

DRUG POLICY REFORM AND
ORGANIZED CRIME SERIES



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AFTER THE WAR ON DRUGS

THE IMPACTS OF COCAINE
AND CANNABIS REGULATION
IN RIO DE JANEIRO

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INTRODUCTION

This report examines the likely consequences for Rio de Janeiro if cannabis and cocaine were to be legalized and regulated. Cannabis possession was decriminalized by Brazil's Supreme Court in June 2024. The city's high rate of urban violence is often regarded as being drug-related, caused by trafficking 'factions' (as they are referred to in this setting) engaged in disputes over the control of sales points in poor neighbourhoods. The issue is aggravated by the so-called war on drugs, conducted by security forces and frequently viewed as violent, arbitrary and corrupt.

Many experts have long advocated that the legalization and regulation of illicit drugs would significantly reduce the levels of violence in Rio. But the rampant expansion of armed racketeering militias (*milícias*) has changed the nature of the violence. These organized criminal groups, which are more focused on extortion than on illicit drug sales, now occupy half the territories currently controlled by armed groups.

The cocaine and cannabis markets do, however, continue to play a significant role in the violent conflict between drug factions and the police in Rio. Public security policies are largely focused on incursions by armed police into the *favelas* controlled by drug factions.

This paper agrees with the premise that there is no war on drugs in Rio per se, and that the state-led and commensurate violence are products of deeper systemic drivers aimed at exerting social control over marginalized communities, particularly impoverished black youth.

Still, the regulation of cannabis and cocaine would help stall growing rates of incarceration and reduce the profits earned in illicit drug markets. But these positive gains from legalization would potentially be negated if drug factions decided to replicate the modus operandi of the militias, resorting to extorting locals to compensate for their income losses.

In terms of methodology, the report is based on a bibliographical review of Brazilian data and academic studies of the subject. Much of the author's previous work is cited. As the intention is to make the empirical and theoretical developments on the topic of violence in Brazil accessible to international audiences, most references cited are from Brazilian scholars.



THE BATTLE FOR CONTROL

Over the past four decades, criminal armed groups have been emerging, developing and expanding their control throughout Rio. Their growing influence has been countered by increasing levels of police violence, contributing to elevated homicide rates.

The levels of urban violence in Rio have long been regarded as a drug-related phenomenon, caused by armed groups that control the sale of illicit drugs – mainly cocaine and cannabis – in *favelas* and peripheral neighbourhoods. Local drug-dealing groups are linked to wider factions that are regularly in dispute over the control of different territories in the city.

Impoverished young people, often armed with illegally obtained handguns and assault rifles, protect points of sale (*bocas de fumo*). They are also responsible for protecting dealers and faction members against attempted incursions by enemy groups and frequent raids by police.

The heavy use of deadly force by police, ostensibly as a means to control the retail market for illicit drugs, has aggravated armed conflict in Rio de Janeiro. It has also led to the criminalization and segregation of low-income residential areas, mostly inhabited by black people and migrants from Brazil's north-east.

Deadly conflict

According to official statistics from the Instituto de Segurança Pública (Institute of Public Security) of the state of Rio de Janeiro,¹ 21 510 people were killed by on-duty police officers between 2002 and 2022 in the state, which has a population of about 16 million. In 2022, police killed 1 327 people and were responsible for 30% of violent deaths registered in the state.

More frequent police raids have not been shown to reduce homicides or property crimes. Instead, there is a strong positive correlation between increased police raids and higher homicide rates and a weak positive correlation with a higher number of robberies reported.²

Despite these poor outcomes, police raids continue to be the state government's principal strategy for crime control in the *favelas*. The accompanying high rates of police lethality and incarceration have resulted in raids being seen as a means of social control, or what some term social cleansing.

Mass incarceration

Incarceration rates in Brazil have almost doubled in the past 15 years,³ driven largely by long prison sentences handed down for illicit drug trafficking. But instead of weakening organized crime groups, mass incarceration has helped strengthen their influence. Most prisons in Brazil are now controlled by criminal collectives, mainly drug trafficking factions. Participation in these organizations often begins in jail, with inmates seeking out security, protection of their rights, and support for themselves and their family members.⁴

Observers of this tragic spiral of violence have begun to question why the state insists on waging a war on drugs instead of regulating the sale and use of these substances, similar to its approach to other psychoactive substances such as alcohol, pharmaceuticals and solvents. Many experts advocate that regulation could help reduce the levels of armed violence in Rio and, by extension, in Brazil. Or, at the least, that it could serve as a primary measure towards 'pacification' (from the Portuguese term) in urban impoverished areas impacted by armed conflict.



