

Daring to Regulate Coca and Cocaine:

Lessons from Colombia's Drug War Trenches

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Abstract:

This essay is from a Beckley Foundation Report, commissioned and convened by Amanda Feilding for the Beckley Foundation's Global Initiative for Drug Policy Reform, called The Cocaine Papers. This Report is the latest in the Beckley Foundation's "Roadmaps to Regulation" series, and will be published later this year.

It is a critical review of Colombia's 2020 legislative proposal (law project 236) to regulate the coca leaf and cocaine markets, authored by Senator Iván Marulanda and co-sponsored with Senator Feliciano Valencia. The essay provides a qualitative analysis of the regulatory regime proposed, its effects across the supply system, and the associated benefit and cost outcomes for Colombia. The essay concludes with a reflection on the challenges surrounding the adoption of coca leaf and cocaine regulation and offers lessons to overcome the political barriers to policy change.¹

Keywords:

Coca, Cocaine, Regulation, Legalisation, Drug, Policy

¹ The author would like to thank Amanda Feilding and the Beckley Foundation. The Report from which this essay was taken: Roadmaps to Regulation - The Cocaine Papers, was commissioned and convened by Amanda Feilding, Director of the Beckley Foundation, who brought together international experts from diverse disciplinary backgrounds to take stock of the current state of play. The report analyses the status of the coca plant and its derivatives, and suggests alternative scenarios for a regulated market for the production, distribution and consumption of coca and cocaine.

Introduction: Toppling a drug policy taboo

On August 25th, 2020, a group of Colombian legislators challenged one of the last drug policy taboos left standing since the start of the current prohibition era: they proposed the legal regulation of *both* coca and cocaine.

The bill, *Proyecto de Ley No. 236*, unexpectedly passed the first round of committee-level congressional debate in 2021, but was archived by Colombia's conservative-dominated legislature. Its opponents claimed that legalisation would unleash drug use and a crime wave, kicking the country back to its Pablo Escobar-era international pariah status (Colombian Congress, 2021).

Despite its shelving, the bill's relative success in Congress reflects a growing understanding that, no matter what governments do, drugs are here to stay. If a drug-free world is not an option, societies are better served by making peace with drugs via regulations that help us contain their harms and maximise their benefits. Sensible drug policy today means leaving behind disproven measures like eradication, crop substitution, drug seizures and incarceration, which do little to prevent "drug addictions", henceforth referred to as substance use disorders or SUDs. Like child abuse, punitive drug policy achieves the opposite of education. It unleashes highly profitable, powerful underground markets where drug use is promoted and glamourised, and violence and corruption become *the* business model (Durán-Martínez, 2018). Punitive drug policy channels public and private resources towards attacking rather than helping marginalised populations whose livelihoods depend on the least lucrative and most unsafe rungs of the illicit drug supply chain.

In Colombia, the Amazon basin, and South East Asia, conflicts and economies made possible by cocaine or opioid prohibition do not just victimise people: they are also speeding the demise of mega-biodiverse ecosystems, tugging the world towards the cliff of runaway climate change (McSweeney, 2015). In Mexico and Central America, homicidal drug wars are destabilising democracies and sending out waves of refugees, vulnerable to exploitation and xenophobia even as they attempt to rebuild their lives (Junger & Quested, 2020; Agren, 2020). In Central Asia, illicit opium helped fund the Taliban's reconquest of Afghanistan, after trillions of dollars spent on the US war on terror (Felbab-Brown, 2021). In the Global North, punitive

drug laws reinforce ethnic and racial profiling, turn low-income neighbourhoods into ganglands, and promote the mass incarceration of people of colour (Davis, 2003).

Colombia's bill does not endorse cocaine use. Neither does it overlook the risk of turning coca and cocaine into for-profit industries like alcohol and tobacco. It is unwise to hand private corporations unchecked control of the plants and molecules that can inebriate and damage our mental health, but also, in the right circumstances, connect us with others, spark our creativity, and even allow us to experience altered states of mind that facilitate personal and community growth (Griffiths et al., 2019). Rather, managing the power, risk and benefits of psychoactive substances demands careful regulatory design that harnesses democratic accountability and knowhow from as diverse an array of human experience as possible.

Colombia's bill captures the evidence-based perspective that regulations can help contain the self-serving excesses of legal markets. They can delay the age of drug initiation, promote moderation and encourage pro-social norms. They do this whilst enabling the emergence of legal industries that pay taxes, provide legal employment and generate medical and social benefits. If done via controls that prevent publicity and reduce profit motives, regulation can minimise drug-related harms even if drug use were to rise, which is not a foregone conclusion. Overall, well-designed regulatory regimes for psychoactive substances offer the possibility of a better cost-benefit balance for society than prohibition appears to do.

Colombia's proposal laid the groundwork for a regulatory architecture that has social justice at its core. It recognised the authority of Indigenous and local government institutions to shape the low-potency, whole coca leaf market, thereby providing an alternative to corporate takeover. This would honour the collective property rights to coca that generations of Indigenous people have fought for, whilst benefitting small coca farmers and integrating beneficial coca leaf uses into society. Following these equity and inclusion principles could transform coca and cocaine markets from a source of devastation to a potential driver of regenerative, intercultural development, not to mention a form of long-overdue reparations for ethnic and small farmer communities.

