

TRANSFORM
DRUG POLICY FOUNDATION

**Submission to the
Titan Prisons Consultation (CP10/08)
from the Transform Drug Policy Foundation**

August 2008

1. About Transform Drug Policy Foundation (Transform)

- Transform is the UK's leading centre of expertise on drug policy and law reform.
- Transform works in a range of national and international forums highlighting the harms caused by the pursuit of a prohibitionist ideology in the drugs and public health arena of social policy
- In recent years our work has included giving written and oral evidence to the Home Affairs Select Committee drugs inquiry, the Science and Technology Select Committee drug classification inquiry, and to various deliberations by the Advisory Council on the Misuse of Drugs
- Transform regularly briefs parliamentarians from all parties, officials in the Home Office, Treasury, DoH and other government agencies.
- Transform has special consultative status at the United Nations
- For more details about Transform's work please visit www.tdpf.org.uk

2. Introduction

The Ministry of Justice Titan Prisons consultation paper says that the consultation “*will focus on the potential options for developing model Titan prisons*” and “*how these will fit with the overall prisons estate strategy*”.

We note that the government code of practise on written consultation says: “the agenda should not be so rigidly defined as to deter respondents from offering views on related questions of interest to them”.¹

In line with this statement, this submission may cover issues considered beyond those in the consultation paper Questionnaire, though arguably they do fall under the first question:

1. *Are the principles set out in this paper sufficient to inform the development of a strategic approach to the prison estate?*

This submission does however relate directly to the issue raised by Rt. Hon. David Hanson MP in the Consultation Document forward, namely:

“Cutting crime is one of the core aims of any government.”

¹ Cabinet Office. (2000). Code of practise on written consultation

3. Summary

“The only sensible course of action is to minimise the damage caused to society by individuals’ drugs choices. What harms society is the illegality of drugs and all the costs associated with that. There is no doubt at all that the benefits to society of the fall in crime as a result of legalisation would be dramatic.” Julian Critchley, Former Director of the UK Anti-Drug Co-ordination Unit, August 2008²

The prohibition of drugs, which began during the First World War and escalated dramatically through the twentieth century, was an attempt to eradicate the health and social problems associated with drug use for individuals, families and the wider community. But, far from reducing the harms associated with drug use, legislating against misuse has in fact maximised drug related-harm and created a far broader crisis in our criminal justice system.

- The prime example of US alcohol prohibition was terminated after causing more problems than the drug itself.
- The collision of drug prohibition and rising demand for drugs has led to the creation of illegal markets and crime on a massive scale.
- Drug prohibition turns otherwise law-abiding citizens into criminals and fuels crime at all levels.
- Attempts to enforce prohibition are expensive, ineffective and counterproductive, exacerbating problems they are intended to solve.

Prohibition has failed in its original objective, and is no longer a plausible solution to the drug problem. To an increasing extent, the problem is prohibition itself.

This submission will argue that the single biggest cause of crime could be eliminated by moving from the current drugs prohibition regime to one of strict regulation and control, leading to a massive fall in the number of people being given custodial sentences. The result would be to eliminate the need for much of the *current* prison capacity, and certainly mean no new build was required to meet “demand”.

Transform therefore calls for the Ministry of Justice to shelve its plans for new Titan Prisons, and instead move towards drug policies based on evidence, not political posturing.

4. The historical failure of prohibition

The last significant drug prohibition was the US attempt to prohibit alcohol (1920-32). This policy was a result of societal concerns about drink related illness, particularly for low income households, combined with a paternalistic, temperance-motivated government. This thirteen-year experiment lost the support of the general population almost immediately and spawned the US Mafia, with its associated corruption and violence.

As alcohol prohibition ended, resources were diverted to the prohibition of other drugs and the world saw the beginning of a process that would eventually globalise prohibition in the form of the UN Convention on Drugs in 1961. Our substantive domestic response came ten years later in the form of the Misuse of Drugs Act 1971. Although it was designed with the best of intentions (reducing the misuse of drugs), the subsequent decades have seen the exponential rise in

² <http://www.bbc.co.uk/blogs/profile/?userid=12801828>

prevalence of drug use in the UK, despite many billions of pounds being poured into drug prevention and interdiction.