Locals take part in a march demanding the legalization of cannabis. Possession was decriminalized by Brazil's Supreme Court in June 2024. © Vanderlei Almeida/AFP via Getty Images

Until recently, the prospect of the legalization of drugs in Brazil seemed unimaginable, but the decriminalization of cannabis is now almost a reality. In June 2024, the Brazilian supreme court decriminalized the possession of cannabis for personal use and established that the possession of up to 40 grams of cannabis or six female plants will be presumed as personal use. Cannabis sales and the possession or production of larger quantities remain criminalized.

The changing nature of violence

Instead of discussing the different models of drug regulation that have been proposed in international literature⁵ or the effect that legalization could have on the consumption of drugs,⁶ this report is concerned with the issue of urban violence, a term that refers to threats to personal and property security in urban populations.⁷

There has been speculation that drug regulation could be the long-awaited panacea to urban violence in Rio de Janeiro. It would indeed solve the public problem of violence if this were an issue caused only

In Rio, more frequent police raids have not been shown to reduce homicides or other forms of crime. © Fabio Teixeira/
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by trafficking and the war on drugs. Regulation may even have been successful if it had been instituted before the 1990s and the early 2000s, when cocaine and cannabis sales were the main economic basis for the proliferation and reproduction of armed groups.

However, developments in urban conflict, particularly the expansion of racketeering groups, the so-called militias, have introduced aspects of criminality that are not directly linked to the illicit drug trade. Because of this, it is unlikely to be affected by the regulation of cannabis and cocaine.

The militias extort income from businesses and essential services in the neighbourhoods they control. They demand the payment of security fees, and tax water, electricity, gas, housing, cable TV, internet, food, transportation and so on.⁸ Although militias also sell drugs, their main commodity is 'protection', and a large share of their income comes from the forceful acquisition of land and from participating in the legal and illegal real estate markets.⁹

The participation of law enforcement officers and elected representatives in these militias helps create 'political advantage', which minimizes police action and lightens the requirements of official inspection and oversight by diverse government bodies.¹⁰

The prevalence of criminal armed groups that are not necessarily associated with the illicit drug market has shifted the debate about violence in Rio from the war on drugs to one that revolves around the complex interconnectedness of protection rackets, clientelism, political corruption, extractive practices and the extortion of urban economies. But because public security policies are centred on armed incursions into the *favelas*, the cocaine and cannabis markets continue to play a highly significant role in the routine armed conflict between drug factions and the police. The repression of the drug market can still be considered a major driver of violence and of mass incarceration.

Prohibition and the repression of the drug market do not reduce drug sales or use, but rather attract hundreds of thousands of poor youths, mainly male and black, who are unlikely to find a place in the country's shrinking formal labour market.

Societal shifts

Although the regulation of cannabis and cocaine in the city would help to reduce drug market profits and curb incarceration rates, it would not necessarily stop violent police raids or reduce police lethality. For that to happen, regulation measures would have to be combined with effective and sustainable rights-based development policies and programmes aimed at ending the marginalization of the city's impoverished youth. Without such societal and institutional reforms, it seems likely that new forms of social control will emerge to maintain current trends, particularly mass incarceration.



URBAN INEQUALITIES IN RIO DE JANEIRO

Urban violence in Rio de Janeiro is set within a very particular context. The prevalence of *favelas* makes Rio's social disparities immediately visible to anyone arriving in the city; even in the richest neighbourhoods, there are densely populated shantytowns. Also called 'hills' or 'communities', *favelas* constitute a specific urban formation, characterized by irregular constructions that are the result of the historical absence of effective housing policies and the persistence of inequalities.

This marked contrast between wealth and poverty has inspired the image of a 'broken city'¹¹ – a stark dichotomy between *favelas* and 'the asphalt', the properly urbanized neighbourhoods. Spatial segregation in Rio is also racialized, characterized by the stigmatization and criminalization of areas on the edges of the city comprising social housing complexes and *favelas* predominantly occupied by black people and migrants from Brazil's north-eastern region.

The portrayal of Rio as a broken city, torn apart by the contradictions and conflicts between the *favelas*, seen as zones of violence and criminality, and the rest of the city has led to the metaphor of war as a lens through which the issue of urban violence is understood.¹² However, this metaphor is rooted in the perception of a society in crisis, devoid of effective institutional mechanisms for appeasing social conflicts and controlling what are viewed as its 'dangerous classes'.