The proponents of Colombia's coca and cocaine regulation bill knew it would likely fail on its first try, but challenging this longstanding taboo could nudge people to conceive another world (Marulanda, 2020). By unlocking the imagination, new strategies might emerge, and this might ultimately change the political balance of power that blocks legal regulation.

This essay seeks to build on that approach. It comments on the bill's comprehensive proposals: the result of a group of legislators, NGOs, and local communities coming together to condense decades of lessons from Colombia's drug war trenches.² It also imagines what the legal regime would look like from farming to consumption, assessing the outcomes in terms of the potential benefits and costs. The essay closes by exploring insights for overcoming the forces that doomed the bill: a stagnant political economy that sustains the war on coca and cocaine as one of the deadliest and most environmentally destructive of all the drug wars.

I. Understanding Colombia's Coca & Cocaine Regulation Bill at a Glance

The Colombian proposal was the first, official attempt at regulating both coca and cocaine anywhere. The draft bill set out a framework to overcome illicit cocaine markets whilst advancing public health, social equity and environmental priorities across the supply chain. To do so, it offered a three-tiered, risk-proportional system,³ comprised of:

- 1- A commercial retail model for low risk, whole coca leaf products, with regulations vetted by Indigenous Authorities;
- 2- A state-control model for medium risk products (i.e. cocaine HCl powder);
- 3- A treatment approach for the highest risk products (i.e. smoked and injectable formulations of cocaine) and people suffering from substance use disorders (SUDs).

² This group comprised Senator Iván Marulanda (author of the bill), his legislative work unit (UTL) led by Lorenzo Uribe; bill co-sponsor Senator Feliciano Valencia and his legislative work unit; the Indigenous Organisations and local communities consulted on the development of the proposal; and *Acciones para el Cambio*, a coalition of Colombian human rights and drug policy NGOs.

³ According to an interview with Lorenzo Uribe, congressional aid to bill author and sponsor Senator Iván Marulanda, this regulatory architecture was inspired by *How to Regulate Stimulants* (2020), Transform Drug Policy Foundation.

The bill's key characteristics are summarised in the following table:

Table 1. Overview of the bill to regulate coca and its derivatives (No. 236, 2020)

Cultivation	Manufacturing & Distribution	Consumption
<p><i>Coca grown in Indigenous and Afro-Colombian jurisdictions:</i></p> <ol style="list-style-type: none"> 1) Ethnic authorities remain sovereign over crop control in their territories <p><i>All other coca crops:</i></p> <ol style="list-style-type: none"> 2) All coca fields identified by UNODC legalised 3) Promotion of coca unions to encourage local social control of crop sizes 4) Promotion of fair-trade and denomination of origin certification 5) Promotion of rural development for small farmers 6) Government purchase of coca leaf for cocaine production via State-controlled pricing and prioritisation of war victims and marginalised groups 	<p><i>Whole Leaf Coca Products:</i></p> <ol style="list-style-type: none"> 1) Indigenous Authorities approve regulations 2) External parties not allowed to register coca brands or intellectual property without prior consultation of Indigenous Authorities <p><i>Adult use cocaine HCl powder: State Control</i></p> <ol style="list-style-type: none"> 1) State-controlled monopoly for manufacturing via outsourced suppliers licensed by the government 2) Distribution to licensed pharmacy & health-focused outlets trained in harm reduction practices 3) No marketing or promotion allowed, outlet location to avoid sensitive areas (i.e. parks, educational sites, religious sites) 4) No government production of smokable or injectable formulations of cocaine (these are easily produced with household items like water and sodium bicarbonate) 	<p><i>Whole Leaf Coca Products:</i></p> <ol style="list-style-type: none"> 1) No restrictions on sales or promotion, other than those defined at a future date via consultation with Indigenous Authorities <p><i>Adult use cocaine HCl powder: Registry, Rationing, Pricing</i></p> <ol style="list-style-type: none"> 1) Adults must register in anonymised user database and receive prevention and harm reduction education 2) Non-transferable 1 gram per week per person 3) Price level to discourage use 4) Consumption in public spaces and driving-under-influence banned <p><i>Treatment System</i></p> <ol style="list-style-type: none"> 1) Substance use disorders (SUDs) signposted 2) Custom dosing and pricing regimes for people with SUDs 3) Harm reduction services and safe consumption facilities for people seeking help with SUDs

Based on this framework, the proposal laid out general rules governing the legal regime from cultivation to consumption – a platform on which ministries and regulators would subsequently build detailed rules. Though these have not been developed, and the bill left many regulatory questions unanswered, it is possible to infer their likely design and impact, as well as comment on their adequacy.

