, and a nearly zero risk of overdose death

Talking about... rights and freedoms

Human rights and fundamental freedoms have always been a central theme of the drug law reform debate, but arguments in this area are sometimes not well thought through. It is particularly important that human rights arguments are grounded in strong reasoning, and take into account the political and cultural context of the debate, as well as your audience's values and priorities. There is a difference between calling for a specific legal right to use drugs, and highlighting how criminalising/punishing consenting adult drug use impinges on a range of internationally recognised legal rights, including the rights to privacy, health, culture, and freedom of belief and practice (which is most notably impinged on with regard to traditional or religious uses of certain plants).

The arguments for the personal freedom of consenting adults to use non-medical psychoactive substances are intellectually strong. The principle underpinning most modern law-making is that consenting adults should be free to engage in whatever behaviour they wish, as long as it does not harm others, and that risky personal behaviour or self-harm, while a legitimate concern of government, should generally not be the concern of criminal law.⁵⁷

Many human rights and freedoms, however, are not absolute, including the right to privacy and the freedom to manifest one's religion. A state may justifiably violate these rights – for example, if doing so is necessary to protect the rights or health of others. But any such action must serve a legitimate aim, and be no more restrictive than is necessary to achieve that aim. The burden of proof is on the state to show this is the case.

⁵⁷ Human Rights Watch (2013) **Americas: decriminalize personal use of drugs**. <http://www.hrw.org/news/2013/06/04/americas-decriminalize-personal-use-drugs>

Below are some key points you can make:

- Drug laws that criminalise or punish personal drug use (or possession for personal use) are at odds with the law for comparable personal choices that involve risk-taking or self-harm by consenting adults, such as dangerous sports, unsafe sex, and the consumption of legal drugs, including alcohol and tobacco, and other legally available substances such as solvents. These activities may not be wise, and they may even be actively discouraged, but they should not be criminal
- There is an important distinction here between the 'consensual crime' of drug use, which involves personal risk-taking, and laws that criminalise actions that directly harm others, such as theft, rape or assault. Do highlight this obvious distinction if you hear the ludicrous prohibitionist argument 'Well, why not legalise murder?' There is simply no moral or legal equivalence between consenting adult drug use and murder
- To avoid confusion, you may need to be clear that no one is suggesting the legal status of criminal acts committed *under the influence* of drugs would be affected. For example, driving while impaired by drug use would remain a criminal offence
- Human rights arguments can also apply to drug production and sales, although care is of course needed when deploying them. Such arguments can, for example, focus on the right to an adequate standard of living for low-income coca growers, or on the right to privacy of people who own a smallholding or a few coca plants. Again, you can ask: Are there no other, less punitive means of achieving the policy goal than enforcement? And if the means have demonstrably not achieved the stated aim over a substantial timespan, can the infringement of rights possibly be justified?

There is no specific legal right to use drugs, and in our judgement, arguing that there should be rather confuses the issue. We would suggest it is

more useful to reverse this argument and ask 'What are the human rights implications of criminalisation?' Debates around the rights and wrongs of individuals' drug use should not obscure the fact that criminalising the consenting activities of hundreds of millions of people impacts on a range of human rights, and involves substantial human costs.

The human rights implications of criminalisation are not just felt by people who use drugs, nor are their rights the only ones infringed. Criminalisation affects entire communities, urban and rural. This is an important point to make when tailoring your arguments and ensuring that the context in which you raise human rights concerns is properly assessed. Ultimately, given the centrality of criminalising and punishing drug users to current policy, the war on drugs is, to a significant degree, a war on people. (For more on this, see Section 4, [Undermining human rights](#), p. 63.)

Traditional use of certain psychoactive plants

The traditional or ceremonial use of certain drug crops – including coca leaf, ayhuasca, peyote, cannabis and khat – is a part of the cultural identity of various indigenous populations around the world. Global prohibition has effectively criminalised entire cultures with longstanding histories of growing and using these drug crops.

For instance, the 1961 UN Single Convention on Narcotic Drugs provided a 25-year grace period for coca chewing – which is popular among indigenous groups in the Andean region – to continue. With this grace period long expired, traditional uses of coca are not permitted under the UN drug conventions, which were forged out of negotiations that entirely excluded indigenous people. Compare this situation with the view of the UN Special Rapporteur on the rights of indigenous people that: “[It] has become a generally accepted principle in international law that indigenous peoples should be consulted as to any decision affecting them.”

The now universally adopted Declaration on the Rights of Indigenous Peoples also recognises this right, as well as the right of indigenous peoples to:

“Practise and revitalize their cultural traditions and customs”, and to “[use and control] their ceremonial heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora.”

The UN Permanent Forum on Indigenous Issues (UNPFII) has supported the call for the removal of traditional uses of coca from the scope of international drug control.⁵⁸ In 2009, the UNPFII requested that:

“Those portions of the [1961] Convention regarding coca leaf chewing that are inconsistent with the rights of indigenous peoples to maintain their traditional health and cultural practices, be amended and/or repealed.”

The absolute ban on traditional uses of such plants is an area of considerable conflict. This was illustrated in June 2011, by the Bolivian government’s withdrawal from the 1961 Single Convention, as a result of a failed attempt to amend it to allow for the practice of coca leaf chewing. Bolivia has now re-acceded to the convention with a reservation that permits this traditional use of coca, against the objections of 15 countries.

⁵⁸ UNPFII, 2009, ‘State of the World’s Indigenous People’
http://www.un.org/esa/socdev/unpfi/documents/SOWIP_web.pdf

Section 9

Responding to concerns about ending the war on drugs

This section provides the basic analysis you will need to respond to the most commonly raised concerns about reform, legalisation and regulation. While these are genuine concerns for many audiences, they may also be used by those who seek to maintain prohibition and undermine the reform movement. So while it is important to respect and respond sensibly to legitimate concerns as a way of finding common ground, you may also have to battle against more cynical attempts to discredit you by those who know they cannot win a debate based purely on evidence.

Will use rise?

The fear that drug use will increase in a post-prohibition world is the most frequently raised and politically potent of all the objections to reform. Many secondary concerns stem directly from it, such as rises in addiction, drug-impaired driving, and other harms related to drug use.

Rising use is a legitimate and understandable concern under any policy model. However, crusading drug-war rhetoric that characterises drugs as an 'evil' that we have a duty to 'combat' has led to all drug use being automatically deemed harmful, abusive, and socially unacceptable. As a result, much of the drug policy debate has been ideologically driven by an obsessively narrow focus on reducing – or in fact eliminating – use.

When the use of a drug does fall, it is heralded as a triumph that renders any debate about reform irrelevant. But when use rises, calls are made for enforcement efforts to be intensified. This simplistic and flawed approach allows those advocating it to avoid analysing what is driving not just drug use, but the whole range of drug market-related harms as well, distorting the priorities of the entire policy making process.

Levels of use are just one measure of health impacts, and not even a very useful one because most drug use is non-problematic

The response to this concern is tricky to boil down into a simple soundbite, because, ultimately, this issue is a lot more complicated than it seems or is often presented. In fact, making this point may be your best starting point.

Key points:

- Be clear that the current approach has demonstrably failed to prevent a dramatic rise in drug use and drug harms over the past half-century, all of which have happened under prohibition
- Research indicates that while legal status alone has little to no impact on levels of drug use, legal changes can reduce the total levels of *harm* caused by drugs – for example in the form of overdoses and HIV transmission. The argument that use would rise massively if either decriminalisation of possession, or legal regulation, was introduced is based on several incorrect assumptions, which are dealt with below:
 - It is widely believed that the criminalisation of drug users significantly deters use. It doesn't. Global and national studies⁵⁹ comparing the impacts of different approaches – from very harsh enforcement to the decriminalisation of possession of all drugs – show that the impact of criminalisation on levels of use is, at best, marginal
 - Prohibitionists claim that legal regulation means the free availability of drugs, which would therefore cause use to rise hugely. But drugs are already available to most people who want them, most of the time. More importantly, regulation actually means controlled availability, not free availability, with measures in place such as age restrictions, limits on purchases and price controls. The evidence shows that strict legal regulation can actually help regulate levels of use too. For example, in the same period that the use of prohibited drugs has risen massively, tobacco use in many countries has been

⁵⁹ Eastwood, N. and Rolles, S. (2012) **Drug Decriminalisation Policies in Practice: A Global Summary** in Harm Reduction International, **Global State of Harm Reduction 2012**.
www.ihra.net/files/2012/09/04/Chapter_3.4_drug-decriminalisation.pdf

halved. This has been achieved without criminalising anyone, by using health education and legal, regulatory measures (see [Section 7 on regulation, p. 81](#), and [Section 8 on tobacco, p. 91](#))