5. Prohibition creates illegal markets and rising crime

There is some evidence that prohibition can prevent the availability of commodities when demand for them is low. However, once demand is established, the effect of prohibition is to establish a high level of arbitrage between supplier and consumer, and thus to encourage a lucrative criminal market. At this point – which we reached a generation ago – prohibition becomes a ‘gangster’s charter’, and the original drug problem becomes subsumed into a vast criminal economy. In 1971 (when the Misuse of Drugs Act became law) there were around 5-15000 problematic class A drug users in the UK: today the number is between 250,000 and 300,000. With no legal supply to meet this ballooning demand organised criminals and unregulated dealers have moved to exploit this profit opportunity with devastating effect.

6. Enforcement can never eliminate illegal drug markets

The UK untaxed, illegal drug market is now estimated to be worth around £5.3 billion a year³. Police attempts to stamp out this trade have *always* failed precisely because it is so lucrative. With the inflated prices and extraordinary profits on offer, criminal entrepreneurs view the efforts of police and customs as an occupational risk. If there is a police crackdown in one area the market simply moves to another. If one smuggling network is smashed another rapidly emerges to fill the void. If one dealer is arrested there is a queue of willing replacements. As was acknowledged in an unpublished Number 10 Strategy Unit report⁴ and more recently by the UK Drug Policy Commission⁵ police efforts have, at best, had a localised, temporary and marginal impact. In the US, where the ‘war on drugs’ is prosecuted with unprecedented intensity, the drug market still thrives and drugs are, as in the UK, cheaper and more available than they have ever been. Even high security prisons are awash with drugs.

7. Enforcement exacerbates problems it was intended to solve

It is not only that enforcing prohibition is expensive and ineffective; in many cases it is actively counterproductive. This was graphically illustrated by Customs and Excise in evidence to the Home Affairs Select Committee (2002)⁶. When asked if the efforts of C&E affected the price and availability of drugs at street level, they replied: "Prices are as low as they have ever been. There is no sign that the overall attack on the supply side is reducing availability or increasing the price." However, they noted how C&E affects prices at wholesale level: "The price of a kilo of cocaine in South America is £1,000. It should cost about £1,500 by the time it reaches the UK, but it actually costs £30,000."⁷

An unfortunate and unintended impact of this dramatic (2000%) price hike is simultaneously to make the trade immensely attractive to organised crime and to make street prices so extortionate that dependent users often resort to acquisitive crime to support a habit.

³ http://www.ukdpc.org.uk/publications.shtml#Drug_Markets_report

⁴ http://www.cabinetoffice.gov.uk/Sites/www.cabinetoffice.gov.uk/strategy/work_areas/%7E/media/assets/www.cabinetoffice.gov.uk/strategy/drugs_report%20pdf.ashx

⁵ UKDPC http://www.ukdpc.org.uk/Publications.shtml#Drug_Markets_report 30.07.08

⁶ <http://www.parliament.the-stationery-office.co.uk/pa/cm200102/cmselect/cmhaff/318/1121107.htm>

⁷ www.parliament.the-stationery-office.co.uk/pa/cm200102/cmselect/cmhaff/318/1121107.htm

It also encourages users to choose the delivery mechanisms and versions of a drug that give the most impact for the money spent. Historically that meant moonshine in the US during alcohol prohibition, whilst in modern times it has meant pressure to inject drugs; to use crack rather than powder cocaine; and to smoke skunk rather than weaker cannabis products.

The depressing reality for both the police and health workers is that the tougher the enforcement, the worse the problems get.

8. Five categories of crime created by prohibition:

a) Organised Criminal Gangs (International)

Violent criminal networks now control an international trade worth over \$320 billion a year⁸. Criminals such as Pablo Escobar have become the Al Capones for a new generation, exploiting drug prohibition for profit and power and located beyond the reach of the law. They are routinely involved in murder, corruption, bribery, fraud, money laundering, destabilising legitimate governments and funding terrorism.

b) Organised Criminal Gangs (Local)

Criminal gangs battling for a share of the illegal drug profits are a significant source of antisocial behaviour and street violence in the UK. Such 'turf wars' have fuelled knife and gun crime, murder, assault and intimidation, making some inner city areas virtually no-go zones.

c) Acquisitive crime: Low-Income Problematic Drug Users

Low-income problematic users (primarily of heroin and crack) frequently turn to offending to raise money to pay the inflated prices of street drugs. A relatively small number of problematic users are now responsible for well over half of all acquisitive crime. Prohibition creates the conditions whereby drug users are responsible for the majority of shoplifting, burglary, theft from motor vehicles, robbery and nearly half of all fraud. Whilst many of these individuals may have been involved in offending before becoming problematic users, it is clear that the need to fundraise dramatically increases the intensity and volume of offences.