II. Embedding Small-Scale Coca Cultivation

Colombia's regulation proposal foresaw two jurisdictions covering coca cultivation. On the one hand, it reaffirmed existing Colombian jurisprudence that acknowledges the autonomy of ethnic authorities for controlling any crop in their own territories, including coca. On the other, the proposal set out the blanket legalisation of coca fields elsewhere in Colombia, using the most recent crop census generated by the United Nations Office on Drugs and Crime (UNODC).

The bill's blanket legalisation approach would leverage the current industry structure that keeps coca cultivation as a small scale rural economy. Though the research detailing how Colombia's coca crops are owned and managed is limited, UNODC's annual reports consistently show that field sizes average about one hectare, indicating that large scale plantations are rare (UNODC, 2021; 2020). Because coca leaf harvests are the least profitable stage of illicit cocaine supply and subject to eradication risk, organised criminal groups have "outsourced" cultivation to small farmers (FIP & UNODC, 2018), focusing their profit-making activities on higher value cocaine manufacturing and distribution (Mejía & Rico, 2010).

There is a risk that blanket legalisation may generate "perverse incentives" that could promote cultivation. It may also inadvertently legalise a marginal number of coca fields owned by organised crime. However, the bill integrates a locally-led development strategy that could help build a dynamic, environmentally-focused rural sector inclusive of coca markets. Drawing on the 2016 Peace Accords and Bolivia's coca social control strategy, the bill encourages the formation of coca cultivator unions as the main guardians of coca crop limits moving forward (Art. 5). This institutional design would, in theory, promote a style of rural development based not on top-down mandates, but bottom-up design and buy-in. This appears to more effectively contain coca crop extensions in Bolivia (Farthing & Ledebur, 2015).

The bill promotes favourable harvest pricing both by increasing supplier power and creating a centralised state buyer tasked with making legal coca leaf acquisitions price-competitive with the residual illicit market. This is an important concern, as the inability to buy coca at competitive prices is one of the key factors hindering Peru's National Coca Company – ENACO – from purchasing more than 10% of the Peruvian coca harvest, which mostly ends up in the more lucrative unregulated market (Glave & Rosemberg, 2005). For Colombia, the issue of residual black markets distorting prices would remain critical in the absence of international coca and cocaine legalisation: global cocaine demand, based on a consumer population of 18-20 million people (UNODC, 2020) dwarfs Colombia's cocaine consumer market, estimated to be around 250,000 people (DNP, 2015). Moreover, wholesale international cocaine prices, at over USD 20,000 per kilo, are more than ten times higher than in the country, where a kilo is valued at around USD 2,000 (UNODC, 2021).

Despite the mandate to keep coca leaf prices competitive, the use of a central state buyer may still prove counterproductive. Peru's state monopoly, for instance, has sometimes featured unstable management (Glave & Rosemberg, 2005). This can hurt farmers as well as damage the supply system downstream. Peruvian commentators have suggested replacing the coca monopoly with a certifying agency (Menacho, 2020). Rather than being a market intermediary, this organisation would focus on training cultivators in regenerative agriculture, local organising, and fair trade. Its focus would be to support coca farmer livelihoods, whilst promoting innovation and a diversified ecosystem of market-validated buyers.

III. Promoting an Indigenous-Led Coca Leaf Market

The bill formally approves traditional and novel products that use whole coca leaf as an ingredient, a category it terms “minimally psychoactive or non-psychoactive” products (Art. 3). The framework contemplates no restriction on consumer sales or publicity for this category, and makes multiple provisions to favour the participation of ethnic minorities in the new market. These include promising state support, such as training and financial assistance, to encourage the leadership of community enterprises in the legal coca market across the country – which already exists in a legal grey zone (Troyano & Restrepo, 2018).

The role of Indigenous Authorities in coca leaf markets

Crucially, the bill also promotes the concept of coca as Indigenous biocultural patrimony. The bill prohibits the use of patents and other forms of intellectual property regimes regarding coca that do not gain approval by Indigenous Authorities (Arts. 7, 10 & 24). It also mandates central government bodies to gain consent for regulations governing the whole leaf coca market via the Permanent Consultation Table (*Mesa Permanente de Concertación* or MPC). The MPC is the main Indigenous government entity that interfaces with the rest of the Colombian state on matters affecting Indigenous communities (*Mesa Permanente de Concertación de los Pueblos y Organizaciones Indígenas*, 2022).

In recognising the supervisory role of Indigenous Authorities over the coca market, the bill attempts to overcome the jurisdictional conflicts that have prevented the central state from formally accepting coca products in mainstream Colombia. So far, Colombia's high courts have conceded that Indigenous people can use and sell coca products – both in their jurisdictions and across the country (Restrepo et al, 2022). They have based these decisions on the fact that coca is a traditional knowledge and that the traditions and customs of ethnic minorities are protected under Colombian and international law. Colombia's high courts have also stated that the coca plant is part of the biocultural patrimony of Indigenous people, and that any decision involving the coca plant therefore requires prior consultation of Indigenous Authorities (Muro et al, 2018). However, in 2019, the Constitutional Court sided with the Bogotá Health Secretariat against Coca Nasa – the leading Indigenous-owned company selling whole leaf coca foods – in a dispute regarding the validity of Indigenous product registries (Colombian Constitutional Court, 2019). This case is being appealed to the Interamerican Commission of Human Rights,⁴ but currently directs Indigenous companies to obtain approval from Colombia's food and drug regulator (INVIMA) (Curtidor, 2020).

