

DRUG POLICY REFORM AND
ORGANIZED CRIME SERIES



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COCA LEAF AND COCAINE LEGALIZATION IN PERU

EXPLORING THE POTENTIAL IMPACTS

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INTRODUCTION

The coca leaf in Peru has been central to a number of historical transformations. Chronicles highlight its significance in pre-Hispanic times, emphasizing its magical and religious roots. This heritage, deeply woven into local traditions, is used in Peru and Bolivia to advocate for coca consumption.

Historians identify a significant shift during the colonial mining era, when the coca leaf, while still maintaining its medicinal and religious functions, was also used as a bargaining tool with indigenous people to mitigate conflict. Recent reviews explore the economic optimism generated in the Andean countries by its export in the form of cocaine derivatives to the main European and American capitals during the 19th and part of the 20th century. However, these hopes were later dashed by the radical turn that popular perceptions of coca took in the later 20th century, once the plant became associated with addictions, criminal networks and security threats.

The laws that have dealt with the coca leaf (and its derivatives) as a problem have tended to presume that it is a consumer good. This tension arose between the Church, which viewed the coca leaf as an impediment to evangelization, and the colonizing enterprise, which deemed it essential for mineral extraction in the Andes, due to its role in enhancing worker productivity. Challenges in the production, export and industrialization of coca derivatives have also arisen from the view that coca leaf is a consumer product. Naturally, this becomes more evident once coca leaf and cocaine are categorized as controlled substances, whose distribution and sale is either limited or outright proscribed by law.

In recent years, the treatment of coca leaf and coca derivatives by the international drugs control regime has seen the emergence of critical thinking about prohibitionist policies. This is based on the evident ineffectiveness of the 'war on drugs' and its lethal consequences in producer countries. Such reappraisals also focus on the prospective revenue that might be derived from commercializing these plant-based products. Even though coca leaf and cocaine would still be consumer goods under this agenda, it is hoped that the reformist approach will tackle the lethal consequences of their ineffective control.

This paper folds into the reformist effort. It discusses the way in which coca leaf and cocaine have been approached in Peru in terms of policy frameworks, as well as the possible scenarios derived from their hypothetical legalization in the country, set within a wider context that assumes global legalization. This latter discussion involves an important semantic revision when it comes

to specifying the legal recognition of certain conducts, as well as the possible criminal penalties they may attract. For this reason, a central purpose of the paper is to establish a clear difference between prohibition, decriminalization, legalization and regulation. This is seen as a contribution to a debate in which such terms tend to be used interchangeably; a habit that risks losing the nuances of their respective implications.

The results of the study are organized into two blocks. The first evaluates how the coca leaf and its derivatives have been addressed by Peruvian law, in light of transformations within the global anti-narcotics agenda. The second section begins with the terminological clarifications necessary to project the possible implications of coca leaf legalization on four variables:

- control policies,
- organized crime,
- the local economy of producers and
- the consumption of coca derivatives.

The report also seeks to provide a reading that balances positive scenarios with a consideration of the likely outcomes that will flow from legalization in countries beset by weak institutions.



Freshly harvested coca leaves being air-dried in preparation for cocaine production or for traditional uses such as tea and chewing. © Cheryl Ramalho



CONTEXT

As a member of the international drug control system, Peru has established a set of measures focused on regulating the production, trade and consumption of coca leaf and its cocaine derivatives. Due to their criminal nature, the basis of these regulatory frameworks places special emphasis on the harm caused by these activities. It should be noted that these regulations present certain differences in the treatment of coca leaf and cocaine derivatives. While on the one hand, the Peruvian state asserts that it protects and defends the traditional cultural uses of the coca leaf,¹ on the other hand it also combats the illicit cultivation, production and trade of cocaine for non-pharmaceutical and non-medicinal purposes. Such activities are classified as illicit drug trafficking.

The Peruvian regulatory framework on drugs has among its points of origin Decree 4428 of 1921, which aimed to regulate the import and export of substances such as opium, morphine, cocaine and heroin, for the benefit of the pharmaceutical industry. This law established the required documentation and the institutions in charge of its implementation. Over time, this institutional framework has undergone a series of notable transformations, beginning with Decree 22095 of 1978, known as the 'Law for the Repression of Illicit Drug Trafficking'. The 1978 decree was a reflection of international concerns about illicit drug trafficking.