d) Street sex workers: Low-Income Female Problematic Drug Users

For female problematic users with no other source of income, prostitution often becomes the most viable source of fundraising to buy drugs. Problematic drug users occupy the most visible and dangerous tier of sex work - street soliciting, and are themselves frequently victims of violence. Crimes including pimping and clipping are also associated with such sex work.

e) Prohibition crimes (as specified under the Misuse of Drugs Act 1971)

Prohibition criminalises all activities involved in the production, supply, and possession of certain drugs, making criminals of a large proportion of the population. An ICM poll (2002) found the following numbers of regular users of drugs: Cannabis 5.1 million, Ecstasy 2.4 million, Amphetamine 2.1 million, Cocaine 2 million and Heroin 426,000⁹. If lifetime use is included, prohibition is criminalising over one third of the adult population, and approaching half of all young people¹⁰. Possession of drugs remains an imprisonable offence with the accompanying criminal record having serious implications for employment, housing, travel and personal finance.

⁸ http://www.unodc.org/pdf/research/wdr07/WDR_2007_2.1_introduction.pdf

⁹ ICM poll Feb/March 2002, the Observer 21.04.02

¹⁰ Statistics on Drug Misuse: England 2008 NHS The Information Centre.

<http://www.ic.nhs.uk/webfiles/publications/Drugmisuse08/Statistics%20on%20Drug%20Misuse%202008%20final%20format%20v11.pdf>

In contrast to the majority of political discourses on drugs and crime, the reality is that most (illegal) drug related crime is not committed because of intoxication but rather as a direct consequence of prohibition (see 1-5 above). Whilst misuse of some illegal drugs (mostly stimulants), or withdrawal from other drugs, can increase the propensity to offend, the vast majority of intoxication related crime is related to alcohol misuse.

9. Prohibition is causing the prison crisis

At the end of October 2007 there were 66,477 prisoners serving sentences in all prison establishments in England and Wales of which 10,526 were directly for drug offences, or 16 per cent.¹¹

In addition, whilst there are no available figures for those imprisoned for drug related crime, the Prime Minister's Strategy Unit¹² has concluded that over half of all property crimes were drug motivated, and according to the Home Office, 280,000 problem drug users cause around half of all crime¹³.

This indicates that perhaps two thirds of the prison population are there directly or indirectly because of drugs prohibition.

In short, the growing prisons crisis can be blamed in large part on prohibition related crime and the ballooning population of non-violent drug offenders.

10. The cost of prohibition-related crime:

Social costs:

Home Office research into the social and economic impact of Class A drugs in the UK estimated the costs in 2000 at between £10.1 and £17.4 billion¹⁴. The research estimated that 99% of this total is a result of problematic use and calculated that 88% of the total is the costs of drug-related crime, graphically illustrating how the costs of drug misuse itself are eclipsed by the far greater costs of crime created by prohibition. The Number 10 Strategy Unit review in 2004 similarly estimated the costs to be £20 billion a year¹⁵, making a total of perhaps £200 billion over the last 20 years. If we continue with prohibition for another ten years (as seems likely), we will rack up perhaps another £200 billion of unnecessary costs.

Criminal justice system costs:

Direct annual expenditure on 'tackling drugs' in the UK National Drug Strategy (2002/3) was £1026 million, of which approximately two thirds was for enforcement. There are no official figures for the financial burden that prohibition related crime imposes on policing, customs, courts, prisons and the probation system. The Home Office estimates that one third of all crime is committed by problematic users of illegal drugs. It is reasonable to speculate that correspondingly large proportion of the total criminal justice budget is spent on dealing with the fall out from prohibition.

¹¹ <http://www.parliament.the-stationery-office.co.uk/pa/cm200708/cmhansrd/cm080107/text/80107w0032.htm>

¹²

http://www.cabinetoffice.gov.uk/Sites/www.cabinetoffice.gov.uk/strategy/work_areas/%7E/media/assets/www.cabinetoffice.gov.uk/strategy/drugs_report%20pdf.ashx

¹³ <http://www.homeoffice.gov.uk/crime-victims/reducing-crime/organised-crime/>

¹⁴ www.homeoffice.gov.uk/rds/pdfs2/hors249pdf

¹⁵

http://www.cabinetoffice.gov.uk/Sites/www.cabinetoffice.gov.uk/strategy/work_areas/%7E/media/assets/www.cabinetoffice.gov.uk/strategy/drugs_report%20pdf.ashx

Human costs:

"We are turning people who want to abuse their bodies into criminals. Why should they be criminals? Why should we force them to mug my granny for money in order to abuse their bodies? We are making it worse not better."

