

6. GOOD GOVERNANCE

THE LEGAL REGULATION

OF DRUGS:

The potential to deliver good governance

The act of prohibiting certain drugs heralded the creation of organised drug crime. This has driven corruption and weakened governance, terrorised communities, caused immeasurable violence and deaths, undermined state infrastructure and public services and caused state capture, in which legislators act in the interests of organised crime rather than their citizens.

The sheer scale of the money involved in drug crime (in 2017 estimated at between US\$426 to US\$652 billion) makes drug crime a key enabler of other crimes.¹ Profits from the drug trade provide the majority of the funding for other organised crime,² and fund terrorist activity.³ Criminals who traffic drugs frequently diversify their activities into other forms of organised crime,⁴ relying on their existing infrastructure, networks and routes to traffic weapons, people and other illegal goods.⁵ They can also take over legal trading sectors – partly to launder money, but also simply to expand their business empire.

However people working in these sectors are then working for the organised crime groups, and become subject to the risks and dangers this entails. Meanwhile measures to enforce prohibition, such as crop eradication and the aggressive pursuit of traffickers, have been shown to contribute to an increase in conflict.⁶

The cause of this chaos is not drug crime itself, but the system of prohibition which created it. The UN Office of Drugs and Crime defines organised crime as “a continuing criminal enterprise that rationally works to profit from illicit activities that are often in great public demand.” The act of making certain drugs illegal created that demand.



It provides the opportunity for those who trade in drugs to develop immense profits and power, enough to 'buy off' officials at all levels through combinations of bribery and acts or threats of violence (including to their families). In some cases this infiltrates entire states resulting in state capture.

Prohibition created an omnipotent shadow economy, sometimes bigger and more powerful than states themselves, in which organised criminals are enmeshed with state actors, facilitating corruption, destabilising state architecture and public services and creating staggering levels of violence. One study found that 82 percent of all statistical studies found a significant and positive association between the enforcement of drug laws and higher levels of violence.⁷ Between 2006 (when Mexico announced its 'war on drugs') and 2012, 250,000 people were killed in drug related violence and between 2006 and 2015 11,000 children were murdered by organised crime.⁸

“**Prohibition gave birth to organised crime. It is what makes it the dominant power it is today.**

Neil Woods Former undercover police officer and Chair of Law Enforcement Action Partnership UK

Further, and most significantly, prohibition diverts both money and policies away from serving people to serving the interests of organised crime. This prevents governments from providing basic services and legislating in the interests of their citizens.

As we witness the beginning of the end of prohibition, with alternatives such as harm reduction, decriminalisation and legal regulation

of cannabis, cocaine, psychedelics, ketamine and MDMA/ecstasy on the agenda of governments across the world, this provides an opportunity to loosen the stranglehold of organised crime, reduce their power, create more stable societies, and direct policy and revenues back to people.

A legal drug trade – risks for governance

Whilst prohibition created organised drug crime, it would be naive to think that it will suddenly disappear with its end. Moves towards legal regulation will by nature take power away from organised crime and hand it back to states. However this must be undertaken with analysis and increased understanding of the potential wider effects. This includes the impact that the end of prohibition will have on those currently involved in the drug trade. The latter includes not just powerful organised criminals, but also those at the lower levels of the trade who often engage in it for survival.

A further risk to be mitigated is that of 'corporate state capture' and other corporate crimes and unethical practices. As is the case with licit trades, weak regulation can enable the expansion and abuse of corporate power, at the expense of small scale traders and communities. If drug reforms happen without the full participation of advocates to ensure good governance we risk wider unintended consequences and some of the injustices of prohibition being recreated in a legal market.

Advocates for good governance must seize the opportunity before new drug markets get captured by corporations. The graphic over the page explores what could happen to new legal drug markets if advocates fail to engage with drug reforms.

How drug crime props up states

'Narco-state' is an imprecise and contested term that has been applied to a range of countries across Latin America, Asia, and West Africa.⁹ In essence it refers to a situation in which organised drug criminals and core state actors are entwined, and in which drugs provide a major source of political power or economic revenue for the state.¹⁰ Examples include:

Shan State in **Myanmar** is a key site for global drug production and one of the largest global centres for the production of crystal methamphetamine. The drug market is many times larger than the state's formal economy. It generates revenue for a range of armed groups currently involved in the conflict.¹¹

Since the 1980s organised drug crime has eroded a number of West African states. Most notable is **Guinea Bissau** where the cocaine market has been described as the "glue holding together the constellation of uneasy power alliances in Bissau's elite protection structure."¹²

In April 2022 former President of **Honduras** (2014–2022) Juan Orlando Hernández Alvarado, was described¹³ by the US Department of Justice declaring his extradition on drug charges as: "a central figure in one of the largest and most violent cocaine trafficking conspiracies in the world... once elected President (he) leveraged the Government of Honduras' law enforcement, military, and financial resources to further his drug trafficking scheme."