Murder rates

Despite its reputation, the state of Rio de Janeiro does not rank among Brazil's most violent states. In 2023, its homicide rate of 26.6 victims per 100 000 population was above the country's average of 22.8 victims per 100 000 population, but Rio de Janeiro was not among

Portions of the city are under the control of criminal groups, and violence has tended to be more prevalent in the *favelas*. © Ricardo Moraes/Reuters



the 10 most violent states in Brazil.¹³ For context, the international average was 5.8 victims per 100 000 population in the same year.¹⁴

The perception of Rio as Brazil's most violent state dates back to the 1990s, when homicide rates were at their peak. In 1994, a murder rate of 64.8 victims per 100 000 was recorded.¹⁵

Organized crime's growing geographic control

What distinguishes Rio from other large cities in Brazil is that large portions of it are under the control of criminal groups. The Historical Mapping of Armed Groups in Rio de Janeiro project shows that 20% of Rio de Janeiro city and 18.2% of the metropolitan region were under the control of armed groups in 2023.¹⁶ This represents an increase of 105.7% since 2008, when 8.8% of the territory was under armed control.

Militias, or racketeering paramilitary groups, currently control almost half of these territories, while the other half is controlled by three drug-trafficking factions. The map shows that militias have expanded their territories by 204.6% since 2008. This expansion did not occur through conquest, but mainly through the incorporation of areas that were not previously under the control of any group.¹⁷

The formation of militias came about in the 1990s, and they expanded in the early 2000s. In the two decades since then, they have grown into the region's greatest security threat. Rio's armed groups establish control by force, subjecting residents to authoritarian social regulations and extorting local businesses and services, constituting a type of dominance referred to by some authors as criminal governance.¹⁸ This is especially true of militias, which often resort to threats, beatings, torture and murder.

Residents in areas controlled by drug factions emphasize the profound anguish – or 'asphyxiation' – of living under the arbitrary social controls of an imposed order.¹⁹ In such environments, people find they cannot rely on predefined and understandable standards of behaviour.²⁰

Social accumulation of violence

The problem of urban violence in Rio de Janeiro is linked to a historical accumulation of social and economic inequalities, coupled with the difficulties of integrating some sectors of the population into the labour market.²¹ This has resulted in their marginalization.

Violence and inequality: demonstrators attend a march against police violence towards the black community, August 2023. © Lucas Landau/Reuters



The rise of urban violence can be traced back to the 1950s, when the 'social accumulation of violence' began.²² It was in this decade that armed robberies became commonplace in Rio. At the same time, death squads were formally established within police institutions to track down and execute suspects, mainly thieves.

These brutal practices were often approved of by the media and the public, who lauded the figure of the *justiceiro* (extra-judicial killer). It gave expression to a collective discontent with the judicial conflict resolution process in a society where the state's monopoly over the legitimate use of force had not been established. Since then, a complex set of interconnected factors have continued to contribute to the ongoing escalation of violence.

Changing dynamics of the drug market

Until the mid-1960s, the drug market in Rio de Janeiro largely involved selling cannabis to small groups of consumers comprising mostly marginalized individuals.²³ The customer profile began to change with the emergence of the counterculture movement, when young artists and intellectuals became interested in cannabis's consciousness-altering effects and its ritualized use by certain groups.²⁴

At the time, cocaine had long been consumed by the middle and upper classes, albeit on a small scale. It remained expensive and difficult to access until the mid-1970s. Then, in the 1980s, the dynamics of the drug trade changed significantly. Rio de Janeiro and São Paulo became included on the international drug route from Peru and Bolivia to Europe, increasing the supply of cocaine and bringing down its retail price. Cocaine became a substitute for cannabis and started being sold by cannabis networks in *favelas*. As a consequence, drug-trafficking activities moved up the agenda of public security policies.²⁵

The introduction of cocaine at lower prices quickly attracted new consumers, accelerating profits. Groups of armed traffickers began to fight over the control of points of sale in low-income neighbourhoods. These disputes began to interfere with the daily lives of residents even before different factions became established.

Evolution of illicit networks

Falange Vermelha, the first faction, which was later renamed Comando Vermelho, was originally a prison gang formed inside the Ilha Grande prison in the late 1970s, when Brazil was still under military dictatorship. The organization was founded by bank robbers who were arrested under the National Security Act, which targeted political dissidents.²⁶ Their aim was to improve solidarity among prisoners by demanding better living conditions and forbidding indiscriminate use of violence to resolve conflicts.²⁷

Many of those prisoners bought their way out of prison in the early 1980s and shifted their criminal enterprises to drug trafficking. Once cocaine started being sold at scale in *favelas* and their profits greatly increased, the Falange Vermelha turned into a network of drug business owners. Conflicts between prison inmates from other criminal collectives that had also acquired influence beyond prison walls gave rise to the factions known today as Terceiro Comando Puro and Amigos dos Amigos. Since the early 1990s, the ongoing rivalry between factions has led to frequent armed conflicts across several territories. The competition fuelled an arms race among factions, a race that the state of Rio de Janeiro would later join, with its own substantial investments in military equipment.

