The World Drug Policy Problem. An Interview with José Ramos-Horta

José Ramos-Horta and Khalid Tinasti

Abstract

José Ramos-Horta is a former president of Timor-Leste, a Nobel Peace Prize laureate and a current member of the Global Commission on Drug Policy (GCDP). Khalid Tinasti, one of the guest editors of this volume, interviewed José Ramos-Horta to gain insight into his views and analyses of drug control policy. They discuss his experience as one of the drafters of the Constitution and criminal justice responses in Timor-Leste, and his role as the UN Secretary-General's Special Representative and head of the United Nations Integrated Peacebuilding Office in Guinea-Bissau (UNIOGBIS) at a time when the country was labelled a 'narco-state'. Khalid Tinasti also asked him about his views on the future of the drug market in the context of a growing drug policy divide between countries that enforce a punitive approach to drug use and those now legalising cannabis and other substances for recreational purposes.

Drug control policies create major 'unintended' consequences such as a widespread illegal and violent drug market; policy displacement, with major resources diverted to law enforcement rather than public health; and geographical displacement, with violence moving from one region to another as the war on drugs escalates. How did these findings influence your position on drug policy? What triggered your call for drug policy reform?

Like the rest of the world population, and for a long time, I have looked at drug control as an important feature in the security arsenal of each country to protect people from poisoning, to reduce criminals' financial profits, to protect institutions from money laundering and corruption, and to reduce the burden of disease on the health system. Like many, I could also see that while drugs were widely used, the drug trade was visible on urban streets and drug control was still capable of 'containing' the issue.

With time, it became clearer that the impacts of drug policy were not only found where they were most glaring, such as in the explosion of incarceration for non-violent offences in the last few years or the spread of infectious

diseases due to the lack of harm reduction services, but also in different aspects of development and, more worryingly, in the poorest populations (GCDP, 2018). I started seeing people in pain not being able to access pain relief; the poorest being arrested when their prevalence of use was no higher than that of wealthier members of society; women being sentenced to long prison terms for minor offences such as acting as a courier, with a devastating impact on their children and communities; and without any reduction in drug production, use or traffic. It is this inability of drug control to achieve its own stated objectives of achieving a drug free society, combined with its numerous negative consequences, that made me look into the issue of drug policy from the perspective of the people impacted, and no longer from a security angle.

The late Kofi Annan called me in 2016 with a message from the members of the Global Commission on Drug Policy, who were inviting me to look into their work, analyse it and—if I was in agreement—to join my voice to theirs. I was delighted to look into the ineffectiveness of drug policies, and to provide recommendations on reforms. As the late Kofi said privately: ‘usually, young people bring the wind of change on conservative issues. With the Global Commission, we, the elderly, have brought the wind of change on drug policy’.

You were the UN Secretary-General's Special Representative and head of the United Nations Integrated Peacebuilding Office in Guinea-Bissau (UNIOGBIS), at a time when the country was being labelled a 'narco-state'. You have opposed the use of this rhetoric—why?

A few months after my appointment by the UN Secretary-General as his Special Envoy, the Security Council renewed the mandate of the UNIOGBIS, adding the monitoring of drug trafficking and the fight against organised crime to its remit. The mission of accompanying the country through a political transition and democratic elections became more complex, as we had to address the interconnectedness between drug trafficking proceeds and the funding of political figures, public institutions and the military.

I have focused my efforts on rebuilding democratic institutions and dialogue, and on attracting international re-engagement with Guinea-Bissau. I have therefore focused on the social and economic determinants of the drug trade in the country. That is the reason why I refused to label Guinea-Bissau as a ‘narco-state’, a term used by academia, practitioners and diplomats. Rather, it is a country where the development gap was filled by illicit financial interests, and where there is more need for structural development support to address the issues of poverty than for enforcement support to fight organised crime.

Since the 1930s, and the introduction of the first international drug trafficking and production crimes, the response to illegal drugs has focused on punitive policies. You have been involved in drafting the Constitution of Timor-Leste, a Southeast Asian country facing issues of smuggling similar to its neighbours, yet which chose to implement proportionate sentences and to ban the death penalty. What is the rationale behind your country's criminal justice approach to drugs?

Our national constitutional framework was built on the premises of restoring justice and dignity to the people. As a state, we needed to ensure that we had democratic institutions and the rule of law. These two pillars needed to build on a fair institutional environment, and that starts with a constitution that is protective of people, and inclusive of their diversity. We also needed to have laws that are proportional to the offences they are designed to punish. Our penal code of 2009 has no specific penalties for drug use, but there are many other articles that punish drug use, possession and trafficking, such as the use of intoxicants in the public space, the use of children in the production or trafficking of drugs, smuggling and money laundering crimes. The latter are the most severely punished crimes, incurring prison sentences of up to 12 years (Timor-Leste Government, 2009).