A legal drug trade: The risks we must avoid



The opportunity for good governance

The end of prohibition would bring the supply chain out of the shadows and allow for transparency and accountability. It could also reduce the power of organised drug crime, currently entwined with state institutions. If constructed using principles of transitional justice, the legal regulation of drugs provides a once in a lifetime opportunity to reduce the power of organised crime, and free up power and revenue to strengthen state services and infrastructure. If drugs were legally regulated and taxed, not only could this disentangle states from organised crime, and strengthen the social contract between citizens and the state, it could bring in vital revenue to rebuild state infrastructure that has been eroded under prohibition.

This will only be possible with the deliberate development of new markets based on transitional justice, that **rectify the injustices of both prohibition and poor governance.**

- After Portugal decriminalised all drugs in 2001, incarceration for all drug offences reduced, including for trafficking and related crimes. The number of people incarcerated for drug offences fell by **43 percent** from 3,863 in 1999 to 2,208 in 2016.¹⁴

Drug revenue for infrastructure not organised crime

In 2017 Global Financial Integrity estimated the value of the global drug trade at between US\$426 billion to US\$652 billion.

At a conservative estimate, global drug sales could provide governments with an additional US\$150 billion in tax revenue each year. This estimate is for a sales tax only and does not include revenue from taxes on corporations, production or income as a result of increased legal employment.¹⁵ To put this in context, the estimated additional funds needed to achieve Universal Health Coverage in the world's 54 poorest countries in 2030 is US\$176 billion.¹⁶

Legal regulation can also prevent public money being wasted on failed enforcement with potential savings in the police, military, prison and judicial systems, as well as those associated with wider health harms.

Some reforms are already demonstrating the redirection of funds into public infrastructure. In the US state of Texas, the city council of Austin redirected US\$150 million from law enforcement to buy housing for people experiencing homelessness, expand health-care, access to food and prevent violence.¹⁷

Good governance in a legal drug trade – key principles

People first. The input of small scale traders, Indigenous Peoples and those currently persecuted under prohibition must be central to the development of emerging regulations. Lessons from the injustices of other trades must be shared and explicitly addressed.

Repair the harms of prohibition, and investigate and prosecute human rights violations committed under prohibition, both directly by organised crime and those done by or with the complicity of the state. Provide reparations for those whose human rights have been violated by state actors and expungement for people at the low levels of the trade who have been criminalised.

Address related crimes. Enact measures to stem related crimes such as the illicit flow of firearms including disarmament initiatives, and evidence-based violence reduction programmes.

Provide employment opportunities and public services for people involved in the low levels of the trade and help to transition to roles in a legal market.

Undertake scenario mapping to acknowledge and mitigate the risk of organised crime expanding into other areas and monitor the effects of this.

Regulate big corporations. Ensure they cannot dominate the market and that new opportunities benefit the poorest. This may include limits on the size of grow sites, moratoriums, full transparency and caps or strict limits on foreign ownership and investment, requiring big companies to share knowledge and technology with small businesses, restrictions on the import of seeds, requirement to source inputs locally.

Invest in public services and ensure accountable governance. Bringing drug revenues out of the illicit sphere to be under state control not only saves the costs of enforcement, but also means these enormous revenues can be taxed. (This could include taxes on production, products, corporations and income from the employment generated.) This could be transformative, providing stable and vital revenue for public good, repairing the damage that prohibition has done to accountable governance and public services.

Provide international funding additional to aid budgets to support states most affected by prohibition to develop their tax collection capacity, address corruption and rebuild vital infrastructure.

What comes next? Let's shape it.

Are emerging drug reforms on your agenda? Advocacy for drug reforms that support good governance must happen *now*.

Contact c.james@healthpovertyaction.org to contribute to the ongoing conversation to ensure drug reforms deliver good governance.

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Endnotes

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14. https://drugpolicy.org/wp-content/uploads/2023/08/dpa-drug-decriminalization-portugal-health-human-centered-approach_0.pdf
15. See tax briefing in this series for further information and calculations.
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