STATE VIOLENCE

The violence experienced by the people of Rio has been exacerbated by the state's security policies. For more than three decades, this has taken the form of regular raids in *favelas* and poor neighbourhoods to seize drugs and arms as well as to arrest or kill suspects. Conducted by police officers armed with assault rifles and in armoured vehicles, these incursions result in shootouts that disrupt local routines, preventing residents from going to work and exposing them to the traumatic experience of being caught in the crossfire between drug factions and police.²⁸ These clashes often result in the intentional or accidental deaths of suspects as well as innocent people – including children. Police officers are also sometimes killed in the shootouts.

State violence in numbers

The rise in police lethality has led to what some term the 'statization of deaths', a process in which state violence becomes the greatest driver of lethal violence. In 2022, police were responsible for 30% of total violent deaths registered in Rio de Janeiro.

- In 2022, schools and health facilities in the Maré neighbourhood were closed for more than two weeks because of armed violence, mainly the result of police raids.²⁹
- In 2021, 4 653 shootouts were recorded in Rio's metropolitan areas, resulting in 1 795 people being shot – 64% of whom were shot during police raids. At least 896 people died.³⁰
- Among the victims shot in 2021, there were 17 children and 43 adolescents. Four children and 15 adolescents were reported dead.³¹
- The database from the Group of Studies on New Illegalisms at Fluminense Federal University, Brazil (GENI/UFF), registered 19 198 police raids in conflict-ridden territories of the metropolitan region of Rio de Janeiro between 2007 and 2022. Of these, 629 were categorized as massacres – incidents in which three or more deaths were recorded. ■



A police raid targeting gang members in the Complexo do Alemão neighbourhood left 18 dead in July 2022.
© Fabio Teixeira/Anadolu Agency via Getty Images

Pursuit of justice

Research from 2013 shows that authorities make little effort to investigate the circumstances of violent deaths, often relying solely on the accounts of police officers.³²

Pioneering work in the 1990s on resistance killings, based on cases prosecuted under the military justice system,³³ and more recent studies on the processing of these cases in common justice systems,³⁴ as well as reports on the pursuit of justice by the relatives of victims of state violence,³⁵ have all highlighted the state's legal indifference and impunity as significant determinants of lethal policing in Rio de Janeiro.

Because of the persistently high number of people killed by police and, more specifically, the unfolding of a court case concerning two massacres by police in 1994 and 1995 in the *favela* of Nova Brasília, Brazil was convicted of human rights violations in 2017 by the Organization of American States' Inter-American Commission on Human Rights.

Allegations of human rights violations by the state during police raids in *favelas* and low-income neighbourhoods have also led to claims of non-compliance with Fundamental Precept No. 635 (ADPF 635) being filed in the supreme court by the Brazilian Socialist Party in November 2019.

The case is supported by a coalition of *amici curiae* (impartial advisors), which includes the Rio de Janeiro state public defender's office, human rights NGOs, social movements from *favelas* and relatives of the victims of state violence. ADPF 635 has produced a number of important judgments, including a supreme court ruling that restricted police raids to extraordinary situations during the COVID-19 pandemic.

In support of the implementation of ADPF 635, GENI/UFF produces research that evaluates the impacts of police raids. A result worth highlighting came from the correlation tests between official

crime statistics and data on police raids between 2007 and 2019. These revealed a strong positive correlation ($R = 0.79$) between police raids and intentional homicides, and a weak positive correlation between police raids and robbery ($R = 0.41$). These findings, which suggest police raids incite violent conflicts instead of appeasing them,³⁶ offer a serious challenge to assumptions that security operations reduce crime rates and that restricting them would therefore prevent the police from successfully fighting crime.

Authorized power

In the absence of protocols and controls on the use of force by the state, tactical police squads are given discretionary powers to conduct raids in volatile territories. They do not have to consult their superiors or account for the operations they conduct. Wielding state-authorized power, under loose rules and with no oversight, police officers frequently engage in extortion or bribery of criminal groups. Raids are used to reinforce these arrangements. At times, the police may even act to weaken an armed group ahead of an invasion by a rival faction.