By siding with the Indigenous Movement on coca product registries, the bill would likely unleash a new market currently blocked by INVIMA's requirements for expensive clinical studies. These same types of products are currently sold freely

⁴ As of this writing, this case has been appealed to the Interamerican Court of Human Rights.

and without discernibly negative public health consequences in Bolivia and Perú – as well as in Colombia's grey coca market (Restrepo et al., 2020). Siding with the Indigenous Movement on this topic arguably ends a form of colonialism, which leading Indigenous voices accuse INVIMA of when it denies the validity of Indigenous products and imposes their subordination under “Western” medical practices (Curtidor, 2020). Arguably, the bill works towards re-balancing power between Indigenous stakeholders and central regulators in a manner more consistent with Colombia's pluralistic 1991 Constitution.

The implications of Indigenous regulations

Though the opportunity to design coca regulations has not yet materialised, it is possible to infer some of their likely characteristics. Starting with cultivation, the Indigenous Movement's involvement and the strengthening of coca unions would set the stage for potential social and environmental dividends. This would stem from higher coca leaf prices and the endorsement of regenerative agricultural practices, which these stakeholders espouse.

In terms of manufacturing and commercialisation, entities wishing to research and sell coca leaf would follow prior consultation procedures (Art. 11). This means seeking permission from Indigenous Authorities, negotiating taxation and, where appropriate, partaking in community responsibilities: town hall meetings, cultural gatherings and supporting community work. Standardised processes for gaining certification and contributing to reparation funds would need to be crafted. These mechanisms may facilitate market participation from external parties, but would have to be carefully designed to ensure entrants do not crowd out local initiatives and to guarantee benefits for communities.

Coca products would not be limited to dried coca leaf. Product innovation is already widespread in the grey coca market, and a rapid growth in sales was taking place when the first Indigenous coca company (Coca Nasa) launched its portfolio – later to be stymied by INVIMA's health warnings (Roig, 2017). Inclusive regulations would likely encourage food products that use coca as an ingredient – though this category is likely to remain a limited niche. More market growth may be found if Indigenous organisations explore new forms of coca chewing and its cultural context.

Coca chewing is the most enduring way that coca leaf is used (Restrepo et al., 2019). It provides a form of physical and mental stimulation and focus that can be sustained for long time periods, as it avoids the highs and crashes of isolated cocaine (Restrepo et al., 2019). In addition to providing nutrition, the practice of chewing coca strengthens community ties. Coca “talking circles” enable focused participation in long, regular group discussions where experiences are shared, decisions discussed, and conflicts addressed (Echeverri & Pereira, 2005). This is often done through stories that help participants communicate their interests without descending into debate. In an era of soundbite, social media conversation, the practice of coca talking circles may be a ritual worth spreading.

The Indigenous regulation of coca markets would promote these technologies and practices, whilst avoiding non-consensual, cultural appropriation by repairing communities that have been protecting this knowledge over centuries of colonial rule.

The market opportunity for whole coca

The limited research under prohibition has begun to validate high-value coca uses long known by traditional medicine (Restrepo et al., 2020). Though much more research is required for approval by medical bodies and regulators, the available data indicates that whole coca is safe and shows potential for significant public health benefits (Restrepo et al., 2019).

Coca's stimulant properties are based on its ability to promote fatty acid metabolism (Casikar et al., 2010), which also explains its temporary appetite-suppressing effect (Weil, 1981). This makes coca a candidate for being a food supplement that also helps reduce impulsive eating, a potential tool for managing obesity and diabetes. Coca's metabolic properties may also account for its apparent boost to sexual performance (Carter & Mamani, 1986), which could help coca substitute the use of animal parts for sexual impotence in the vast, Asian traditional medicine market. Coca appears to alleviate altitude sickness by improving oxygenation (Biondich & Joslin, 2015). Though the understanding of coca's physiological mechanisms in breathing and blood flow is still in its infancy, proving them may add an important clinical tool in respiratory care.

Intriguingly, coca's stimulant effect could provide a form of harm reduction, mitigating the risks of cocaine use. Coca-based products would help people seeking to shift away from high-potency stimulants, by offering a milder, but still notable energy boost. Such products could also become an element to share when attending group therapies. Like in traditional talking circles, coca would help participants focus and connect with others, whilst its residual cocaine may help people with SUDs reduce cravings. Coca-based products might therefore become a form of medicine-assisted therapy (MAT) for stimulant harm reduction, in a manner analogous to methadone for opioids (Hurtado, 1985).