- The reality is that wider cultural and socioeconomic factors are far more important in determining levels of use, particularly levels of problematic use. The two key drivers of drug use are pleasure-seeking and the removal of physical or emotional pain. Those using drugs primarily to alleviate pain are far more likely to become problematic users. That is why research shows that high levels of inequality and low levels of wellbeing are much better predictors of rates of problematic drug use than enforcement policy
- You may want to use specific examples: a) When Portugal decriminalised the possession of all drugs in 2001, prohibitionists predicted drug use would go through the roof and the country would be swamped by drug tourists. Neither happened.⁶⁰ b) Switzerland introduced a legally regulated supply of heroin to dependent users in 1994 through a clinic system. This reduced rather than increased availability, as evidenced by the fact that drug dealing (and serious thefts) by these heroin users fell by over 80%. In other words, availability had been controlled, not increased. During this period, heroin use in Switzerland also fell⁶¹
- Levels of use are just one measure of health impacts, and not even a very useful one because the vast majority of drug use is non-problematic. Furthermore, health impacts are only one of many indicators that need to be considered when developing drug policies that minimise harms to users and the wider community. We should also consider impacts on, for example, crime, human rights, community

⁶⁰ Hughes, C. and Stevens, A. (2010) **What can we learn from the Portuguese decriminalization of illicit drugs?**, *British Journal of Criminology*, Vol. 50, No. 6. <http://bjc.oxfordjournals.org/content/50/6/999.abstract>

⁶¹ Federal Department of Home Affairs (2008) **HAT Annual Report: Heroin-assisted treatment / treatment with diacetylmorphine (HAT) in 2007**, p. 3. www.aegd.ch/O4engl/pdf_engl/hat_2007_en.pdf

safety, international development, security and conflict, and possible economic impacts, all of which would benefit from reform. We must redefine the 'drug problem' as far more than just 'people who use drugs' if we want to see an approach that benefits society as a whole

- Finally, even considering just health, under legal regulation, drugs would be safer (given that they would be of known strength and purity, and would carry safety information, for example), and regulatory systems could encourage safer behaviours, use in safer environments, and reduce the barriers that deter people from seeking help. Even if the use of some drugs rose, overall health harms would still fall. Society would also be far better placed to address problematic drug use, and its underlying causes

Additional points

- Drug use may both rise and fall post-prohibition, but sweeping generalisations are not useful. There will be a range of factors at play, often pushing in different directions, and we will certainly see different impacts with different drugs, different populations of users, and with different regulatory models
- A pragmatic model of legal regulation can learn from the mistakes made with alcohol and tobacco and focus on controlling the elements of a legal market that are likely to increase use or related harms. Crucially, regulation can limit any financial incentives to increase availability or use, and impose bans on marketing, branding and advertising. Legal regulation can also facilitate investment in drug prevention and risk education
- The profit-driven dynamics of the criminal trade under prohibition have tilted the market towards ever more concentrated and profitable forms of certain drugs (e.g. from opium to heroin, from hash to skunk, and from coca leaf to cocaine and crack). A post-prohibition era is likely to

see a shift back towards safer, less concentrated options (something that can be facilitated by market regulation – see Section 7, [How to talk about alternatives](#), p. 81). This is what happened once US alcohol prohibition ended: consumption patterns moved away from spirits, and back to beers and wines

- Changes in patterns of use of currently illegal drugs could also have impacts on the use of currently legal drugs. Use could, for example, be displaced from alcohol to cannabis. From a narrow prohibitionist perspective, any rise in cannabis use would look like a policy failure, but given their relative harms, such a reduction in the use of alcohol could produce a net public health gain

In summary, drug-taking decisions post-prohibition will be influenced by many factors, such as changes in price, availability, quality, and marketing (if permitted); changes in perceptions of drug use (the greater medicalisation of dependent users could have an effect in this regard); a reduction in the number of criminal dealers targeting new users; and the reinvestment of enforcement spending into treatment, education and social regeneration. The net effect will vary between different drugs and different drug-using populations, and there may also be displacement between different drugs.

Critically, impacts will also be dependent on the type of regulation adopted. While an unregulated free-market model certainly has the potential to generate increases in use, the regulatory models outlined here are driven by public health priorities and are specifically designed to prevent the kinds of harms produced by unregulated markets for alcohol and tobacco (see Section 8, [Talking about... alcohol and tobacco](#), p. 91).

Who will protect the children?

One of the most frequently voiced concerns about legally regulating drug markets is best summarised as ‘But what about the kids?’ It is entirely understandable for parents and carers in particular to have real fears about the impact of drug law reform on children and young people, as well as people with mental health problems, the homeless and other socially excluded or vulnerable groups.

Fears about the impact of drug law reform continue to be stoked by defenders of prohibition, in populist appeals to emotions over evidence. Often deliberately conflating the harms of drugs with the harms of drug policy, tales of young victims of drugs or drug markets are used by politicians and prohibitionists as a rhetorical ploy to avoid discussion of the war on drugs' overwhelmingly negative effects. Many career politicians and policymakers use the 'But what about the kids?' line to deflect the focus of the debate away from political territory where they fear to tread or where they may be exposed to criticism based on actual evidence.

The following are key points to make when this issue arises:

- Under prohibition, illegal drugs remain easily available to most young people, and a significant minority have used them. Regulation cannot eliminate such use, but controlled availability will create an improved environment for reducing harm, and for reducing demand in the longer term
- A criminal record, even for a minor drug offence, is a greater threat to the health and wellbeing of many young people than occasional drug use, often restricting employment, travel, personal finance, and housing

options. If it involves the trauma of imprisonment, criminalisation can have a particularly devastating effect on already vulnerable individuals, fostering stigma, discrimination and social exclusion

- There is an obvious irony that while the war on drugs is often justified using a narrative of child protection, it has in reality achieved the exact opposite. The war on drugs does not protect children; it directly endangers them on multiple fronts. Children and young people carry a disproportionate burden of the costs of the war on drugs. As drug users, they are exposed to additional risks and denied access to healthcare, and through involvement in, or contact with, criminal markets, they are subject to violence, exploitation and abuse from criminals and sometimes law enforcers
- While it may seem counterintuitive, legally regulated and controlled drug markets offer a far greater level of protection to vulnerable groups than the chaotic, unregulated and often violent illegal markets we have today. One of the key benefits of regulation is that it allows appropriate controls to be put in place over price and availability (location, times of opening, age restrictions etc.), as well as advertising and promotions. It is precisely *because* drugs pose risks that they need to be appropriately regulated, especially for young people
- Many children and young people have become 'drug-war orphans', with parents either killed in drug-war violence or imprisoned for drug-related offences. Many more are drawn into working in the illicit drug trade itself, driven by poverty or lack of opportunities. The war on drugs only threatens their futures further

There is an obvious irony that while the war on drugs is often justified using a narrative of child protection, it has in reality achieved the exact opposite

- Legal regulation will make health messages on all drugs, including alcohol and tobacco, more balanced, consistent and believable
- Young people are not stupid. Policies that they rightly perceive to be failing, hypocritical, unfair, persecutory and pointless can only undermine respect for the law, the police and authority in general. If we want to reach out to young people and other vulnerable or socially excluded groups in order to offer help and encourage responsible and healthier lifestyle choices, then declaring a war against them is not the way to do it. Removing the spectre of criminality, punishment, and stigma would make drug services and accurate risk information far more attractive and accessible for those most in need but hardest to reach

Further reading

- Barrett, D. (2011) *Children of the Drug War*. www.childrenofthedrugwar.org/

Will profit-motivated multinationals take control from the cartels?

There is a legitimate concern that legal drug markets could eventually be controlled by profit-motivated corporations interested in aggressively marketing and promoting drugs and drug use. The pharmaceutical industry is already the focus of considerable criticism for some of its business and marketing practices. Similarly, sections of the alcohol and tobacco industries have been guilty of unethical conduct, putting profits before concerns for public health with aggressive marketing and lobbying against regulation (see also Section 8, [Talking about... alcohol and tobacco](#), p. 91).

The assumption made by some opponents of reform that a rapacious 'Big Pharma' or 'Big Tobacco' scenario is inevitable needs to be strongly challenged. This is not to suggest that such a scenario is not a risk – it clearly is in countries that are more averse to state control of markets or state intervention in the private sector. Indeed, in the US, which is leading the way with its state-level cannabis reforms, there have been concerns about some less well regulated medical cannabis operations and the commercialised nature of some of the emerging recreational markets too. However, there is no reason why other countries or jurisdictions must rigidly follow the examples set by the US. Instead, they can develop alternative systems of legal drug regulation that suit their own needs and priorities.

It is the responsibility of reform advocates and policy makers to learn from mistakes of the past, particularly with alcohol and tobacco, and make sure that the regulatory models that replace criminal markets are the right ones.