Ethnographic research in territories controlled by the Comando Vermelho drug faction show that corrupt police officers demand payments known as *arrego*, arrangements referred to as 'drug business licences'.³⁷ These payments are intended to avoid local drug businesses being raided by police. The cost of *arrego* depends on the ratio of estimated earnings of drug businesses to their vulnerability or capacity for resistance to police raids.³⁸ Drugs and firearms are seized for the purpose of being sold on to other criminal groups instead of being handed over to police authorities.³⁹ These 'spoils of war' include money and property stolen from suspects as well as from people living in *favelas* whose homes are randomly invaded and looted by the police.⁴⁰

When researchers compared the GENI/UFF police raids database with the results of the Mapping of Armed Groups pilot project,⁴¹ they found that although militias control vast areas, fewer police raids were conducted in neighbourhoods under their domain. The majority of police raids were concentrated in areas controlled by drug factions.⁴²

By adopting police raids as an indicator of political-coercive advantage, militias hold an advantage over Comando Vermelho. The militias experience lower levels of enforcement in the territories they control, partly because of the active participation of public officials such as police officers and elected politicians in these groups, as was shown in the final report of Rio de Janeiro's state legislative assembly's investigation, CPI das Militias.⁴³

The push by social movements, human rights organizations, scholars and partner public agencies to develop police oversight mechanisms is largely aimed at preserving lives, but also at removing mechanisms of power from the corrupt and violent groups inside security institutions. Such efforts would most certainly benefit from a policy of drug regulation instead of prohibition. If drug factions are the main target of police raids, then the legalization of cocaine and cannabis would render these raids superfluous and reduce the power of law enforcement officials to extort people. However, there is much more at stake in policies centred on armed confrontation than merely the control of illicit drug markets.



IS THERE A WAR ON DRUGS IN RIO?

The daily armed conflicts between drug traffickers and the police in Rio de Janeiro are frequently portrayed as a localized manifestation of the global war on drugs. But this tends to distort the local context to align more closely with a constructed international debate. Illicit drugs play a pivotal role in the dynamics of local armed conflict in Rio de Janeiro. The sale of drugs serves as a primary economic basis for the expansion of drug factions, which are more frequently subject to police repression than militias, while also offering greater resistance during police raids.

The ostensible eradication of the sale and use of drugs is used by the state to justify the mobilization of extensive human and material resources. But in the state of Rio de Janeiro, a major concern of the forces of order is to secure the possession and circulation of wealth in an urban setting characterized by socio-economic inequalities, spatial segregation, racism and control by criminal groups in impoverished areas.⁴⁴

Internationally, social movements and scholars have exposed how the war on drugs is actually a war on people and, specifically, on racial and ethnic minority communities. In Brazil, however, many public authorities will not name illicit drugs as the enemy to be fought. Instead, they are quite open about their objective to achieve a form of social control through heavy-handed police action and mass incarceration.

Undisguised social cleansing

Brazilian penal populism sees public officials resorting to statements about 'killing vagabonds', 'putting an end to banditry', and 'aiming at the head and firing', as promised by Wilson Witzel during his successful 2018 campaign to become state governor.⁴⁵

These expressions are all variations on the infamous catchphrase, 'A good bandit is a dead bandit', first used as a campaign slogan in state elections in 1990 by José Guilherme Godinho Sivuca Ferreira. A former member of a police death squad, Sivuca was twice elected to the Rio de Janeiro state legislature.

In Brazil, especially in Rio de Janeiro, the 'war' fought by law enforcement is overtly against categories of people regarded as dangerous, and not against substances. The expression 'drug dealer', so



War on drugs? A soldier frisks a young man. The 'war' fought by law enforcement is often seen as targeting categories of people regarded as potential threats, and not substances. © Carl De Souza/AFP via Getty Images

common in the media, is often replaced by police with 'vagabonds'.⁴⁶ Even current state governor Cláudio Castro, who was re-elected in 2022, publicly referred to the 27 victims killed by police in the Jacarezinho massacre in May 2021 as vagabonds.

The principal objective of law enforcement policies does not seem to be the prevention of the sale and consumption of illicit psychoactive substances, with middle- and upper-class users and traffickers mostly escaping persecution.⁴⁷ Instead, Rio's authorities are explicit about their objective being the control of 'dangerous citizens' through lethal police action and mass incarceration. Although a little over half (51.7%) of Rio's population is black, a 2020 study revealed that 86% of people killed by the police are black.⁴⁸

Language as a weapon of incrimination

In analyzing the social accumulation of violence in Rio de Janeiro, sociologist Michel Misse says the term 'vagabond' has, over time, become socially constructed as an accusation. This is linked to the concept of criminal subjection, a process in which incrimination is detached from specific criminal actions and is instead attached to individuals.⁴⁹ The data on unarmed victims killed by police after being 'mistaken' for criminals shows the victims are mostly black, aligning the issue of criminal subjection with the debates about race and structural racism.⁵⁰