Since its independence, our country has preserved the right to life and therefore never allowed or accepted the use of the death penalty for any crime. I will recall here that the UN Committee on Human Rights has repeated time and time again that drug trafficking offences do not meet the 'most serious crimes' threshold, and that the death penalty should therefore not be used to address these crimes. This stance has also been promoted by the International Narcotics Control Board, the international body in charge of country compliance with the three drug control conventions (INCB, 2016).

Therefore, the rationale behind our response to drugs is one of proportionality and of mitigating factors. We cannot, on the one hand, promote more structural and systemic changes to address poverty and, on the other, make life harder for impoverished communities through disproportionate drug policies and enforcement. This is also how the rule of law is maintained over the longer term.

Could Southeast Asian countries, which are the fiercest proponents of punitive drug policies, enforce their way out of drug-related problems?

The history of Southeast and north-east Asian countries and illegal drugs goes back to the massive opium dependence of the nineteenth century, and to its

impact on social, economic and cultural life. These historic landmarks cannot be minimised or overlooked; they are a central part of reforming towards people-based drug policies. Today, these same countries are facing new challenges. Being large producers of plant-based drugs but also of methamphetamine, and thanks to the socio-economic progress of the last few decades, they have also become a new transit and consumption hub. For instance, Australia's illegal market is the most expensive in retail prices to the consumer, so it seems lucrative for traffickers to transit through our region from other producing countries.

Identifying the issues is one thing, and we do it as well in Southeast Asia as it is done in the rest of the world. Now, what the most appropriate response might be is another discussion. Evidence and data show that no one can enforce themselves out of drugs, and no one can impose discipline with over-punitive laws. I believe it is time to try something different; something where people and those most concerned, such as youth, are considered as partners in drug policy. For this to be a reality, our policies need to adapt, and our societies need to accept that some people will use drugs regardless of legal or social punishment.

Countries that spearheaded drug prohibition in the past are now radically reviewing their approaches, with some legalising the use of cannabis or psilocybin for recreational purposes. Yet other countries with a tradition of mild substance use (such as opium in India) have lost this privilege to drug prohibition. Are we witnessing a new global divide on drug policy?

This is a gradual approach that has taken two decades (Bewley-Taylor, 2012), but that has speeded up considerably in the last decade with the establishment of the Global Commission on Drug Policy, and then the organisation of the UN Special Session (UNGASS) on drugs in 2016. Nevertheless, the growing diversity in drug policies on the ground is a worrying trend.

International norms were established to provide the international community with common tools and effective coordination against common threats. This divergence in the international drug control system, be it positive and take the form of a move towards regulated drug markets—and my hope is that these markets will be regulated according to the dangerousness of the substance and not the commercial potential of a prospective market—or negative and take the form of over-repression and sometimes extrajudicial punishments, is a breach in the implementation of international law. This is never good, and questions the rule of law. Nevertheless, this situation does nothing to mitigate the original error of the international community—that of having a normative framework that is absolutely not aligned with what evidence reports on the ground. We know demand for drugs is significant, we know that

supply will fill that demand, but we refuse to implement smart laws to reduce the harmful associated effects of drug use, while introducing many negative consequences of drug control. What good can come when our young people, simply wishing to have fun with recreational and occasional drug use, are met by the police, the criminal justice system, and the never-ending consequences of a criminal record? When laws are unfair, they are breached, and those who enforce them find ways to adapt them. This is damaging for the national and international rule of law.

These national policies, which are currently diverse on the ground (from decriminalisation of use to harm reduction scale-up; from state-condoned extrajudicial killings to legalisation of some substances), contrast heavily with the old consensus that prevailed among UN member states until just a decade ago. Is the UN still relevant in drug policy debates?

I am someone who will always believe in the value of multilateralism, and in the extraordinary capacity of our countries to carry out the most difficult tasks when we work collectively. The COVID-19 epidemic has indeed clearly highlighted this: no country can end the epidemic alone, there is no need to duplicate efforts, and if we work together and mutualise resources we can progress faster and better. The UN still seems to be the appropriate space for doing so.

Now, as stated by my colleague at the Global Commission, Helen Clark (an internationalist and supporter of the international system), UN norms are usually overlooked and disrespected when they are the right guide for good policies. In drug policy, these same norms and conventions, which are outdated and were drafted at the time of social hygienism, are a barrier to good policies on the ground. It is because we firmly believe in the need for international co-operation on drug policy that we have criticised the UN for not keeping up with the world, in practice or in thinking. It is not the UN's Secretariat or technical agencies but its member states that are in a position to reform and amend the drug control conventions. They are the ones that could make the UN central or irrelevant in drug policy.