Decree 22095 outlined the axes of anti-drug policy that – to a large extent – are still observed to this day. It also created the first public entity responsible for this work, the Multisectoral Committee for Drug Control, chaired by the Ministry of the Interior. The objectives of this body were to define policy guidelines to prevent drug misuse, establish limits for the licit production and trade of drugs for medical purposes, and to apply administrative control measures and criminal sanctions to those who circumvent these limits.

In a bid to address the limitations of the committee, Legislative Decree 753 of 1991 was enacted, with the aim of prioritizing the economic and social aspects that influenced the cocaine production problem. Within this framework, the Institute for Alternative Development was created, but it faced serious difficulties due to the country's internal armed conflict.² This included terrorist violence in areas where coca leaf was cultivated. As a result, Decree 26626 created the Operational Command of the Internal Front in July 1992, which was mandated to control and counter drug cultivation and supply. It was an entity with a profoundly repressive anti-narcotics focus.

In 1996, Legislative Decree 824 established the Commission for the Fight against Drug Consumption – CONTRADROGAS. This organization's primary function was to lead drug consumption prevention measures, including by promoting the substitution of illicit crops, raising awareness about the dangers

of illicit drug trafficking, and by obtaining international resources to implement its agenda. This decree also highlighted the damage caused by illicit drug trafficking to the cultural, political and economic foundations of society.

The explanatory memorandum of Decree 824 refers to the harmful effects of drug trafficking and the various manifestations such harms assume. Although the references are generic, it is important to note that they are in line with concerns expressed in international instruments. However, it should be noted that these regulations focus on productive and commercial activities that constitute illicit drug trafficking, without explicitly addressing consumption as a public health problem.

The last relevant drug policy reform in Peru was enacted in 2015 through Legislative Decree 1241, which strengthens the fight against illicit drug trafficking. Unlike previous regulations, this decree does not explicitly mention drug policy guidelines, but focuses on detailing the powers and responsibilities of the public entities involved in this policy area. Among its main contributions, it proposes a transition that would see CONTRADROGAS hand over its responsibilities to the National Commission for Development and Life without Drugs (DEVIDA). This new entity is in charge of proposing strategies and policies, as well as coordinating institutions involved in anti-narcotics efforts in relation to the enforcement of limitations on illicit crops.

At the same time, responsibilities were revised for the Peruvian National Police, the Ministry of the Interior and the National Coca Enterprise (ENACO),³ a public enterprise in charge of the monopolistic control of the legal coca leaf trade and transformation since 1949. It purchases coca leaf from legally registered growers and transforms it into various products including coca-leaf flour, cookies, candies, liquor and other derivatives. These products are then sold to the general public.

Legislative Decree 1241 also integrates and strengthens aspects related to the fight against and investigation of illicit drug trafficking. It covers the seizure of goods associated with this illicit activity, as well as the reinforcement of existing punishments for the diversion of chemical inputs used in drug production. It is focused on tackling the association of illicit drug trafficking with other criminal offences that threaten public security.

Policy change milestones and key players

The preceding section traces the history of Peru's drug policy framework, highlighting its focus on prohibition and control. In this regard, different regulations and institutions have focused on controlling the coca leaf and cocaine derivatives, on the grounds that the behaviour associated with these products generates various forms of harm.

An important aspect of this trajectory is the main anti-drug policy instruments that the Peruvian state has approved. Since 1994, the Peruvian state has organized the efforts of various public entities (and oriented the efforts of private entities) around three policy objectives: (i) rural development in areas where the coca leaf is present, (ii) control of the supply of coca leaf and cocaine derivatives, and (iii) prevention of the consumption of these drugs, among others (particularly marijuana).

During much of the 20th and part of the 19th century, the Peruvian state repeatedly updated the regulation of drugs, but the overall approach remained almost unchanged, steered very largely by prohibition. Furthermore, these approaches supported objectives that mobilized the efforts and resources of an extensive and complex network of public and private entities. Even in recent years, the bulk of the Peruvian state's efforts have focused on repressive control of coca leaf and cocaine use.

However, during this journey, Peru has made some shifts in the way coca leaf and cocaine derivatives are dealt with. Along with Bolivia, Peru has voiced reservations to the international drug control system regarding the categorization of the coca leaf as a controlled substance. For both countries, the basis for expressing such reservations lies in the historical tradition of coca leaf consumption among local populations; a tradition that was behind the creation of ENACO.

While a prohibitionist approach has always prevailed within the international policy system, epitomized by the 1961 and 1988 International Drug Control Conventions, the international community has recognized the importance of addressing structural drivers of drug production and consumption. As the punitive approach has generated criticism and resistance from coca-producing communities, global policy has partly shifted, searching for more comprehensive and sustainable solutions. The 2016 UN Global Drug Strategy, for example, adopted a more balanced and health-focused approach, highlighting the importance of addressing the underlying causes of coca cultivation, such as poverty and lack of economic opportunity.

