3.2
Regulated drug markets

Key recommendations

- The responsible legal regulation of drug markets can reduce harms associated with the illicit drug trade and offer improved outcomes on a range of health, community safety and financial indicators – this policy option should therefore be actively and publicly debated and explored

- Policy makers exploring options for regulation should consider establishing a national expert advisory group to design policy and legal frameworks tailored to meet local needs and priorities. This panel should include expertise from public health, law enforcement, drug policy reform, evaluation and monitoring, alcohol and tobacco regulation, prevention, treatment and harm reduction, as well as representation of people who use drugs and subsistence farmers of crops destined for the illicit drug market

- Reforms should be phased-in cautiously, using solid and well-funded evaluation and monitoring of impacts built into any legislation and process of change, along with a willingness to adapt approaches on the basis of emerging evidence

- Particular care should be taken to mitigate risks of over-commercialisation, with public health and community safety remaining the guiding influence for policy design, rather than private profit. Non-commercial models should be considered as viable options, whilst commercial models should mitigate risks of over-commercialisation by learning from the successes and failures of different approaches to alcohol and tobacco control

- Policy makers should encourage, and meaningfully engage in, debates at high-level regional and UN forums around reforming the global drug control system to accommodate demands for greater flexibility to experiment with regulation models, either independently or alongside any ongoing domestic reform processes

- Policy makers should encourage the UN to convene an independent expert group to consider the issues raised by legal regulation, implications for the existing treaty system and options for its modernisation and reform.[53]

Introduction

The decriminalisation of drug use has increasingly been adopted as policy and practice around the world (see Chapter 3.1) – and has assumed a central position in UN agency advocacy and high-level debates. However, a parallel debate around the legal regulation of production, supply and consumption of certain internationally controlled substances has also developed rapidly in the past five years.

The legal regulation of cannabis has been at the forefront of this rapidly evolving debate – particularly since 2012, when cannabis was legalised for non-medical use in the US states of Washington[54] and Colorado.[55] Soon after, Uruguay became the first UN member state to do the same by adopting Law No 19.172.[56] Since then, two more US states (Alaska[57] and Oregon[58]) and the District of Columbia[59] have followed, and several more states are likely to do so in the next few years – in particular California. In 2015, Jamaica legalised cannabis for medical, industrial and religious purposes,[60] and the newly elected Canadian Government has also pledged to legalise cannabis[61] – the first G7 country to do so.

Other developments around the world are also feeding into these ongoing discussions – including the system of legal regulation of the coca leaf in Bolivia, the New Zealand model of regulation for certain lower-risk new psychoactive substances (NSP) (see Box 3 in Chapter 2.1), and the ongoing development of maintenance prescribing to people dependent on heroin and other controlled substances (see Chapter 2.5 for more details).

The move from a theoretical legalisation debate to real world policy development means that the global consensus supporting an overly prohibitionist approach to drug control is now broken. With cannabis at least, a tipping point has been reached. It is therefore important for policy makers to consider the implications of this rapidly changing policy landscape, and the options for reform at domestic level.

Legislative/policy issues involved

There remains some confusion about what the 'legalisation' of controlled substances actually means. 'Legalisation' is the *process* by which an illegal product or activity becomes legal. In policy discussions, it is therefore more helpful to refer to the 'legalisation and regulation' or the 'legal regulation' of a controlled substance (or substances), as this provides a clearer description of the model being proposed and employed. A legalisation process allows for a policy of legal regulation to be implemented. Under legal regulation, substances can be adequately controlled and the regulatory regime can be effectively implemented by government authorities – in an effort to remove the drug trade from the control of criminal groups.[62]

The last decade has seen the first detailed proposals emerge that offer different options for how the legal regulation of drugs can take place.[63] These proposals have explored options for controls over:

- The drug products themselves (dose, preparation, price, and packaging)

- Licensing of drug product vendors (vetting and training requirements)

- The outlets from which the drug products are available (location, outlet density, appearance)

- Marketing (advertising, branding and promotions)

- Availability and access (age controls, licensed buyers, club membership schemes, rationing)

- Where, when and how drugs can be consumed.