Given the low levels of investment in drug-related social and health services, combined with punitive laws and social stigma, do you consider that the Sustainable Development Goals are achievable for people who use drugs and for their communities?

Drug policies are clearly a cross-cutting public matter, influencing and impacting a variety of policy areas and development objectives. In fact, when

law enforcement activities against drug use and trafficking are practised indiscriminately—and usually arbitrarily, focusing on the most vulnerable—the rule of law and equitable justice are under threat (Sustainable Development Goal (SDG) 16); when people who use drugs do not seek treatment or access harm reduction because of fear of arrest, healthy lives for all become impossible (SDG 3); when it is the poorest who are harmed the most, not only by drugs but also and as much by police repression, poverty eradication efforts are questioned (SDG 1); when it is women who are the most frequent victims of current drug policies, being incarcerated more than men for drug use or trafficking, gender equality is flouted (SDG 5); when there are violent confrontations between law enforcement and criminal groups, with innocent citizens caught in the middle, no cities can be safe (SDG 11); and the list could go on and on.

The implementation of the SDGs and the Agenda 2030 are a serious pathway to try to right the past's wrongs. The SDGs are a bold agenda. As Ruth Dreifuss—the Chair of the Global Commission—said, they require some pre-conditions to be agreed upon: that a drug free world will not be achieved; that drug-related health issues and social unrest are fuelled by current prohibitive laws and policies; that the war on drugs has resulted in weak and ineffective public institutions in many places; and that drug traffickers have benefitted from this very weakness. We need to recognise the issues at hand, so that we can be more pragmatic about how to address them.

After 50 years of the war on drugs, even the UN recognises that at best the 'world drug problem' has been 'contained'. The UN also falls short—along with national authorities—of providing clear plans to achieve the desired drug free world. What are the elements that prevent the international community from recognising that the initial aim was wrong?

The criminalisation of the consumption, production and retailing of illegal drugs seems reasonable when they are seen as unnatural contaminants pushed into a society from the outside or by deviant forces, creating a dependence that is 'evil' and takes control of people's minds and bodies. Nevertheless, consuming mind-altering substances is a near-universal impulse that has been documented across cultures throughout history. In anthropology, 'mood- or consciousness-altering techniques and/or substances' are part of the list of 'human universals', alongside music, language, play, and other elements, forming the basic cultural toolkit. And this still holds true today: there are few individuals who never consume psychoactive substances, be they alcohol, tobacco, coffee, chocolate or khat. Therefore, most individuals and societies have an

understanding of the appeal of psychoactive substances, at least of those that are socially acceptable in their culture (GCDP, 2017).

When it drew together the different pre-war conventions into the 1961 *Single Convention on Narcotic Drugs*, the international community was also hoping to stop the scourge of dependence. Nevertheless, international and national laws are made to evolve, to adapt to progress in science and in society, and to be amended or terminated by elected officials. The problem here is that dependence and its related issues are most problematic and visible among the poor, those who have no voice in the public debate, and those who are already under economic pressure. This has turned drugs from a public health issue concerned with preventing harm which could have been more effectively dealt with under another regime than prohibition; into a political problem in every country, since drug policy is now related to weak and ineffective institutions, ill-health, minority repression, corruption, unfair judiciary systems, over-punitive law enforcement apparatuses, overcrowded prisons, state-condoned extrajudicial punishments and a concentration of these harms among the poorest in society.

Yet now that we see more and more jurisdictions adopting the legal regulation of cannabis or mushrooms, we believe that more has been done in the last ten years in terms of recognising the reality of drugs than in the preceding 50 years.

As the United States retreats from its position as the proponent of the war on drugs due to its current opioid-driven overdose crisis and the state-based legalisation of cannabis, and as the Russian Federation takes over as the global advocate of prohibition, do you foresee any major changes in international and national drug policies in the next decade?

The major changes that I see in the next decade in terms of drug policy are both negative and positive. The current divisions of opinion in international settings provide the opportunity for countries to be more flexible in implementing better drug policies nationally, and for regional multilateral strategies to move closer to the realities of a regional block of countries. At the same time, these same opportunities are a challenge, since the noncompliance with human rights law and its violation have been occurring in the name of drug control.

Caution is also needed with respect to how the legal regulation of cannabis is implemented. If it means establishing a commercial model for a 'new' industry, then few of the issues will be solved since the majority of those involved in the 'old' illegal market will be left out. Moreover, consumers who benefit from

effective illegal supply chains have no incentive to buy in the legal market. If this regulation is inclusive and respectful of communities and the existing structures of this illegal global industry, then there is the worry that drug policy reform will end with cannabis policy reform, since the problem of over 70 per cent of consumers will be solved. However, issues related to cannabis use are not as problematic as those associated with more potent substances, such as opiates or cocaine.

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