When encountering defenders of the status quo who critique regulation proposals based on a Big Tobacco/Big Pharma argument, a useful response is to:

- Firstly agree with them that this would not be a good model, but that for all the legitimate criticisms of commercial companies, their status operating within a legal sphere makes them intrinsically preferable to the alternative of international organised criminal networks. Unlike organised crime, commercial companies:
 - Pay tax
 - Are subject to external scrutiny in the form of independent auditors, trade and financial regulatory bodies, unions and consumer groups
 - Are answerable to the law and are legally liable for their actions
 - Are not armed and do not use violence in their daily business dealings

- Can be controlled and regulated as deemed appropriate by democratically elected governments
- Secondly, point out there is no reason why we have to repeat the mistakes made with alcohol and tobacco. Emerging legal drug markets offer a completely blank slate: from the outset, policy makers can establish optimal legal regulatory framework that function in the public's best interests. If, for example, profit-seeking commercial companies are deemed unsuitable, then the production or supply of certain drugs could be controlled via a regulated non-profit model, or an entirely state-run enterprise (for further discussion with examples, see Section 8, [Talking about... cannabis](#), p. 99)
- Thirdly, take the opportunity to describe the kind of regulation you would like to see, and why. Challenge your opponent to help make sure that regulatory models, when they are implemented (and they are already being implemented), are as effective as possible

Morals and messages?

A concern is often raised about what message any move away from prohibition would send out, particularly to the young and impressionable. The suggestion is that by legalising and regulating a previously illegal drug, the state is somehow condoning its consumption, or sending a message of encouragement or moral approval.

The debate around the morality of drug use is interesting and important, even if generalisations about a wide range of drugs and behaviours are rarely helpful. But it is crucial to clearly separate any debate around the morality of drug use itself from the more urgent debate around finding

effective policy responses to the reality of drug use as it currently exists. For more on how to engage with groups with different moral perspectives, see Section 2, [Audiences, language, framing and messaging](#), p. 33.

If the topic does arise, tackle it sensitively, as views can easily become polarised and emotions can run high, potentially leading to certain audiences becoming alienated. However, there is never a reason to surrender the moral high ground to advocates of counterproductive enforcement policies that are not only ineffective, but have often created immense, and ultimately unnecessary, harm and suffering.

- It is useful to start by highlighting how personal moral choices, including whether to take a particular drug, are different from moral policy making. We argue that seeking the most just and effective policy that delivers the best outcomes for individuals and society *is* the moral policy position
- Support for responsible drug regulation does not imply support for the use of drugs. You can be supportive of a system that regulates tobacco use more strictly and still be anti-smoking
- As already discussed (see Section 8, [Talking about... rights and freedoms](#), p. 112), we do not prohibit any number of other activities that involve risks to the individual or user, including many with an equivalent or higher potential for harm than illegal drug use. Many of these activities are perceived by some to be immoral, but a distinction should be made between a moral judgement of personal conduct and a judgement that has legal or criminal implications
- When the government wishes to send messages (often with a moral dimension to them) encouraging sensible, healthier or safer lifestyle choices for almost everything other than illegal drugs, it does so through public education via a range of institutions and media. Policy on illegal drugs is arguably unique in using the criminal justice system as the

primary source of public health education. But it is not the job of the criminal justice system to 'send a message' on public health or private morality, and when it has attempted to, it has generally proved a blunt and ineffective tool

What will organised crime do instead?

This is the concern that if the most lucrative source of illegal income is denied to organised criminals, there will be an explosion in other forms of crime.

It is important to be clear that no one is suggesting that the sprawling criminal empires involved in drug production and supply will magically disappear overnight, or that the criminals involved will all 'go straight' and get jobs selling flowers or working in the local supermarket. This is a classic strawman argument. However, it is equally absurd to suggest they will all inevitably embark on some previously unimagined and far worse crime spree. There are many examples from around the world of successful conflict resolution and the disbanding of armed groups and militias.

Clearly the impacts of reforms on criminal groups will differ at various levels of their structure, and they will experience diminishing profit opportunities as reforms are phased in carefully over a number of years. During this transition, there may be localised spikes in violence as criminal groups fight over the contracting profits. But if such conflict does occur it is likely to be a temporary phenomenon, and if it can be realistically predicted it can also be more effectively managed, with problems minimised through strategic policing.

The following are key points to make:

- This argument is a strange one because it effectively says that we should keep prohibition as a way of maintaining illegal drug empires, along with the accompanying violence, corruption and other costs, so that organised criminals don't change jobs. Following that logic, we would never take any crime prevention measures – for example, trying to prevent burglary – in case the criminals involved committed different crimes instead
- In reality, the legal regulation of drug markets could remove one of the largest criminal opportunities globally, not just from existing criminals but in future too. Ending prohibition holds the prospect of preventing huge numbers of young people entering a life of crime as the next generation of drug producers, traffickers, and dealers
- Crime is to a large extent a function of opportunity, and the more drug markets become legal entities, the smaller the opportunities available to organised crime become. Other criminal activities could simply not absorb the manpower currently deployed in the multi-billion-dollar illicit drug market
- Even if there is some displacement to other criminal activity, it should not be overstated. The bigger picture will undoubtedly show a significant net fall in overall criminal activity. As opportunities dry up, many on the periphery of the drug trade may well move back to the legitimate economy
- Clearly some criminals will seek out new areas of illegal activity, and it is realistic to expect that there may be increases in some forms of criminality – for example, extortion, kidnapping, or other illicit trades, such as counterfeit goods or human trafficking. The scale of this potential 'unintended consequence' of reform, however, needs to be put in perspective. As a direct result of being able to invest their drug profits

in other activities, organised crime groups have already diversified their business interests extensively in recent years, particularly where they have become the most entrenched and powerful groups

- Finally, moving away from prohibition will free up large sums of money to spend on targeting any remaining criminals, whose power to resist or evade law enforcement efforts will diminish as their drugs income shrinks

What would we do when bad things happen?

This is primarily a political concern stemming from the media's preoccupation with negative stories about illegal drugs, particularly when they also involve crime, violence or death. Such stories always bring the drug policy debate into the spotlight in the worst possible way, sensationalising the issue with 'shock' headlines and favouring emotive anecdote over reasoned discussion. This knee-jerk populism can play into the hands of advocates of 'tough' enforcement responses.

It is often sensationalist media reporting of tragic drug-related deaths or drug-market violence that shapes public debate, rather than measured, scientific reviews of the evidence. This creates a one-dimensional discussion in which drugs are described as an 'evil' we must fight against, drug use and drug policy-related harms are confused, and nothing is actually done to promote responses that might make such tragedies less likely. So what is the best way to respond to such stories?

- Firstly, always show compassion and sympathy by acknowledging the tragedy, and then seek common ground by agreeing that this is the sort of incident drug policy should be aiming to prevent

- You can then point out that this sort of tragedy has occurred under prohibition with increasing frequency, because a drug-war approach makes such incidents more, not less, likely – and that is why you support reform
- You can make the distinction between harms that relate purely to drug use and harms that are created or exacerbated by drug prohibition. Prohibition actively increases the risks associated with drug use and also directly fuels crime and violence (see Section 4, [Critiquing the war on drugs](#), p. 53). Given this, how can such a policy be the answer?
- You can move the discussion on to ways to avoid or reduce the likelihood of such events happening in the future by, where appropriate, talking about decriminalising the personal possession of drugs and models of legal regulation
- In particular, you can mention that directing resources into counterproductive enforcement (which fuels crime, conflict and violence) diverts funding from precisely the sort of public health interventions (education, prevention, treatment, and harm reduction) that can reduce the incidence of such tragedies (see Section 5, [The benefits of ending the war on drugs](#), p. 69)
- You can additionally point out that knee-jerk responses to such events, and the moral panics they provoke, do not have a history of leading to effective policy

How do we get there?

Even once people have understood the reform position and support it in principle, doubts may remain about the feasibility of making progress, given the wider political climate, public opinion and the numerous domestic and international institutional hurdles.

- Change will occur in increments, over a number of years – a new post-prohibition world will not spring into being overnight
- You can demonstrate clearly that a positive process of reform is *already underway* on many levels. Although driven by a range of motivations and local priorities, there is undoubtedly a global trend away from harsh, costly and counterproductive law enforcement, and towards a greater emphasis on approaching drug use primarily as a public health issue
- These changes around the world include decriminalisation and sentencing reform, regulatory models for cannabis and novel psychoactive substances, and innovative harm reduction interventions such as supervised drug consumption venues and heroin assisted treatment. Each of these reforms is chipping away at the monolith of prohibition in a different way, but all demonstrate that principled and evidence-led change is possible, even in sometimes hostile political environments
- Different countries and regions will move at different paces, but one of the key first steps will usually be a review to lay out the options and

evidence. Information from these experiences will feed into the body of knowledge about what works best for different drugs in different environments

- The war on drugs has failed, change is happening all over the world, from Colorado to Uruguay, and it is simply a matter of how and when, not if, global prohibition ends

A leap in the dark?

It is sometimes suggested that any form of legal drug regulation represents a dangerous gamble with the health and wellbeing of the public, and that there is no evidence to support such a 'radical' move.