There are a number of options for how different regulatory tools are applied to different substances or among different populations. Box 1 offers a summary of the various regulatory models that could be implemented, with the aim of managing drug markets in a way that minimises the health and social harms associated with both illicit drug use and drug markets.[64]

Figure 1. Spectrum of drug policy options and their likely effects[65]
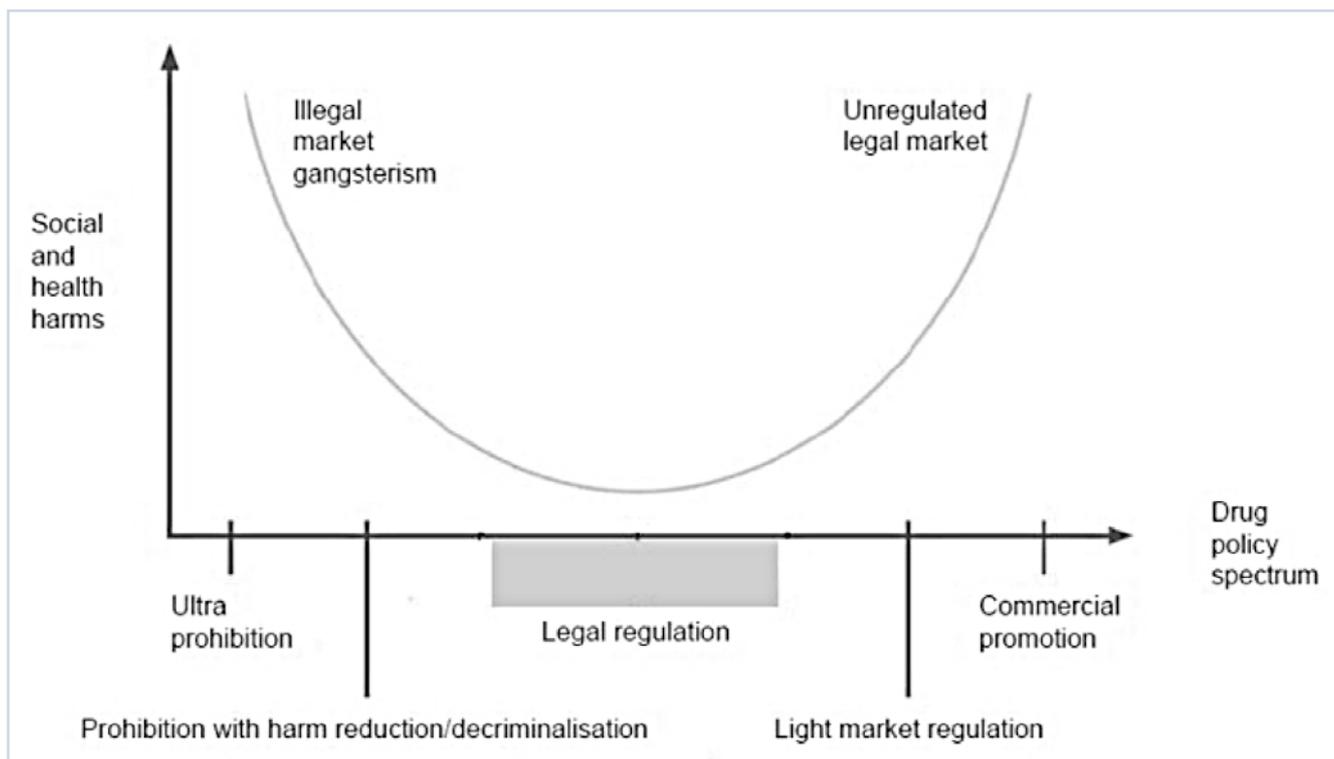
Box 1 Five basic models for regulating drug availability

- Medical prescription model with optional supervised consumption facilities – for the most risky substances and behaviours (injected drugs, including heroin and cocaine, and more potent stimulants such as methamphetamine)

- Specialist pharmacist retail model – trained and licensed vendors, potentially combined with named/licensed user access and rationing of volume of sales for moderate-risk drugs such as amphetamine, powder cocaine, and ecstasy

- Licensed retailing – Including tiers of regulation appropriate to product risk and local needs; this could be used for lower-risk drugs and preparations such as cannabis, khat and kratom, or lower-strength stimulant-based drinks

- Licensed premises for sale and consumption – similar to licensed alcohol venues and cannabis 'coffee shops' in the Netherlands, these could potentially also be for smoking opium or drinking poppy tea. Additional tiers of licensing and onsite supervision could be introduced to cater for some types of psychedelic use, or the sale and use of certain stimulants at events and party settings

- Unlicensed sales – minimal regulation for the least risky products, such as caffeine drinks and coca tea.

Implementation issues involved

Reducing health, social and financial costs

The regulation of drug markets is not a 'silver bullet' solution to the problems associated with drug use and drug markets. In the short term, legal regulation can only seek to reduce some of the health, human rights, crime and security problems that stem from prohibition-led drug control efforts and those fuelled by the illicit drug market (see Box 2 on Uruguay, as well as Box 3 of Chapter 2.1 for an overview of the New Zealand experience with regards to NPS). However, legal regulation cannot tackle the underlying socio-economic drivers that may exacerbate drug problems within a community – such as poverty, inequality and social marginalisation. Nevertheless, by promoting a more pragmatic public health model and freeing up drug law enforcement resources for evidence-based health and social policy, regulatory models may very well create a more conducive environment for doing so.[66]

Different social environments will require different approaches in response to the specific challenges policy makers face. The emerging range of regulatory options available to manage drug markets and use, through state and commercial institutions, now offer a credible option for policy makers if the harms facing their societies cannot be addressed within the current international drug control regime. Such reforms are likely to unfold in an ad-hoc basis for different substances, in different jurisdictions.