Around 60% of the Brazilian workforce is still excluded from formal work, drifting between open unemployment and informal work, which has been described as 'work without form'.⁵¹ A portion of this workforce resort to sideways mobility, the 'intermittent movement from badly paid jobs to property offences, from forms of unemployment benefit to small street-dealing in drugs and other commodities, and so on'.⁵²

In Brazil, workers develop strategies and rely on reciprocal relationships for survival, following the 'logic of *viração*', the logic of make-do.⁵³ Telles and Hirata offer a vivid description of the urban worker in São Paulo, one who navigates the uncertain borders between the illegal, the informal and the illicit. This contemporary figure resorts to the sporadic use of both legal and illegal opportunities that coexist and overlap with the formal labour market, blurring the distinctions between precarious work, resources for survival and illegal activities.⁵⁴

In Rio de Janeiro, drug trafficking has become an attractive opportunity for poor children and adolescents, especially school dropouts who need to earn money but do not have any qualifications and have not reached the minimum age required for formal work.⁵⁵ Although the earnings of lower-level traffickers, such as footsoldiers, sales clerks and scouts, are often below the minimum wage, there is prestige and self-worth attached to belonging to the local drug firm and, by extension, to the drug faction.⁵⁶ Referred to as 'consideration' in the *favelas*, it also gives them access to firearms to carry out armed robberies outside of the faction's territories, a practice regarded as being far more dangerous than selling drugs but one that is much more lucrative.

There is a complex interdependence and tension between drug factions and armed robberies.⁵⁷ Because stick-ups in more affluent neighbourhoods as well as stolen vehicles being found in *favelas* are known to inevitably lead to police raids, drug business owners often try but fail to restrict robberies.

Property over lives

Of the four Rio de Janeiro State Strategic Crime Indicators,⁵⁸ three are categorized as violent property crime, which is defined as robbery (article 157) in Brazil's penal code. Non-violent property crime is defined as theft (article 155). The control of violent property crime is clearly a priority for authorities. The observed increase in the number of people killed by police, concomitant with increased police raids intended to recover stolen property, has led to the assertion that Rio de Janeiro's law enforcement agencies prioritize the protection of property over lives.⁵⁹

In 2018, Brazil was in the grips of a financial crisis and the state of Rio de Janeiro was bankrupt. This coincided with Rio recording its highest incidence of robberies, with 231 606 robberies reported to police, according to ISP-RJ, the institute of public safety.⁶⁰ This prompted federal intervention and the deployment of armed forces. The following year, 1 814 people were killed by state agents, the largest number ever recorded in Rio de Janeiro.

According to data drawn from the GENI/UFF database on police raids, the percentage of police raids allegedly motivated by the 'repression of drug traffic' averaged 26.1% between 2007 and 2022. It has been decreasing over time: it was 11.5% in 2021 and 12.4% in 2022.⁶¹



LAWFARE: THE NEW DRUG LAW AND MASS INCARCERATION

Conclusions drawn from the above data are that the war waged by the police in Rio de Janeiro is mostly not a war on drugs and the regulation of cannabis and cocaine would reduce but not stop police from conducting deadly operations in *favelas*. Nonetheless, drug prohibition acts as an efficient mechanism to control young men, mostly impoverished and black, who are regarded by many as potential threats to personal and property security. Charges related to dealing drugs are the easiest way for the police to arrest whomever they want – and keep them off the streets for up to 11 years.

Introduced in 2006, Brazil's Anti-Drug Act (Law 11.343/06), referred to as the New Drug Law, eliminates prison sentences for drug use, but carries increased penalties for dealing drugs. It also does not specify any objective criteria for distinguishing between users and traffickers. So, depending on a police officer's account and the accused's record and/or social background, the alleged possession of a small quantity of illicit drugs may be enough for someone to be convicted of drug trafficking and associating with drug traffickers. Research from 2009 shows that in half of the *flagrante delicto* arrests for dealing where cannabis was seized, the amount ranged between 1 gram and 100 grams. In 35.1% of arrests for cocaine possession classified as trafficking, no more than 10 grams were seized.⁶²

Although the New Drug Law, as it is commonly known, may have contributed to a decrease in drug consumption charges and a concomitant increase in arrests for dealing, in the absence of official criteria to distinguish between the two, law enforcement authorities often base their decisions on personal criteria and prejudices. A Rio de Janeiro civil police deputy has asserted that a middle-class person arrested for possession of illicit drugs is likely to be considered a drug user by the police, while a *favela* resident is most often charged as a dealer, regardless of the quantity of drugs found on them.⁶³ The decriminalization of cannabis possession for personal use by the Brazilian Supreme Court in June 2024 finally established objective criteria for distinguishing between users and dealers, but this applies strictly to the possession of cannabis.