While we are only now seeing the first real examples of places legalising and regulating drugs that are prohibited under the UN conventions (see Section 9, [Talking about... cannabis](#), p. 99), it is wrong to suggest there is no evidence to support arguments for legal regulation.

You can say:

- There is in fact a wealth of experience in regulating drugs and other risky products and behaviours that we can learn from and build upon. This includes: lessons from alcohol and tobacco regulation (including the repeal of alcohol prohibition in the US); experiments with cannabis regulation around the world; medical models for prescribing drugs to dependent users; the impacts of decriminalisation policies around the world; and experiences with regulating other forms of 'vice', such as gambling and sex work

- Change will not be revolutionary or overnight; it will be phased and cautious, based on experimentation, with policy carefully adapting and evolving in response to emerging evidence and changing circumstances
- This evidence-based approach is fundamentally different from the ideological and dogmatic underpinnings of prohibition
- Although well-intentioned, prohibition is not and never was based on evidence, so its introduction was far more 'radical' and a greater 'leap in the dark' than the growing moves towards regulation are now
- In fact, we can conclusively show that while there is strong and increasing evidence to support reform and regulation, any balanced, independent review will also show prohibition is expensive and actively counterproductive

If you have more time, you can point to some of the significant and growing supportive evidence:

- **Currently legal drugs.** Most obviously, there is evidence (of both what does and does not work) from the various regulatory models for currently legal drugs, including alcohol and tobacco (for more detail, see Section 8, [Talking about...alcohol and tobacco](#), p. 91). On the production side, it is important to point out that many drugs that are prohibited for non-medical use are produced safely and securely for medical uses, including opiates (such as opium, morphine and heroin), amphetamines, cocaine, and cannabis.⁶² More than half of global opium production is entirely legal and regulated for medical uses, a market not associated with any of the chaos, violence and criminality of the parallel criminal opiate trade

⁶² See Appendix 2 in Rolles S. (2009) **After the War on Drugs, Blueprint for Regulation**, Transform Drug Policy Foundation.

- **The end of alcohol prohibition.** The problems created by alcohol prohibition in the US⁶³ closely echo those of modern drug prohibition, and the benefits of its repeal (specifically the dramatic reduction in organised crime and related harms from the alcohol market) are well documented

- **Maintenance and substitute prescribing to dependent drug users.** A form of harm reduction, the medical prescription model of supply to dependent drug users has a large body of supporting evidence, particularly for opiates. Large-scale heroin prescription projects have been adopted in the Netherlands, Germany, and Switzerland, with impressive results on indicators for crime, health and social nuisance. Smaller-scale experimental programmes are also in place in the UK and Canada. A number of countries have similar maintenance prescribing models for dependent amphetamine users. You can, therefore, already point to functioning legal supply models that manage some of the most problematic users of some of the most risky drugs. Similar prescription models for opiate substitutes, such as methadone and buprenorphine, are even more widespread, now in place in 77 countries⁶⁴

- **Models of cannabis regulation around the world.** (See Section 8, [Talking about... cannabis](#), p. 99.)

- **The decriminalisation of possession of small quantities of drugs for personal use.** Numerous countries in Latin America, Europe and elsewhere have decriminalised personal drug possession, some for cannabis only, but in many cases for *all* drugs.⁶⁵ Decriminalisation of personal possession/use is obviously different

⁶³ Most famously in the US, although alcohol prohibitions were also implemented and subsequently repealed in a number of other countries.

⁶⁴ Harm Reduction International (2012) **Global State of Harm Reduction 2012**. <http://www.ihra.net/global-state-of-harm-reduction-2012>

⁶⁵ Rosmarin, A. and Eastwood, N. (2013) **A Quiet Revolution: Drug Decriminalisation Policies in Practice Across the Globe**. Release. <http://www.release.org.uk/publications/quiet-revolution-drug-decriminalisation-policies-practice-across-globe>

from legally regulated markets, and these experiences have been varied in their design and implementation. However, if there is one broad conclusion that emerges from these experiments, it is that the doomsday predictions that any moves away from rigid and punitive prohibitions would result in an explosion of use or the collapse of society have been proved wrong

— **The legalisation and regulation of gambling and sex work.**

Although these are services or activities rather than retail products, they are often categorised alongside drugs under 'vice'. While they are not necessarily approved of or condoned by society, policy and law seeks to pragmatically manage and control them to reduce individual and social harms. In so doing, they demonstrate how violence, criminal markets and other problems associated with a high demand for illegal activities can be reduced through legal regulation

Don't the UN treaties mean reform is impossible?

There is more room for manoeuvre within the UN drug conventions than many states appreciate, but there are limits to what they allow.⁶⁶ The legal regulation of drug production and supply for non-medical use remains strictly prohibited under the spirit and letter of the conventions, and they are a major obstacle for signatory states to negotiate – but it can be done.

A key concern for states is how to balance their international obligations under the UN drug conventions – which clearly outlaw the legal regulation of drugs for non-medical and scientific uses – with the urgent

⁶⁶ Jelsma, M. and Bewley-Taylor, D. (2012) *The Limits of Latitude: The UN Drug Control Conventions*, TNI/IDPC. www.tni.org/briefing/limits-latitude

need to explore alternatives to the failing prohibitionist approach that the conventions have established. This dilemma raises a number of difficult challenges in terms of national sovereignty and international law.

Reform-minded states are not alone in facing this challenge, and it is important to be clear from the start that the UN drugs treaties present a significant but by no means insurmountable hurdle to reform.

The 1961 UN Single Convention on Narcotic Drugs, which is the foundation of the global prohibitionist regime, was drafted in the 1940s and 50s, an era dramatically different to the one we now live in. The laws that stem from this treaty are therefore woefully out of date and are too rigidly drawn to adapt to present-day needs. There is a growing consensus, even within the UNODC, that the conventions need to be modernised and made 'fit for purpose'.⁶⁷

“There is indeed a spirit of reform in the air, to make the conventions fit for purpose and adapt them to a reality on the ground that is considerably different from the time they were drafted.”

Antonio María Costa

Executive Director

UN Office on Drugs and Crime, 2008

Key points on this question:

⁶⁷ Costa, A. (2008) *Making drug control 'fit for purpose': Building on the UNGASS decade*, UNODC. www.unodc.org/documents/commissions/CND-Session51/CND-UNGASS-CRPs/ECN72008CRP17.pdf

- It is important to remind your audience that, as previously discussed, change is already happening. This will help you give a clear sense that reform of the international drug control system is both necessary and inevitable
- Mechanisms do exist to reform and update the treaties,⁶⁸ even if these present substantial political and institutional challenges. They are not written in stone
- The power of the drug treaties is built on the consensus of the member states that ratify and enforce them, and this consensus is rapidly collapsing as the global drug control regime consistently fails to deliver what it set out to do. The past few years have witnessed open dissent in the highest-level UN forums for the first time
- Numerous states are moving away from the letter and spirit of the laws that the conventions have led to, and are becoming increasingly reluctant to fund expensive and failed drug-war programmes
- The UN drug law enforcement agencies are becoming more isolated from the rest of the UN family, with tensions growing as the commitment to maintain a war on drugs comes into conflict with other international legal and treaty commitments. Bodies like the WHO, the UNHCR, UNDP and UNAIDS, which subscribe to more progressive and pragmatic human rights, harm reduction and public health principles, appear increasingly unhappy with the current approach
- The need for greater 'system-wide cohesion' within the UN and international law is also likely to be a key issue for reform-minded states, as they highlight how their multiple treaty obligations – on, for example, human rights, indigenous rights, the rights of the child, the

⁶⁸ See Appendix 1 in Rolles S. (2009) **After the War on Drugs, Blueprint for Regulation**, Transform Drug Policy Foundation, and Room, R. and McKay, S. (2012) **Roadmaps to reforming the UN drug conventions**. www.beckleyfoundation.org/Roadmaps_to_Reform.pdf.

right to health, and the protection of biodiversity – are in conflict with the outcomes of the prohibitionist approach mandated by the UN drug conventions

- As the UNODC has made clear, the treaties are 'not written in stone' and only exist to reflect the will of member states. In particular, the acute and growing problems faced by producer and transit states gives them a unique authority to speak about the failings of prohibition at the highest levels. The challenges presented by treaty reform are an opportunity for reform-minded states to demonstrate leadership on the global stage, building solidarity with like-minded governments in their regions and beyond

- While challenges to, and defections from, the convention system by individual states have been and will remain important in pushing the the drug policy reform debate onto the agenda, long-term change is likely to result from a coalition of states highlighting the failings of the system and demanding remedies. They will not be seeking to 'overthrow' the international drug control system; rather, they will be seeking greater flexibility for individual states or regions to explore regulatory alternatives to prohibition, while at the same time preserving the positive elements of the system, such as regulation of the international pharmaceuticals trade, and the consensus on the need to minimise the harmful consequences of drugs and drug markets

What role will the US play in the reform process?