If Indigenous Authorities leverage coca regulation, coca applications could fit into traditional medicine centres and strengthen Colombia's intercultural health system. However, coca also shows potential in conventional healthcare, which would call for complementing Indigenous approval processes with successful clinical trials. This would be crucial for export markets, unlikely to recognise Indigenous certifications alone as a proof of safety and efficacy (Restrepo et al., 2020b). Traditional and western knowledge systems are not mutually exclusive. Ethnobotany has been the source of many pharmaceuticals and other technologies. The challenge lies in ensuring that "western" science recognises the epistemic and environmental stewardship of Indigenous knowledge (Shiva, 2001 [1997]).

Though scale and profitability of the whole coca market remains speculative, there are reasons to believe it would be significant. Coca's medical applications are relevant for some of the largest therapeutic and food categories globally. The 19th century already witnessed a boom in coca products – albeit in a plantation and corporate model that generated little benefit for small farmers (Gootenberg, 2008). Today, Peru's highly restrictive market appears to be growing more quickly than the overall economy, despite a dysfunctional ENACO (DEVIDA, 2020). Under Colombia's proposed regulated cocaine supply, it might be easier to overcome the suspicions that stymie the growth of legal coca markets.

Dealing with the challenges of legal coca

How the legal coca market grows is just as important as its scale, however. As the experience of Ayahuasca tourism is demonstrating, the commercialisation of Indigenous knowledge can be deleterious to Indigenous communities in a manner

perhaps as damaging as prohibition (Aldred, 2000). Commercialisation can attract excessive outsider attention that overwhelms communities and introduces incentives for fraud and non-consensual cultural appropriation. It can also worsen the quality of community relationships by making them transactional. If accompanied by boom-and-bust cycles that strain the social order, commercialisation can boost inequalities that jar with egalitarian traditional values.

Institutions like prior consultation and benefit-sharing agreements are responses to these challenges. Such institutions may slow down innovation and market formation, given the complexity of gaining approval. However, this slowdown may be advantageous in the case of coca, where innovations may chip away at the safety found in traditional product formats. Conversely, strengthening the power of Indigenous Authorities in the commercial approval process could have the counterproductive effect of turning them into a target for below-the-table dealings.

Nevertheless, in a highly complex society like Colombia, where the Indigenous population is less than 4.4% of the total (Ministerio de Salud, 2020), pooling power through centralising political organisations is a key way of promoting minority survival. Strengthening the role of local Indigenous institutions and organisations has been shown to be among the most important assets in successful conservation programmes (Rodríguez et al, 2021). This finding anticipates the value and organisational capacity of Indigenous governance in coca regulation.

Recognising coca as Indigenous biocultural patrimony can generate concerns in terms of the potential for exclusion of Afro-Colombians and *campesinos*. Many non-indigenous local communities also maintain traditional coca uses and feature livelihoods reliant on coca cultivation (Roig, 2017; Ramírez, 2020). However, this fear appears misplaced, at least in terms of the current bill, as it admits all coca farmers into the new, legal market, whilst also explicitly recognising coca cultural rights for non-indigenous local communities (Art. 24). Though mechanisms for intercultural work on coca regulation may require further elaboration, Colombia's diverse rural movements are likely to cooperate in designing coca leaf regulations, as they do in other political domains.

In sum, Colombia's coca regulation framework could be expected to spark a new economy around coca's nutritional and medicinal products, absorbing some

demand for cocaine and other chemical stimulants, whilst offering an avenue for inclusion of Indigenous and marginalised rural groups.

IV. Colombia's proposed Legal Cocaine regime

Legal Cocaine Supply

In terms of the main public health concern of the regulatory policy, cocaine, the proposal expands Colombia's existing state-controlled monopoly over medical-use cocaine to cover adult, recreational use. Cocaine would be manufactured in facilities commissioned by the state (Art. 14). Its distribution would be licensed to outlets trained in harm reduction. Their licensing conditions would include restrictions on location (notably, being far enough removed from education facilities, parks and churches), opening hours and their implementation of a cocaine user registry. All cocaine marketing and publicity would be banned, and the state monopoly of cocaine would, in theory, reduce profit motives that may otherwise encourage user recruitment.

Regulations on recreational cocaine consumption

Adults wishing to consume cocaine would need to sign up to an anonymised registry designed by the National Institute of Health. They would be required to participate in harm reduction education before being able to purchase cocaine powder. A maximum of one gram of the substance would be allowed per week, with standardised purity levels to avoid harm from adulterants.

Smokable or injectable cocaine formulations, associated with higher health risks, would not be dispensed by the state as a further way to discourage their use. However, since these formulations can be obtained using readily available household supplies (e.g. water and sodium bicarbonate), access to these products would still be feasible. Consumers of coca paste or *basuco* – a less pure form of cocaine base than crack – would either have to switch over to cocaine hydrochloride, make their own cocaine base (i.e. “crack”), or return to the black market.

The cocaine user registry would be a necessary feature for implementing rationing, whilst helping generate data to identify frequent purchasers – some of whom may present with substance use disorders.