Doubling the sentence

The New Drug Law also criminalizes the act of associating with others for the purpose of drug trafficking (Section 35). This was initially intended to incriminate the members of criminal organizations who do not necessarily deal in drugs directly. In practice, however, the intention appears to have been perverted, so that the crime of association has come to be used as a means to duplicate the penalties for common trafficking situations (Section 33).



Ilha Grande prison. Brazil's New Drug Law, which subjects the accused to longer periods in prison, has contributed to a rise in imprisonment rates. *Photo: Wikipedia*

Rio de Janeiro's public defender's office (Defensoria Pública) analyzed 3 735 sentences handed down to drug traffickers.⁶⁴ It identified that in 42.7% of the cases, the defendants were accused of drug trafficking under Section 33 as well as with association for drug trafficking (Section 35).

In almost half the cases (48.4%), the accused were found guilty of both crimes. In other words, 27.1% of convictions applied both sections 33 and 35. Combining these sections of the act increases the average penalty from 27.45 months for drug trafficking with mitigation (Section 33, paragraph 4) or from 71.09 months without penalty mitigation (Section 33) to an average combined penalty of 119.56 months.

The imposition of association charges should be based on investigation, proving the involvement of the accused in a criminal organization. However, in 82.13% of the cases analyzed, sentences were handed to suspects caught *in flagrante delicto* of drug possession without any prior investigation. In 53.79% of the cases, the only proof mentioned by the judge was the police officer's account.

The report by the public defender's office highlights that the main argument presented by the judiciary for convicting people under both sections, despite the lack of evidence linking the defendant to a criminal organization, is the Rio de Janeiro Justice Court Precedent No. 70.⁶⁵ This states that 'restricting the oral evidence to statements by police authorities and their agents does not disallow the conviction'. The judges base their decisions on the assertion that the testimony of a police officer is credible. Consequently, if a police officer claims that the location of an accused's arrest is controlled by a drug faction and that no independent dealer could feasibly sell drugs there, their statement is considered sufficient proof of the accused's involvement in a criminal organization.

The possibility of using the New Drug Law to subject the accused to longer periods in prison is one of the factors that has contributed to the consistent rise in imprisonment rates in Brazil. In 2006, there were 401 236 people in prison in Brazil, which is a rate of 214.8 per 100 000.⁶⁶ By 2022, the number of people in prison had almost doubled, reaching 837 443 – or 392.58 per 100 000.⁶⁷

The rise and rise of drug-related charges

There has also been an increase observed in the share of people convicted for, or accused of, charges related to the drug laws. The 2022 Infopen report, a national survey on prisons released by the national department of prisons (Departamento Penitenciário Nacional, or DEPEN), shows that the percentage of people jailed for drug-related charges increased from 20.89% of the prison population in 2008 to 28.71% in 2022. The number of people in prison for property crimes dropped from 53.26% in 2008 to 40.73% in 2022.⁶⁸ The main explanation for this shift is the longer penalties applied under the New Drug Law.

Legal proceedings during which a judge evaluates the legality of a person's arrest without deciding on the culpability or innocence of the defendant – known as custody hearings – were introduced in Brazil in 2015. A 2018 report from the public defender's office found that 69.5% of the defendants who went through custody hearings between September 2016 and September 2017 faced charges relating to property crimes (37.85% robbery and 24.7% theft). Just 18.88% of the accused faced drug-related charges.⁶⁹ A report published in 2021 showed a very different scenario: 36.07% of defendants had been accused of property crimes, while 32.12% faced drug-related charges.⁷⁰

Although Brazil's 'war on crime' cannot be simplified as a 'war on drugs', the data presented above demonstrates the implications of the criminalization of drug-related offences on the country's mass incarceration programme. If cannabis and cocaine were to be legalized and regulated, the rates of imprisonment would probably witness a significant reduction in the short and medium term.

It is more difficult to imagine the longer-term impacts on prison numbers, as Brazilian magistrates have historically proven to be quite creative when it comes to interpreting the law, circumventing constitutional guarantees to justify the arbitrary confinement of 'undesirable' populations.