The US is the originator and primary driver of the modern-day global war on drugs. It has also been the policy's most enthusiastic guardian and enforcer, applying intense political pressure – often backed up with threats of, or actual diplomatic and economic sanctions – on countries that have deviated from the drug-war path. As a result, debate on reform (let alone actual reform) has been stifled for decades. However, US influence is now waning:

- Within the US, the political potency of drug-war rhetoric has diminished. The Obama administration has distanced itself from the more hawkish language of the past, even abandoning the phrase 'war on drugs' in an effort to reframe responses in the language of public health. There has also been an increasing, if reluctant, openness to at least debate alternatives. President Obama, for example, has stated that legalisation is a 'perfectly legitimate topic for debate.'⁶⁹ And of the legal regulation of cannabis in Colorado and Washington, he said: 'It's important for [these initiatives] to go forward because it's important for society not to have a situation in which a large portion of people have at one time or another broken the law and only a select few get punished'⁷⁰
- As discussed, the US can, if anything, now be seen as a global pioneer in drug policy reform – led by Colorado, Washington, Oregon, Alaska, and Washington, D. C.. The federal government may not be happy about this, but it is a reality that it has to address – especially with

⁶⁹ Szalavitz, M., **Drug Legalization Is a 'Legitimate Topic for Debate,' Obama Says**, TIME magazine blog, 28/01/11. <http://healthland.time.com/2011/01/28/president-obama-calls-drug-legalization-legitimate-topic-for-debate>

⁷⁰ Remnick, D., **Going the distance: On and off the road with Barack Obama**, The New Yorker, 27/01/14. www.newyorker.com/magazine/2014/01/27/going-the-distance-2?currentPage=all

more states, including California, likely to follow suit imminently. That these states have been given federal approval to proceed (within certain parameters) is hugely significant. It has forced the federal government to engage in the debate on *how* regulation should function, rather than dwelling on whether it should happen at all. It has also dramatically diminished the authority of the US to oppose reform elsewhere in the world, or to demand that other countries enforce punitive drug policies. It was notable that Uruguay's reforms provoked no diplomatic reaction from the US

- Now faced with having authorised a technical breach of the UN drug conventions within its own borders, the federal government has gone further, developing a rather tortured legal justification for the situation. It has argued that, in fact, the legalisation of 'entire categories of drugs' is allowed under a 'flexible interpretation' of the prohibitionist UN drug conventions. Without going into the legal technicalities, this move signifies two things. Firstly, that the threat from the US as an enforcer of the global drug war has now receded; and secondly, that the drug control system is broken and needs to be urgently reviewed and modernised. It is important, however, that the emerging 'flexibility doctrine' is not allowed to delay the urgently needed modernisation of the UN drug treaty framework, even if it does allow for more unilateral state experimentation

Latin America is particularly relevant to this strand of the drug policy reform debate. The region has closely followed the wishes of the international community, in particular the US, in fighting the war on drugs for 50 years. In doing so, it has carried a disproportionately heavy burden of prohibition's failings. No region has greater legitimacy in now calling for a meaningful exploration of alternatives.

In fact, leaders in the region are now talking openly about reform, driving the debate in the hemisphere and on the wider international stage, including at the 2016 UN General Assembly Special Session on Drugs in

New York. In a number of Latin American states, including Bolivia and Uruguay, open defections from the status quo have already taken place. There have arguably been some political costs in terms of relations with the US (the smaller states inevitably more vulnerable than larger ones) but these have been minor. This leadership is shifting perceptions of the creaking legal structures of prohibition, which are increasingly being perceived as an anachronism that is ready and open to challenge, review and reform.

In short, while the US remains a formidable barrier to reform, its ability to block change is weakening, and is no longer insurmountable.

The US as the main consumer market

The role of the US as a primary consumer market for drugs is an important point to address, particularly given the increasingly vocal calls for reform coming from the neighbouring region of Latin America. Indeed, the suggestion is sometimes made that reform in Latin American countries is pointless while prohibition and illicit markets remain in place in the US. This suggestion can be challenged on several fronts:

- Firstly, the nature of demand for Latin American-sourced drugs is rapidly changing. Both increasing illegal domestic cannabis production and legal medical cannabis production (a proportion of which has become a form of *de facto* legal supply for non-medical use) are already eating into Mexican cartels' profits, with the wider legalisation of non-medical production and supply set to accelerate this trend. Other trends may have similar effects elsewhere in Latin America: the use of cocaine produced in the region has been displaced by the use of novel psychoactive substances (such as 'bath salts') and diverted prescription stimulants, contributing to a fall in US cocaine use in recent decades. While some of these substances come from the South (for example methamphetamine produced in Mexico), many are domestically

produced or imported from elsewhere. These trends are largely independent of Latin American policy decisions, but a declining US demand for illicit drugs produced in the region is already looking likely

- Secondly, while Latin America has not historically been perceived as a major consumer market, this is no longer true. Consumer markets are substantial and growing – Brazil, for example, is now the world's second largest consumer of cocaine after the US
- The move towards regulation has always been proposed as a cautious, phased and incremental process. Pioneering regulatory models for drug markets in Latin America would bring real benefits, in particular reducing the low-level drug-related street violence associated with domestic trades. They would also demonstrate leadership to the rest of the hemisphere, help build the evidence base for how effective regulation models can be developed and implemented, and inevitably push the reform issue up the US agenda

We suggest that rather than waiting to react to what the US does, it is time for the region to assert itself and show leadership. As President Mujica said of Uruguay's cannabis regulation plans: "Someone has to go first."⁷¹

Of course, this debate does not take place in a vacuum. Latin America needs to negotiate with the international community, who will be affected by any decisions made in the region. But this cannot be an argument against beginning the process of reform. As our Latin American colleagues say: "We are the ones carrying the burden of current failings, we are the ones who will continue to suffer if change does not happen, and we are the ones who need to map out the way forward for the hemisphere."

71 Padgett, T., **Uruguay's Plan to Legalize Marijuana Sales: Should the Rest of the World Follow?**, TIME magazine blog, 26/06/12. <http://world.time.com/2012/06/26/uruguay-wants-to-legalize-marijuana-sales-should-the-rest-of-the-world-follow/> For more information on Uruguay's initiative, see: <http://regulacionresponsable.org.uy>

State institutions are not strong enough to regulate drugs

The argument is made that, even if the broad case for regulation is accepted, in practice institutions in many countries do not have the capacity to carry out their existing functions, let alone to regulate drugs. This argument will resonate with many, but at its core is a misunderstanding of current realities, and a confusion about what drug law reform can achieve or is claiming to be able to achieve.

- The starting point is that the violence, crime, corruption and instability associated with the illegal drug trade is actively undermining many state institutions, and these are problems either created or fuelled directly by the current approach to drugs
- If countries do not have the capacity to regulate drugs perfectly, then they will certainly not have the capacity to enforce the prohibition of illegal drug markets in the face of powerful cartels. This is the case in Mexico, a relatively developed and rich country, where drug cartels often act with total impunity. Here, prohibition is a hindrance not a help
- There is a vicious circle of mistrust: the public have little faith in state institutions because they see the impunity with which drug cartels operate, and this in turn means they do not provide institutions with the information and support they need to function
- When the police or military become dependent on foreign resources (particularly from the US) to fight the cartels, priorities are skewed towards those of the funders, reducing opportunities for states to direct institutional efforts towards local needs or objectives
- Regulation, by reducing all these costs and obstacles, and in particular reducing the power of cartels and their ability to undermine and corrupt

institutions, can help create an environment that facilitates, rather than impedes, social development and institution-building

- Drug policy reform will be a phased and cautious process, one that allows regulatory infrastructure to be developed and implemented over a period of time, in parallel with wider developments in social policy and institutional capacity
- As with all forms of regulation, drug market regulation may initially be imperfect, but it can develop and improve over time. And in any case, evidence from tobacco regulation (for example from the FCTC) shows that positive results can be achieved even with sub-optimal regulatory systems. Again, some form of regulation is preferable to none, which is the current situation under prohibition
- Most states already regulate (albeit imperfectly) the two most widely used drugs in the world: alcohol and tobacco

How do cartels undermine institutions?

- The misuse of economic power – primarily in the forms of corruption and intimidation – which is facilitated by the profits generated by the illicit drug trade
- The success, visibility and impunity of cartels undermines both the rule of law and respect for the institutions of law. Criminals can even become role models, corrupting established community values
- Illicit drug profits cause wider distortions in the functioning of legal markets, reducing both the ability of the state to regulate them and the ability of legitimate businesses to operate
- In some regions, cartels can become the default providers of key social services, displacing the state

Summarising the arguments, and further reading and resources

This section, also available as a standalone publication,⁷² will provide you with a quick-reference summary of some of the key arguments for and against reform. Please note that in order to keep this section reasonably short we have not covered all the issues discussed elsewhere in this book. For more arguments and detail, please see Section 8, Talking about... particular drugs, and rights and freedoms, p. 91, and Section 9, Responding to concerns about ending the war on drugs, p. 123 in particular.