The prices for cocaine would be fixed centrally and updated at regular intervals. The law directs the National Narcotics Council (led by the Ministry of Justice) to use pricing mechanisms aiming to keep legal cocaine competitive with the black market, but expensive enough to dissuade purchases. This would be a difficult balance to strike, and the presence of contraband could be anticipated in many scenarios given cocaine's low production costs. It remains to be seen whether the quality and equity assurances provided by having a legal supply system would trump the convenience of current black markets. However, there should be an overall reduction in enforcement as the bill limits punishments for breaking coca and cocaine laws to fines (subject to means testing) via fully de-penalising cocaine use and sales.

Policy architecture for substance use disorders

The bill integrates provisions targeting the small but important minority of people who use cocaine and develop SUDs, many of whom in Colombia use *basuco* (Zuleta & Martínez, 2020; Abultaif, 2020). Estimated at just 10-20% of the population that uses cocaine, people with SUD are thought to account for 80% of all cocaine consumed and therefore represent the highest public health concern (Transform Drug Policy Foundation, 2020).

The bill's strategy for SUDs focuses on providing treatment and harm reduction services, such as psycho-social and occupational support. It also foresees prescription-based, subsidised access to cocaine. Given the substance's low production costs, this would represent a limited state investment and may help low-income people regain their economic footing. The text of the bill does not provide significant detail on how SUDs would be defined, by whom and using what evidence criteria, leaving a door open for gaming the system. Some form of means-testing and treatment participation commitment could be established to de-incentivise non-problematic users from claiming SUD status to exploit treatment-based cocaine.

The revenues from legally regulated coca and cocaine would provide new funding sources for this infrastructure, which remains under-developed in Colombia. The presence of user registries and touchpoint opportunities with trained staff would aim to signpost treatment and harm reduction services for people most likely to gain from them.

The draft bill leaves a wide margin for defining the scope of these services further on. Based on inferences from current industry practice, it can be anticipated that they may include novel prescription-based access to cocaine or substitute MATs, supervised drug use facilities, safer paraphernalia, drug education as well as retraining, lodging, health and psychological support (Rigoni et al., 2018). The regulation bill would help fund and make available these services both for vulnerable people with SUDs and their communities. These types of interventions have shown far greater impact at reducing overdose deaths – and even the rates of drug use – than legal punishment (Rigoni et al., 2018). They are certainly a better tool for drug education than incarceration, which should decrease with fewer cocaine-related sentences and arrests.

Though this is not discussed in the law proposal, a better funded, updated treatment and harm reduction service in Colombia would be ripe for intercultural collaboration between the State, the Indigenous Movement, and civil society organisations. Traditional Indigenous knowledge and culture is already being appropriated in the development of treatments using psychedelics. These services have utilised intellectual property laws to patent molecules, extraction processes, practices and rituals Indigenous peoples have stewarded but are now being cut off from (Gerber et al., 2021). Ensuring benefit sharing agreements are in place would provide a legitimate vehicle for health researchers to collaborate with Indigenous leaders, and enrich their perspectives with insights, practices and tools that may improve conventional mental health interventions.

Consumption behaviours and SUDs under the legal regime

Assessing the impact of the proposed regulations on local cocaine consumption requires addressing the following questions: would current users turn to the new market? Would the cocaine user population rise? Would this increase

public health costs, especially via a growth in the prevalence of substance use disorders and associated harm?

It can be expected that a significant share of Colombia's 250,000 cocaine consumers would turn away – or reduce their purchases – from their current dealers, switching over to legal products and channels instead. Product standardisation would offer a safer experience. After finding the nearest dispensary source, many would tolerate limitations on their rights (i.e. privacy, rationing) and sign up to both the user registry and harm reduction education. This is not dissimilar to getting a driver's license or the trainings used routinely in Colombia for accessing traffic fine discounts. Higher cocaine prices (if they materialised) would be justified for most users given the improvement in quality, fairness, and security.

Some, however, may remain inclined towards the black market – especially if they wished to exceed rationing limits. The black market would likely find ways of matching legal cocaine in purity and prices: ongoing illicit cocaine exports would at least ensure that dealer networks have ample resources to readjust their Colombia business model in favour of higher quality and lower profits. To undermine the black market, regulatory refinements may be needed that replace rationing with higher dose allowances at higher prices, and curtail inconveniences surrounding product access.

The use of a state monopoly system minimising profit across the supply chain would presumably reduce incentives for recruitment, at least at first. Eventually, as has happened with Colombia's state-owned liquor monopolies (Meza, 2014), politicians may find it advantageous to boost state coffers by promoting sales. Democratic accountability mechanisms over the management of cocaine supply, such as health sector surveillance and outcome-based incentives, may be required to keep the monopoly's interests aligned with public health goals.

It is actually a reduced cocaine risk perception that would be most likely to drive recruitment into the category, as people concerned by the presence of adulterants in illicit markets may no longer fear experimentation. However, as with tobacco, risk perceptions could be reset through consumer education strategies (Adkison et al., 2014; Bansal-Travers et al., 2011): packaging warnings, trained dispensary staff, and public health campaigns making it clear that even standardised cocaine is harmful. Tobacco has shown that communication strategies could help

strengthen social reproach towards cocaine use, without the need of criminal law. Encouraging lower harm, but still effective whole coca stimulant options may also erode cocaine recruitment, just as *snus*, nicotine replacement therapies and vaping have done with tobacco smoking (Public Health England, 2021).