Tallying the costs

Challenging the 'war on drugs' narrative as an explanation for the high rates of urban violence in Rio should not undermine the positive prospects of putting an end to the irrationality of criminalizing specific substances and mobilizing state apparatus to maintain prohibition. In 2017, the states of Rio de Janeiro and São Paulo together spent US\$1.7 billion (author's conversion) to sustain drug prohibition.⁷¹ That's a tremendous amount of money in a country where there are still homeless children and where hunger has not yet been eradicated. Regulation would free up some of the money spent on prohibition, which could be redirected towards health services and education, for example. Indeed, Rio's precarious public services would greatly benefit from this investment.

Despite being extremely costly, drug prohibition is also not very effective in achieving its intended objective, which is presumably to combat the trafficking of illicit drugs to reduce their consumption.

According to national surveys on drug use in Brazil, the reported consumption of illicit drugs continues to increase despite the enormous direct expenditure spent on sustaining prohibition. In the study conducted in 2015, 10.2% of people between the ages of 12 and 65 said they had used cannabis in their lifetime, with 3.6% reporting having used it in the 12 months before the survey.⁷² In 2012, 7.7% said they had used cannabis in their lifetime and 2.5% reported having used it in 12 months preceding the survey.⁷³ As for cocaine, the percentage for lifetime use in 2015 was 4.1% of the population, with 1.1% reporting that they had used it in the past 12 months. In 2012, the lifetime consumption of cocaine was 2.9%. It was 0.9% in 2011.

It can also be argued that the consumption of cannabis and cocaine is not a significant public health problem in Brazil, or at least not enough of a problem to justify such high spending, a mass incarceration programme as well as the thousands of lives lost to drug-related violence.

When compared with 2018 data from the European Monitoring Centre for Drug and Drugs Addiction, cannabis use in Brazil is much lower than in countries such as the UK (29.4% use in lifetime), Germany (41.4%) and France (27.2%). And despite the fact that it borders cocaine-producing countries, Brazil's cocaine consumption is similar to that of the UK (4%). It is 1.2% in Germany and 2.4% in France.⁷⁴



CONCLUSION: TOWARDS REGULATION

Although the regulation of the drug industry will not miraculously solve the complex challenges of drug-related violence in Rio de Janeiro, the data cited in this report supports the idea that it should be considered as a rational measure towards more effective drug control in a country where people kill each other over the sale of drugs. Although regulation would not eradicate the drug market, it would prevent organized crime groups and corrupt police squads from setting the rules governing it.

The wisest strategy for dismantling the armed groups that control large portions of Rio de Janeiro would be to challenge their economic basis by exerting more efficient regulation of the legal and illegal markets from which they extract income, including, although not exclusively, illicit drug markets. Drug regulation policies would probably inflict considerable income losses, not only for drug factions and militias, but also for the groups of corrupt police officers that extort them.

As explained above, the proliferation and continued existence of drug markets in Rio are largely dependent on spurious negotiations with law enforcement agencies through the transaction of 'political commodities'. Since police raids are often used to enforce the payment of *arrego* (bribes), the expected loss of income from regulation would probably discourage this type of behaviour. There would perhaps even be a reduction in the number of lives lost at the hands of police.

One should, however, remain somewhat sceptical about drug regulation putting an end to the high rates of police lethality, for the following reasons:

- The illicit drug market would not disappear completely, as a considerable proportion of drug users would probably be excluded from legally purchasing drugs.
- Drug factions are already armed and control half of Rio's territories that fall under the domain of armed groups. It would be naive to suppose they would not mimic the racketeering practices of militias. They have already done so in many areas, engaging in extortion and the over-taxation of local businesses and services.
- Most importantly, the high rates of police lethality are not only due to attempts to fight the drug trade, but are mostly associated with social control. For as long as social inequalities, racism and spatial segregation remain and the 'marginalized masses' keep growing, actors promoting securitized policies will keep instigating and gaining power from the feelings of fear and insecurity.



A production facility that received authorization from the Brazilian Health Regulatory Agency to produce cannabis. © Victor Moriyama/Bloomberg via Getty Images

The prospect of regulation does, however, hold the promise of a reduction in incarceration rates. As shown above, almost 30% of prisoners in Brazil are currently in custody on drug-related charges, and around 36% of arrests in Rio de Janeiro are carried out under the New Drug Law.

Regulation would mean that arrests would immediately drop by almost a third, and those charged with or already convicted on drug-related charges could apply for amnesty based on existing legal precedents. These applications would probably be denied, but a new front for collective action would be open. It seems very likely that new legal mechanisms would be invented to put marginalized people, mostly impoverished young black people, in prison without appropriate investigation, keeping them behind bars for as long as possible.

Nevertheless, given its interaction with all of the abovementioned social phenomena, drug regulation would likely be a victory for human rights and anti-racism movements.

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