To minimise overlap, and for ease of use, we have divided this chapter into the following sections:

1 What is legal regulation?, 2 Levels of drug use, 3 The young and vulnerable, 4 Crime, 5 Health and risk, 6 Security, 7 Development, 8 Money, 9 Human rights, 10 Morality, 11 Political context, 12 Fighting harder or smarter?

References for this section can be found on page 173.

⁷² Kushlick, D. et al. (2014) **Debating Drugs: How to Make the Case for Legal Regulation**, Transform Drug Policy Foundation. <http://www.tdpf.org.uk/resources/publications/debating-drugs-how-make-case-legal-regulation>

1 What is legal regulation?

Responsible governments already legally regulate many risky activities and other drugs effectively, including alcohol, tobacco and pharmaceuticals. So, far from being ‘radical’, legal regulation is in fact the norm. In reality, it is prohibition that is the radical policy.

Concern	Response
<p>Legal regulation would mean a drugs ‘free-for-all’, in which everyone has easy access to any drug they like</p>	<ul style="list-style-type: none"> – Although the legal regulation of drugs is sometimes characterised as a ‘liberalisation’ or ‘relaxation’ of the law, it is in fact the opposite: it is about bringing the drug trade within the law, so that strict controls can be applied. Such controls are impossible to impose under prohibition – Legal regulation enables responsible governments to control which drugs can be sold, who has access to them, and where they can be sold. Under prohibition, it is criminals who make these decisions – Anyone can buy any drug they like while criminals control the trade. Drug dealers don’t ask for ID – Under a system of legal regulation, many activities, such as sales to minors, would remain illegal and subject to sanctions – It is a caricature of the reform position to say that advocates of legal regulation want drugs to be freely available – sold, for example, in supermarkets. It is irresponsible in the extreme that alcohol and tobacco are already sold in this way. We should aim for better, stricter regulation of both legal and currently illegal drugs

Concern	Response
<p>The legal regulation of drugs would be a dangerous leap into the unknown</p>	<ul style="list-style-type: none"> <li data-bbox="381 234 1011 368">– Prohibition was the leap into the unknown. There was never any evidence that it would be effective. But now, after more than half a century of this policy, we know that it is costly and counterproductive <li data-bbox="381 373 1011 571">– We already legally regulate many risky activities and substances effectively. Even some drugs prohibited for non-medical use – including opiates, amphetamines, cocaine and cannabis – are produced safely and securely for medical use without any of the chaos, violence and criminality of the illicit trade <li data-bbox="381 576 1011 783">– There would be no ‘one-size-fits-all’ approach: the riskier the drug, the stricter the controls that should be placed on it. Some less risky drugs, for example, would be sold by licensed retailers, while more risky drugs would only be available via medical prescriptions for people registered as dependent users. The supply of the most risky preparations, such as crack cocaine, would remain prohibited <li data-bbox="381 788 1011 927">– We can apply the lessons learned from the control of other risky substances and activities – such as alcohol, tobacco, prescription drugs, gambling and sex work – to ensure that regulation promotes public health and safety <li data-bbox="381 932 1011 1098">– Change will not happen overnight – it will be phased and cautious, based on experimentation, with policy carefully adapting and evolving in response to emerging evidence. If policies do not work they can be revisited and, where necessary, reversed
<p>It is naïve to think legal regulation is a panacea or ‘silver bullet’ for the problems caused by drugs</p>	<ul style="list-style-type: none"> <li data-bbox="381 1139 1011 1246">– This is a strawman argument. No one is claiming that legal regulation is a silver bullet for all the problems associated with drugs. It is, however, a silver bullet for many of the disastrous problems caused by drug prohibition <li data-bbox="381 1251 1011 1390">– To meaningfully address the wider challenges posed by drugs, legal regulation must be complemented by improvements in public health, education, prevention, treatment and recovery, as well as action on poverty, inequality and social exclusion

2 Levels of drug use

More than 50 years of prohibition, and over a trillion dollars spent on enforcement, have failed to prevent a dramatic rise in illicit drug use, with over 240 million people using drugs worldwide today. This is hardly surprising given that research consistently shows criminalisation does not deter use. Contrary to some claims, legal regulation simply means the availability of drugs is controlled, not increased. However, even if levels of drug use did continue to rise under legal regulation, overall social and health harms would still fall significantly.

Concern	Response
<p>Without criminalisation to act as a deterrent, drug use will dramatically increase</p>	<ul style="list-style-type: none"> <li data-bbox="333 616 966 754">– Comparative studies of drug laws around the world show no link between harsh enforcement and lower levels of use.^{73 74} The theory that criminalisation has a significant deterrent effect, which underpins the policy of prohibition, is not supported by evidence <li data-bbox="333 791 966 874">– In the Netherlands, where the possession and retail supply of cannabis is legal in practice, rates of cannabis use are almost the same as the European average⁷⁵ <li data-bbox="333 906 966 1018">– When Portugal decriminalised the possession of all drugs in 2001, drug use did not rise dramatically, as some feared. Over ten years on, levels of drug use remain below the European average⁷⁶ <li data-bbox="333 1050 966 1189">– In many countries, tobacco use is half what it was 30 years ago.⁷⁷ This reduction has been achieved without blanket bans or criminalising smokers; it is the result of health education and stricter market regulation, only possible because tobacco is a legal product <li data-bbox="333 1220 966 1327">– Levels of drug use are often equated with levels of drug harm, but the vast majority of drug use is non-problematic. Rather than narrowly focusing on reducing use, policy should seek to reduce overall harm

Concern	Response
<p>Legal regulation will increase the availability of drugs</p>	<ul style="list-style-type: none"> - Legal regulation means controlled, not increased, availability, with tight controls on what can be sold, where it can be sold, and to whom. Under prohibition, there are no such controls
<p>Large, profit-motivated corporations will commercialise drug markets and aggressively promote drug use</p>	<ul style="list-style-type: none"> - Drug markets do not have to operate along commercial lines. Options exist for state-run institutions or non-profit organisations, to manage the drug trade effectively, in ways that remove the financial incentive to increase or initiate use - We can learn from the mistakes of alcohol and tobacco control. Levels of alcohol and tobacco use are the result of decades of commercial promotion, often in largely unregulated markets. With currently illegal drugs, we have a blank slate: we can put in place optimal regulatory frameworks from the start, controlling all aspects of the market - We have a choice: the drug trade can be controlled by criminals or by doctors and pharmacists. There is no third option in which drugs don't exist - Criticisms of some commercial companies are entirely legitimate. However, unlike organised crime groups, they are regulated by government bodies, pay taxes, are answerable to the law, unions and consumer groups, and do not use violence in their daily business dealings
<p>Drug use is currently falling. We shouldn't risk reversing this trend by legalising</p>	<ul style="list-style-type: none"> - The current number of people who use drugs is so high that it constitutes a significant public health, crime and security problem. Even if some drug use is declining, prohibition leaves too many people using unregulated drugs in unsafe ways, and a vast market in the hands of organised crime - Research consistently shows that rates of drug use are primarily driven by changing cultural, social or economic trends, not by the intensity of enforcement⁷⁸

3 The young and vulnerable

Rather than protecting the young and vulnerable, the war on drugs has placed them at ever greater risk – from the harms of drug use, and the risks of being caught up in the violence and chaos of the criminally controlled trade. We want a market legally regulated by responsible government authorities, combined with the redirection of enforcement spending into proven health and prevention programmes aimed at young people.