The costs of developing and implementing a new regulatory infrastructure should be considered, but would likely represent only a fraction of the ever-increasing resources currently directed into prohibition-led efforts to control illicit supply and demand. There is also an important potential for translating a proportion of existing criminal profits into legitimate tax revenue – as has happened with some of the US cannabis regulation models.[67]

Learning from the challenges of regulatory models for alcohol and tobacco

There are legitimate concerns around the fact that over-commercialisation of legal drug markets could lead to increased use and related health harms, as business interests seek to expand their markets and maximise profits. Policy makers therefore have a responsibility to ensure that public health is prioritised at all times over commercial interests when designing any new regulatory model. This has certainly not been the case historically with alcohol and tobacco in most jurisdictions – with more responsible public health policy models only now being explored and implemented, after long-term resistance by powerful industry lobby groups. Policy makers have an opportunity and responsibility to ensure that lessons from the alcohol and tobacco markets are learnt, and built into any new drug regulatory model from the outset.

Credible and functioning options for non-commercial models of market regulation exist – including

Box 2 Uruguay's legal regulation of cannabis markets

In 2013, Uruguay became the first country to pass legislation to legalise and regulate cannabis for non-medical uses. The argument for a legally regulated market was made by the government on the basis that it would help to protect the health of people who use cannabis, as well as minimise risks to citizen security from the criminality associated with the illicit trade.[68]

The Uruguayan model involves a greater level of government control than the more commercial models developed in the USA. Under the control of a newly established regulatory body (*Instituto de regulación y control del cannabis, IRCCA*), only production of specified herbal cannabis products by state-licensed growers is permitted. There is a complete ban on all forms of branding, marketing and advertising, and tax revenue will be used to fund new cannabis prevention and education campaigns.[69]

Sales are permitted only via licensed pharmacies, to registered adult Uruguayan residents, and at prices set by the new regulatory body. The pharmacies are allowed to sell cannabis for therapeutic purposes on the basis of a medical prescription, and for non-medical use up to a maximum of 40g per registered adult per month. Citizens are allowed to grow up to six plants in their homes for their personal consumption, with a maximum harvest of 480g per year. They can also form cannabis clubs of 15 to 45 members allowed to cultivate up to 99 cannabis plants with an annual harvest proportional to the number of members and conforming to the established quantity for non-medical use.[70] So far, the implementation of the regulatory regime has remained slow, in particular the licencing of pharmacies for cannabis sale.

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state monopolies (or partial monopolies), not-for-profit corporations, or not-for-profit cooperative 'social clubs', or the promotion of self-cultivation. If a commercial market is established, lessons from alcohol and tobacco regulation are particularly relevant. The blueprint provided by the UN Framework Convention on Tobacco Control,[71] and World Health Organisation guidance on alcohol regulation[72] provide useful evidence-based recommendations on how to mitigate such risks – for example through controls on sponsorship, advertising and branding (also see Box 2 on Uruguay's regulatory model for cannabis).

Addressing tensions with the UN drug control conventions

Moves towards legal regulation will require a review of the substantial institutional and political obstacles presented by the international drug control system. Specifically, the emerging trend towards exploring legal regulation for internationally controlled substances creates a clear tension with the three UN drug control conventions that unambiguously do not allow it.[73]

Countries where regulatory regimes have so far been adopted have approached this problem in different ways:

- The USA has argued that state-level legalisation may be allowable under a 'flexible interpretation' of the treaties

- Uruguay has stated that its requirement to meet wider UN obligations to protect human rights, health and security take precedence over technical UN drug treaty commitments

- Bolivia has denounced the 1961 Convention and then re-accessed it with a reservation on the specific articles that prohibit the coca leaf

- Jamaica has regulated cannabis cultivation and use for religious purposes (see Chapter 4.3 for more details)

- New Zealand's NPS regulation framework is only available to substances not controlled under the UN drug conventions.

In reality, this area of drug policy reform is moving into unchartered waters with regards to the various, potentially conflicting treaty obligations – and there are multiple outstanding questions of international law that are only now beginning to be explored in the various high-level UN forums. Whilst precisely how or when these can be addressed satisfactorily remains unclear, the fact that multiple reforms are already underway clearly highlights the shortcomings of an outdated international framework that is unable to meet the needs of a growing number of member states. It therefore seems inevitable that a process of modernisation must take place to provide the flexibility for the evidence-based experimentation and innovation that is required.[74]

Key resources

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Cannabis plant at a Colorado grow house

Credit: Jessamine Bartley-Matthews, WOLA