Richard Brunstrom, Chief Constable of North Wales, Daily Post, 30/01/2003

For the many victims of drug-related burglaries, street robberies or shootings, and for the communities they live in, prohibition has sown misery, fear and despair. These negative impacts of prohibition are inevitably concentrated on the most socially deprived communities, where problematic drug use and related crime is the highest.

More often than not, problematic drug users have other problems, including histories of abuse or having been in care, mental health problems, homelessness, unemployment and so on. To criminalise (and frequently imprison) this group, arguably the most vulnerable in our society, merely adds to their own problems and to those they cause society, and makes the process of rebuilding their lives more difficult.

There is also the often overlooked secondary cost to their children. In addition to the enforced absence of many fathers resulting from imprisonment for drug related offences, the number of women in prison has doubled in ten years. Nearly half of them are there for drug offences, over half have a child under the age of 16 and nearly three quarters of them have had a drug problem¹⁶.

For millions of non-problematic users the stigma of criminalisation is an ever-present threat, creating fear and distrust of the police, the very people intended to protect them from crime. For black people the situation is worse still, with a criminal justice system still 10 times more likely to imprison them for drug offences than whites.

11. Clients or criminals?

Problematic illegal drug users are increasingly accessing treatment through the criminal justice system, where the lions share of new treatment funding is now being spent. For individuals with numerous complex problems this is a singularly inappropriate setting to receive help. It is ludicrous to operate a system that encourages individuals to offend and then puts in place treatment that is intended, first and foremost, to reduce their offending. Problematic drug users need and want treatment services available in the same way that alcohol and tobacco users do –without the need or incentive to start offending.

12. Recommendations

- The Government must first commission a full cost benefit analysis (CBA) comparing current drug policies with other options including the repeal of prohibition in favour of the Government accepting responsibility for regulation and control. This will establish on a rational basis the failure of current prohibitionist drug policy, the role of prohibition in the creation of crime, and the inability of policing to reduce drug supply.
- Such a CBA will allow government to demonstrate that problematic use of currently illicit drugs is a challenge for health and social policy, and is no more the responsibility of the criminal justice system than alcoholism or glue sniffing. Responsibility for drug policy needs to move from the Home Office to the Department of Health (as has happened in Spain).

¹⁶ Drugscope (www.usingwomen.org.uk)

- The Government has made a welcome commitment to investing in drug treatment and harm reduction. However, treatment alone, especially when coerced and administered through the criminal justice system, will never be the answer to drug related crime whilst prohibition remains in place. The understanding of harm reduction needs to be broadened to include prohibition-related crime.
- In the short and medium term the government should expand heroin prescribing programmes far more rapidly than currently envisaged to remove the majority of dependent users from the clutches of the criminal market. The potential of this move alone to reduce crime is enormous, as was shown by large scale trials in Switzerland where police records and official crime statistics verified that criminal behaviour declined, with the proportion of users reporting income from illicit sources reducing from 69% to 10%¹⁷.
- Decriminalising personal possession of drugs would remove the spectre of criminality from millions of consenting adult users. This is a move that is supported by mainstream UK organisations including Drugscope, NAPO, ADFAM and Turning Point, and has been successfully adopted by countries including Portugal, Italy, Spain, Holland, Switzerland and most recently, Russia, all of which have lower drug use than the UK.
- In the longer term the only viable option is the dismantling of prohibition and its replacement with a legal system of regulation and control for drug production and supply. Legal frameworks already in place for currently legal drugs (prescription, pharmacy sales, licensed premises and licensed sales) mean that many of the required regulatory tools are already in place. As the Home Affairs Select Committee has recommended, the government needs to initiate a discussion at UN level regarding the possibility of renegotiating the international drug treaties that enshrine prohibition into domestic law the world over¹⁸.
- The implementation of these policy changes would, at a conservative estimate, halve the prison population rendering the construction of any Titan Prisons unnecessary, freeing hundreds of millions of pounds for other purposes, potentially including drug treatment and education measures.

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¹⁷ UCHTENHAGEN, A., DOBLER-MIKOLA, A., STEFFEN, T., *et al* (1999) Prescription of Narcotics for Heroin Addicts. *Main Results of the Swiss National Cohort Study*. Basel: Karger.

¹⁸ See: http://www.tdpf.org.uk/Parliament_HascReport.htm