Concern	Response
<p>Prohibition keeps drugs out of the hands of many young people. Legal regulation would simply increase their access to drugs</p>	<ul style="list-style-type: none"> – Prohibition has proven highly ineffective at restricting young people's access to drugs – Effective legal regulation, which includes age restrictions, can limit young people's access to drugs – We should obviously do all we can to prevent young people from taking drugs. However, if minors do obtain legal drugs intended for adult use, they are at least better protected because the drugs are quality controlled and carry dosage and health and safety information – as legal pharmaceuticals do now – For those young people caught using drugs, criminalisation can restrict their life chances and further marginalise them – Criminal production and supply maximises the dangers associated with drug use, by encouraging young people to consume risky products in risky environments
<p>The UN Convention on the Rights of the Child requires a zero-tolerance approach to protect children from the dangers of drugs</p>	<ul style="list-style-type: none"> – The UN Convention on the Rights of the Child calls for the protection of children, not punishment and criminalisation. The war on drugs is at odds with the emphasis placed by the UN on human rights and health, and it is these considerations that should shape the development of drug policy

Concern	Response
<p>Criminal drug laws send out the message that drug use is dangerous and unacceptable</p>	<ul style="list-style-type: none"> – It is not the job of the criminal justice system to send messages on public health, and when it has tried to, it hasn't worked – Savings from enforcement budgets and tax revenue from legal drug sales could be used to fund more effective, targeted drug education programmes – Legal regulation, and the control it gives us over packaging, vendors and outlets, provides far better opportunities to send messages about the dangers of drug use – The decline in tobacco use in many countries⁷⁹ demonstrates that the threat of criminalisation isn't required to make people aware of the risks of drug use. Stricter regulation and better health education are more effective and humane ways of encouraging people to make healthier lifestyle choices
<p>Prohibition protects the most vulnerable and marginalised in society. Legal regulation would simply put them at greater risk</p>	<ul style="list-style-type: none"> – Prohibition actively fuels the marginalisation of vulnerable people. It is a policy that stigmatises and discriminates against people who use drugs, the poor, women, young people and, in particular, ethnic minorities. Despite the fact that black people and white people use drugs at almost identical rates, black people are dramatically more likely to be arrested, prosecuted and incarcerated for drug offences^{80 81} – While people living in poverty are no more likely to use drugs than the rest of the population, poor people are far more likely to be harmed as a result of their drug use⁸²

4 Crime

Rather than reduce crime, prohibition actively creates it. The illegality of drugs has created a kind of alchemy, turning plants into consumables worth, in some cases, more than their weight in gold. This provides a huge profit motive for criminal groups to enter and control the trade. These inflated prices also fuel low-level street crime, as people who are dependent on drugs are forced to steal and rob to support their habits. Finally, through its punitive response to drug use, prohibition makes criminals of millions of otherwise law-abiding people – particularly the most marginalised and vulnerable.

Concern	Response
<p>Taking the drug trade away from criminal groups won't cause them to disappear; they will simply exploit other criminal opportunities</p>	<ul style="list-style-type: none"> <li data-bbox="336 657 966 767">– Where other criminal opportunities are available, they are already being taken, often funded by the profits from illegal drugs. Legal regulation would remove one of the largest criminal opportunities in the world, now and in the future <li data-bbox="336 799 966 909">– This concern implies we should maintain drug prohibition to keep criminals occupied with drug-related crime. Following this logic, we would not attempt to prevent any crimes, in case people went on to commit other offences instead <li data-bbox="336 941 966 1115">– Even if there is some diversion into other criminal activity, overall there will be a significant net fall in crime. It will also end ineffective enforcement measures that simply push drug production and transit – and all the associated crime and violence – into new areas, rather than eliminating them (the so-called 'balloon effect') <li data-bbox="336 1147 966 1227">– Ending prohibition will free up resources to tackle other crimes. And this challenge will become easier because as criminals' illegal drug profits shrink, so does their power

Concern	Response
Legal regulation means being soft on crime	<ul style="list-style-type: none"><li data-bbox="395 236 1002 320">– Legal regulation is tough on crime. The people who most strongly oppose it are the criminals who make vast profits as a result of prohibition<li data-bbox="395 352 1002 491">– A significant proportion of acquisitive crime is committed by people who are dependent on drugs stealing to feed their habits. When Switzerland provided a legally regulated supply of heroin to people dependent on drugs, rates of burglary fell by half⁸³
We would of course reduce crime by legalising drugs. But in that case, why not legalise murder too?	<ul style="list-style-type: none"><li data-bbox="395 539 1002 705">– There is simply no moral or legal equivalence between adult drug use and murder. The former is a consensual activity that involves a personal decision about what individuals do to their own bodies. The latter, by definition, is a non-consensual activity, committed against individuals' wishes, with the express intention of causing them harm

5 Health and risk

Prohibition has led to a public health disaster. By leaving potentially harmful substances in the hands of organised criminals, and by criminalising and marginalising people who use drugs, prohibition maximises the health risks associated with drug use. Legal regulation protects health: governments can control availability and ensure drugs are of known strength and purity. Consumers are aware of what they are taking and have clear information on health risks, and how to minimise them.

Concern	Response
<p>Drugs are dangerous - that is why they are illegal</p>	<ul style="list-style-type: none"> <li data-bbox="333 616 966 671">– We should regulate drugs precisely because they are dangerous, not because they are safe <li data-bbox="333 699 966 786">– While it is clearly true that all drug use, both illegal and legal, carries risks, these risks are dramatically increased when drugs are produced and supplied by criminal profiteers <li data-bbox="333 813 966 1018">– Prohibition maximises the health risks associated with all drug use. It pushes the market towards riskier, more potent (and therefore more profitable) products like crack cocaine, leads to the use of contaminated drugs of unknown strength, encourages high-risk using behaviours, pushes consumption into unsafe environments, and forces people who use drugs to come into contact with a potentially violent criminal underworld <li data-bbox="333 1045 966 1101">– Under prohibition, the threat of criminalisation means drug users are reluctant to seek medical attention when they need it <li data-bbox="333 1128 966 1216">– Doctors are often unable to provide appropriate emergency treatment, because even their patients cannot know what was in the substance they took <li data-bbox="333 1243 966 1331">– Ever-increasing spending on counterproductive drug law enforcement has reduced budgets for proven health interventions like prevention, harm reduction and treatment

Concern	Response
Drugged driving would increase, and employees would go to work under the influence of drugs	<ul style="list-style-type: none"><li data-bbox="395 236 956 320">– Driving while impaired by alcohol or other drugs is rightly illegal and would remain so regardless of any drug's legal status<li data-bbox="395 352 956 437">– In many countries, significant reductions in rates of drink driving have been achieved through public education and effective enforcement. Alcohol has not been prohibited<li data-bbox="395 469 975 576">– Employees would still be bound by employment contracts that forbid them from working while impaired by the use of any drug. Impairment should be the key concern, not legal status

6 Security

Treating drugs as a security threat and prohibiting them has inadvertently empowered organised criminals and corrupt officials, who can accrue both the wealth and the firepower to challenge legitimate state and government institutions.

Concern	Response
<p>Drugs and organised crime are a threat to the security of whole regions, so we must fight them</p>	<ul style="list-style-type: none"> - Drugs <i>per se</i> are not a threat to security – any more than alcohol, tobacco or pharmaceuticals are. The threat arises as a result of prohibition, which abdicates control of the market to organised criminal groups, who have in some cases become so powerful they are undermining national and regional security. Ending prohibition and putting governments in control of the market would significantly reduce this threat - The use of the military and extreme policing techniques to tackle organised crime actually undermines security, with the public getting caught up in the increased violence between the authorities and criminals, or between rival gangs - Law enforcement measures simply push drug production and transit – and all the associated crime and violence – into new areas, rather than eliminating them (the so-called ‘balloon effect’)

7 Development

Prohibition is hindering development in drug producer and transit regions. It funds and empowers organised crime groups who then corrupt politicians, undermine institutions, deter investment, and cause valuable resources to be wasted on counterproductive law enforcement. Legal regulation would reverse this trend.

Concern	Response
Drugs and organised crime are a threat to the development of whole regions, so we must fight them	<ul style="list-style-type: none"> – Prohibition fuels corruption and violence that actively undermines development – The extent and power of organised crime groups has meant that some regions are now comparable to armed conflict zones. The longer the conflict continues, the harder the process of post-drug-war reconstruction becomes – Involvement in the illegal drug trade further marginalises already vulnerable populations, and the hidden nature of their activities often makes them invisible to policy makers and public debate. Stigmatisation arising from links to the criminal economy also creates obstacles to implementing effective development initiatives
In many countries, state institutions are too weak to regulate drugs	<ul style="list-style-type: none"> – Many state institutions are actively undermined by the corruption and violence that prohibition has generated. Reducing drug-related corruption and violence would help create an environment more conducive to institution-building in the longer term – Some form of drug regulation is far better than no regulation at all, which is what happens when markets are left entirely in the hands of organised crime – Regulation may not be required everywhere. For instance, little illicit opium poppy will be grown in Afghanistan when most of the global demand for opiates is met through a legal supply

8 Money

In addition to costing over \$100 billion a year, the global war on drugs produces disastrous secondary costs, both financial and social. The shift to legal regulation would free up wasted drug-war budgets to be spent on other enforcement priorities or other policy areas, such as education and healthcare.

Concern	Response
<p>Legalising drugs would be far too costly, both in terms of the enforcement of any new regulatory framework and the health costs resulting from increased rates of drug use</p>	<ul style="list-style-type: none"> <li data-bbox="412 502 944 587">– While there will be costs associated with a shift to a regulated approach, they are tiny in comparison to the costs of enforcing prohibition <li data-bbox="412 619 944 730">– Legal regulation means not only saving a vast amount of money by no longer fighting a futile and counterproductive drug war, but also that money can be generated through taxes <li data-bbox="412 762 944 842">– Under prohibition, finite resources are spent on counterproductive drug law enforcement, at the expense of proven health interventions <li data-bbox="412 874 944 959">– Any revenue generated from legally regulated drug sales can help support health interventions such as drug prevention, treatment and harm reduction <li data-bbox="412 991 944 1070">– Even if use increases, health harms and financial costs will decrease, providing a substantial net benefit to society overall

9 Human rights

By prioritising enforcement goals above all else, human rights have been marginalised under prohibition, leading to widespread and systematic abuses in the treatment of people who use drugs and in drug law enforcement itself. Police and military actions related to drug law enforcement are rarely subject to human rights scrutiny, and abusers are rarely held accountable. Drug policy should protect and guarantee human rights, not undermine them.