Even if an increase in cocaine recruitment and per capita consumption did materialise, this does not immediately imply a rise in the prevalence and harm of cocaine use or SUDs. Research into the effects of cannabis legalisation has found the converse to be the case. Not only has underage consumption dropped in North America and Uruguay (Anderson et al., 2019; Laqueur et al, 2020; Blevins et al., 2018; Leyton, 2019), but the moderate rise in cannabis use is focused on older adults and shows little evidence of increasing public health costs. The temporary rise in hospital admissions witnessed early on in certain jurisdictions was related to the availability of cannabis edibles or high potency strains, and have since receded (Roberts, 2019). This type of risk would likely be better managed by the harm reduction requirements in Colombia's cocaine regulation proposal.

In fact, the bill's provisions for strengthening health and social care options for people with SUDs would likely lead to significant public health improvements. The use of analogous harm reduction interventions for opioids has contained and even reversed the prevalence of SUDs as well as helped people dealing with SUD re-integrate into their communities (Rigoni et al., 2018). Stigma, isolation and economic distress are often the key triggers of behaviours that result in health and social harms, rather than drug use alone (Buchanan, 2006). By transforming environmental factors, cocaine regulation may even help Colombia follow the path of Portugal and Switzerland in rolling back homelessness, crime and adverse health events involving people with SUDs (Greenwald, 2009; Hughes & Stevens, 2010; Uchtenhagen, 2010).

Impact on the cocaine supply system - legal and illegal

Legally regulating coca and cocaine would almost certainly mean that the country would see substantial relief from the dynamics that surround current cocaine supply. Assuming an important share of Colombia's cocaine consumers do switch to legal outlets, this would represent a sizeable, if not fatal, blow to local trafficking networks. The latter would still be involved in shipping cocaine abroad, as

well as selling other illicit substances domestically, and conducting robbery, extortion and other forms of crime. Despite their persistence, smaller local cocaine markets would translate into improved security conditions in urban areas. This outcome would be a function of fewer territorial disputes, lower employment for local illicit sales (i.e. street and at-home deliveries of cocaine and *basuco*), and the redirection of law enforcement resources towards violent and property crime.

Despite some job losses, former dealers may benefit from the expansion of health and social care services. The availability of free or lower cost access to cocaine, for instance, would reduce economic strain on drug user-dealers living in poverty, thereby dampening the drive for petty crime.

Funding for these services could reasonably be covered via a combination of new tax revenues from coca and cocaine as well as a boost from reallocating the vast resources wasted on ineffective but expensive punitive drug policy. The bill's authors identified USD 1,2 billion spent annually on drug policy (Comisión Asesora para la Política de Drogas en Colombia, 2015) and USD 228-305 million spent annually on eradication (2008-2015). This does not properly account for military and police costs, 58% of which are related to reducing drug supply (Rico et al., 2018).

The expected economic and welfare benefit of regulation would not stop in urban areas. Rural communities could also be expected to benefit. Admittedly, illicit cocaine exports would continue funding armed groups in Colombia's vast rural areas. But the legalisation of coca cultivation would mean that the state, especially its armed forces, would find it harder to justify treating coca growing regions as default enemy territory. In addition to reducing mortality and injury from forced eradication, legalising coca crops would improve farmer relations with security forces, which might refocus on armed groups and environmental crime. This shift would likely improve development conditions in areas that have remained off limits to central state institutions. The end of coca eradication would also, in theory, free enforcement resources for higher value elements of the export-based cocaine supply chain – manufacturing, shipment and money laundering – to prevent local organised crime from coalescing into larger syndicates.

The potential diplomatic fallout

The experience of cannabis legalisation has shown international reproach to be an important, but manageable issue. For instance, both Canada and Uruguay have moved forward with recreational cannabis legalisation and handled the diplomatic consequences (Hudak et al., 2018). They have either ignored the reprimands of the International Narcotics Control Board, argued that legal regulation provides a form of control in consonance with international conventions, or affirmed that the need to advance human rights supersedes maintaining punitive drug policies that undermine them (Álvarez et al., 2017; Walsh, 2018).

Colombia can make an even stronger case with coca and cocaine regulation, arguing that it has been left with no other choice. No country has eradicated as many illicit crop hectares, confiscated as many drug shipments, or extradited as many drug dealers. And yet, Colombia's enforcement-based approach has correlated with worse results than its development focused coca-growing neighbours (see Table 2). The moral authority conferred by bearing such a disproportionate cost from prohibition – in terms of lives, money and biodiversity lost – can be flexed vis-à-vis international partners. As the United States moves beyond prohibition, Colombia should have a stronger hand in negotiating a shift away from being a dumping ground of weapons and chemicals into a source of intercultural, bioeconomy innovations.

Table 2. Colombia has the most punitive drug policy, and yet the worst outcomes in the Andean region.