Concern	Response
<p>The human rights of people who use drugs shouldn't be prioritised over the health and wellbeing of society</p>	<ul style="list-style-type: none"> <li data-bbox="397 579 980 722">– The war on drugs is in reality a war on people, one that impacts on whole sectors of society, particularly the most marginalised and vulnerable. These include not only people who use drugs, but women, young people, the poor, indigenous communities and ethnic minorities too <li data-bbox="397 754 980 898">– While there is no specific legal right to take drugs, the criminalisation of consenting adult drug use impinges on a range of internationally recognised legal rights, including the rights to privacy, health, culture, and freedom of belief and practice <li data-bbox="397 930 980 1121">– Drug laws that criminalise personal use are at odds with the law for comparable activities that involve risk-taking or self-harm by consenting adults, such as dangerous sports, unsafe sex, and the consumption of legal drugs, including alcohol and tobacco. These activities may not be wise, and they may even be actively discouraged, but they should not be criminalised
<p>Prohibition protects the human rights of those who do not wish to take drugs</p>	<ul style="list-style-type: none"> <li data-bbox="397 1169 996 1305">– The lack of human rights scrutiny in many producer and transit regions has created a culture of impunity in which torture, enforced disappearance, rape, executions and other serious rights violations have become normalised as a way of exercising authority <li data-bbox="397 1337 1002 1447">– As conflict situations intensify, the ability of citizens to exercise their rights is progressively undermined. Civil and political rights, economic, social and cultural rights, indigenous and environmental rights have all suffered to varying degrees

Concern	Response
Various UN treaties dictate that a harsh response to drugs is necessary to protect the world's citizens	<ul style="list-style-type: none"> – Much of the international legislation on drugs is hugely outdated. The main UN drug treaty, for example, was drawn up over half a century ago. We need a modern international drug control framework that is fit for purpose and respects – rather than undermines – health and human rights

10 Morality

While some may believe that drug-taking is immoral, it should not be a crime. Other activities, such as gambling, adultery, or even homosexuality, are judged by some to be immoral, but they are not criminalised in modern societies.

Concern	Response
It is wrong to take drugs, so it would be wrong to encourage their use by legalising them	<ul style="list-style-type: none"> – Supporting legal regulation is not the same as endorsing drug use, or somehow being 'pro-drugs' – Civilised and tolerant societies should not use criminal sanctions to impose their moral judgements on adults whose actions do not negatively impact on others – Putting in place a drug policy that is healthy, just and humane is the most moral response to drug use – and that means legal regulation
People shouldn't buy drugs that are known to come from a violent and destructive criminal market	<ul style="list-style-type: none"> – People shouldn't buy consumer products that are produced or sold in ways that cause significant harm. But given that people will continue to buy drugs, the only way to eliminate this harm is by ending prohibition and having governments legally regulate their production and sale – As we see with tobacco and alcohol, given a choice, most people who use drugs would not buy them from a violent criminal market. So if we are genuinely concerned about the destructive effects of the illicit trade, we should give people who use drugs an ethical alternative

11 Political context

The primary role of responsible governments is to look after their citizens. By following the policy of prohibition, governments do precisely the opposite, putting people’s health and wellbeing at risk. Legal regulation is the responsible way to protect citizens from the potential harms of both drug use and the drug trade.

Concern	Response
<p>Only a small minority of the population support legalisation</p>	<ul style="list-style-type: none"> – In many countries, support for reform is growing rapidly, including in the US, where over 50% of the public are now in favour of the legal regulation of cannabis⁸⁴ – In a growing number of US states, citizen-led initiatives have resulted in the legal regulation of cannabis – This is an issue of political leadership. In Uruguay, for example, politicians have led the debate, introducing a strict system of legal cannabis regulation, despite an initial lack of public support – Both sitting and former world leaders are increasingly advocating reform, without being vilified in the media, as it becomes more and more clear they are on the right side of history
<p>Global powers and the UN conventions are insurmountable obstacles to reform</p>	<ul style="list-style-type: none"> – Both the US and Uruguay already have legally regulated cannabis markets, despite being signatories to the UN drug treaties – There is now open dissent at the highest level over global drug prohibition, and debate and actual reforms are taking place all over the world. It is just a matter of how, not whether, the global drug control system should be reformed – The power of the US to impose a war on drugs approach around the world has diminished as American states like Colorado and Washington have legally regulated cannabis, and its global influence has declined – While UN member states have a range of longstanding international obligations, they also have a responsibility to change policies that have clearly failed and actively cause harm to their citizens

12 Fighting harder or smarter?

For over 50 years, global drug prohibition has been a disaster. Fighting harder can only make matters worse, but there are important steps that can reduce some drug-war harms. These include reorienting policy towards health goals, decriminalising possession of drugs, and strategically targeting the most violent criminals. However, because it is prohibition itself that creates the illegal market and all its harms, the only long-term solution is to replace the war on drugs with responsible legal regulation that protects children, improves health, reduces crime, and saves money.

Concern	Response
<p>The drug war can be won if we fight it harder, by investing greater resources and imposing harsher criminal penalties</p>	<ul style="list-style-type: none"> – The criminal justice-led approach to drugs is already imposing disproportionately harsh sentences and filling prisons with users and non-violent drug offenders. Doing more of the same will not produce different results – Where there is high demand for drugs, prohibition just creates a criminal profit opportunity. Any interruption of drug production and supply simply increases prices, motivating more criminals to enter the market. So no matter how many drug crops are burned or smuggling networks are smashed, they will always be replaced – Criminalisation and mass arrests give a false sense of security. They allow politicians to be seen to be ‘doing something’, but rather than address the problem, they drain scarce resources and simply fuel the marginalisation of at-risk groups and vulnerable communities
<p>The current approach is not a ‘war on drugs’; it is a comprehensive strategy that includes treatment, prevention, education, as well as enforcement</p>	<ul style="list-style-type: none"> – Treatment, prevention and education are essential parts of any effective drug policy. But such proven health interventions are actively undermined by punitive enforcement aimed at the very populations we are simultaneously trying to help. Highlighting the evidence base for health interventions cannot obscure the absence of evidence supporting enforcement

Concern	Response
	<ul style="list-style-type: none"> – In many transit and producer countries, the impacts of prohibition are so devastating that the situation is indeed similar to a warzone. And in many consumer countries, the vast majority of the drugs budget is spent on punitive enforcement and incarceration
<p>We agree that punishing people who use drugs is not the right approach, which is why many countries have decriminalised drug possession and use. But we have a duty to go after drug suppliers</p>	<ul style="list-style-type: none"> – Decriminalisation of drug possession and use is a positive first step towards reforming the current prohibition regime. Yet decriminalisation alone does not address many of the greatest harms of prohibition – such as high levels of crime, corruption and violence, massive illicit markets, and the harmful health consequences of drugs produced in the absence of regulatory oversight⁸⁵

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Ending the war on drugs:

How to win the global drug policy debate

This is a guide to making the case for drug policy and law reform from a position of confidence and authority, with a particular focus on the issue of legal regulation of currently illegal drug markets that is now core to the debate in the region. It is for every policymaker, media commentator, and campaigner who not only recognises that the ‘war on drugs’ is a counterproductive failure that is creating catastrophic unintended consequences, but who also wants to convince others to back reform.

It will equip you with the constructive arguments, different approaches and nuanced messaging needed to address the concerns and interests of diverse audiences. This will enable you to not just win the argument, but make the new allies needed to turn the current unparalleled momentum for reform into concrete policy change nationally and internationally.

“I would like to express my sincere gratitude to you [Transform/MUCD staff] for your hard work and contributions to the Report on the Drug Problem in the Americas. Your participation in this historic endeavour was invaluable to the Organization of American States.”

José Miguel Insulza, Secretary General,
Organization of American States, 2013

“The Global Commission on Drug Policy commends the progressive and high-quality contributions of Transform to the wider international debate on ending the war on drugs.”

The Global Commission on Drug Policy, 2014

“Transform’s workshop in Mexico about how to argue for drug law reform in general, and legal regulation in particular, was invaluable. It should be rolled out globally to advocates of drug law reform and all policymakers considering change.”

Ambassador Edgar Gutiérrez Girón,
Special Mission on Drug Policy Reform, Guatemala, 2013

TRANSFORM
Getting drugs under control