Drug Policy Intervention Metrics	Bolivia Population 11.5m		Perú Population 33m		Colombia Population 50m	
Eradication (hectares in 2017)	<1,000		7,237		52,571	
Alkaloids confiscated (ton in 2017)	18		36		435	
Incarceration rate (per 100,000 population 2014)	24		54		51	
Legal coca leaf market	Yes		Yes		No, grey market	
Level of punitiveness	Low		Medium		High	
Drug Policy Outcome Metrics						
Coca leaf prices - US \$ (per kilogram, 2017 - farm gate level)	9.4	+++	2.4- 3.4	++	0.7	+
Crop sizes (Hectares x 100,000 population, 2017)	709	+++	712	++	1,788	+
Cocaine consumption prevalence (last year use as a % of the population; using 2013 data)	0.32	++	0.2	+++	0.7	+
Homicide rates (per 100,000 people)	6.3	+++	7.7	++	24.9	+

Source: own elaboration, based on data from Chaparro & Pérez (2017) for incarceration rates, all other metrics generated using UNODC data from the relevant years.

V. Moving past the paradox of legalisation infeasibility

The analysis of the coca and cocaine regulation proposal indicates a favourable cost-benefit balance. Based on the available evidence, the new markets would be unlikely to increase public health costs, whilst significantly reducing security and environmental harms and promoting development outcomes.

If reason guided policymaking, the positive cost-benefit potential of legal regulation would have resulted in the bill's passage. Its failure amidst another wave of violence in Colombia demonstrates how deeply entrenched the political economy of prohibition remains.

The drug war arguably provides a “regulatory capture” scenario. Drug war costs, though high, are diffusely borne across society. Its benefits, in the form of security contracts and corruption, accrue to a small number of stakeholders who can more easily coordinate their defence of the status quo. Because personal experiences with SUDs are traumatic and widespread, the public are easily manipulated by politicians' messaging about the value of punitive measures as a response to drug issues. The consequence is that evidence-based approaches, like harm reduction and regulation, remain unsupported.

If regulatory capture were the main phenomenon driving the resilience of prohibition, Colombia's proposal is inadequately designed to disrupt the current balance of power. The promised benefits of full regulation – less violence, lower law enforcement cost, more tax, better SUD responses – are diffusely spread across society, incentivising no one in particular to mobilise. People who use cocaine could hardly be expected to provide a sufficient impetus for political mobilisation. Their numbers are limited, and shame still surrounds cocaine use, even if the vast majority of cocaine consumption is unproblematic (Schlag, 2020; SAMHSA 2018).

Meanwhile, the losers from legal cocaine regulation would suffer enormous losses – maybe not at first, but certainly if the rest of the world catches on. At stake is Colombia's largest and most profitable agroindustry, that generates nearly 1,88% of GDP (Montenegro et al., 2019), and USD 90-150 billion in direct illicit cocaine revenues worldwide (UNODC, 2010). These losses would be disproportionately borne by a powerful and concentrated group: organised crime, the security sector and their associates in the legal economy, alongside politicians basing their careers on promoting hard-on-crime measures. Legalising cocaine is a clear and present

threat to a status quo that profits from Colombia's suffering whilst hiding behind misleading but believable drug panics.

And yet, the bill offers a potential clue for breaking drug policy stagnation: the role of Indigenous rights. Honouring Indigenous leadership in the growth of legal coca markets would incentivise a narrow band of well-organised beneficiaries, vested in transforming the status quo. Indeed, the organisational prowess of the Indigenous Movement has turned it into a protagonist in Colombia's national strikes (Valenzuela, 2019), and made Indigenous organisations important allies for progressive parties, where they punch well above the weight of their small populations.

The way to a better drug policy future could be to bolster the traditional uses of coca and their proponents. In the absence of political capital for legislative change, habilitating windows of legality already exist to promote these stakeholders. These windows include international human rights treaties that safeguard Indigenous culture, re-defining the medical use exemption in the International Drug Control System to accommodate traditional medicine, or expanding the use of "religious exemption" arguments as in the United States for *peyote* and *ayahuasca*. These opportunities can be leveraged for market-development within prohibition to gradually build political power.

A community-driven, intercultural approach to drug policy change would correct the West's 19th century appropriation of coca, which launched cocaine (Gootenberg, 2008), but passed over coca chewing. Though there is a risk that new commercialisation channels could undermine Indigenous communities, there are institutional arrangements akin to the concept of prior consultation that can be used to contain market forces whilst bringing up the community fabric. These experiences provide a starting point for regulatory innovation centring communities in the move towards legal markets.

Recent drug policy reform has relied on medicalisation to subvert cannabis and psychedelic control systems from within, but at the cost of replicating exclusionary industry structures (Jelsma et al., 2021). Integrating traditional health and cultural rights may offer a path around this trade-off. Perhaps one of the most compelling lessons from Colombia's pioneering regulation bill may be its focus on a pluralistic approach to regulation: one that recognises local communities as equal partners in shaping drug policy.

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