The Peruvian state has been involved in these debates, emphasizing the need to ameliorate issues ranging from social exclusion to the lack of infrastructure and basic services in coca-producing areas. The country has promoted the Integral and Sustainable Alternative Development strategy since the 1990s, which seeks to include local communities in decision-making. This is one of the first relevant turns that Peru's anti-drug policy has taken in a similar direction to changes in the international drug control agenda.

A second milestone in this journey concerns the eradication of coca leaf crops. Until the middle of former president Ollanta Humala's government (2011–2016), the eradication of coca crops was driven by the United States government. However, Humala's government decided that eradication should be entirely financed by resources from the Peruvian public treasury. The argument advanced was that doing so would allow greater control by national authorities. The eradicated area of illicit crops jumped to 30 000 hectares per year, in contrast to the historical average of 10 000 hectares. Subsequent policy has been to eradicate 25 000 hectares of illicit coca crops annually.

Finally, during the brief government of Pedro Castillo (2021–2022), seven bills were presented in Congress, with differing aims (deregulation, legalization, and complete purchase of legal and illegal coca leaf by ENACO). These bills, tabled by members of the governing party, have sought to reform the entire national coca leaf control and commercialization system, although none of them have been approved to date. Under Castillo, the first anti-drug policy with a national scope was approved, focusing in large part on the control and eradication of coca leaf in the country.



A coca grower takes part in a protest against Peru's punitive approach towards drug production and consumption, Lima, 2004. © Jaime Razuri/AFP via Getty Images



POTENTIAL IMPACTS OF COCAINE LEGALIZATION IN PERU

Definitions

Prohibition. Prohibition is understood within the framework of criminal law and, therefore, is associated with a set of behaviours. According to the Principle of Legality:

- i. 'No one shall be punished for an act not foreseen as a crime [...]',⁴ so it follows that 'what is not prohibited [in the penal code] is permitted'.⁵
- ii. In Peru, all actions that favour illicit drug trafficking are prohibited and punishable.⁶
- iii. There is a set of practices that are outside the scope of prohibition (e.g. drug use).
- iv. However, the criminal laws do not prohibit an object generally, but rather only specific activities relating to that object: selling, producing, giving away, buying, among others.

Based on a detailed description of the coca leaf and cocaine supply chain in Peru,⁷ Figure 1 plots the legal status of the different phases that make up the process of coca leaf and cocaine supply, production and trade in Peru.

Decriminalization and legalization. There is a conceptual and operational difference between non-prohibition and legalization. Legalization is not equivalent to decriminalization, but decriminalization is a pre-requisite for legalization.

Legalization and regulation. There are broad perspectives on the concept of legalization, but they revolve around the idea of 'the incorporation of a practice or custom into a norm which is thereafter conferred with the status of a law'.⁸ What is legal must be regulated and any conduct relating to it too must be regulated – with the term 'regulation' being understood as 'to adjust, regulate, or put something in order'.⁹

Coca leaf cultivation and cocaine production are legal. In Peru, the coca leaf cultivation and the cocaine paste and cocaine production cycle has been legally recognized since 1978 under the Transitory Provision 1 of Decree 22095. In 2021, there were 22 094 hectares under legal cultivation and 34 464 coca leaf producers listed in the National Register of Producers.¹⁰ Of the 132 346 metric tonnes of coca leaf produced annually in Peru in 2019,¹¹ ENACO legally acquired 1 404 metric tonnes.¹² It also produces various products from coca leaf (such as infusions, liquor, powdered coca leaf and micro-pulverized coca leaf¹³), including cocaine base for pharmaceutical purposes.¹⁴ These substances are produced in ENACO's laboratories and their production lies within the country's legal framework (Law 27634 of 2002).

Legal, informal and illegal operations in Peru's cocaine supply chain

SUPPLY OF RAW MATERIALS		PRODUCTION		WHOLESALE TRADE		RETAIL TRADE	
Coca leaf supply	Acquiring farmland	Production of cocaine paste	Building ponds to produce cocaine paste	Domestic wholesale trade in cocaine derivatives	Transporting cocaine paste to labs for refinement	Retail sale of cocaine derivatives	Acquiring cocaine derivatives for retail sale
	Renting fields for cultivation		Renting ponds to produce cocaine paste		Transporting derivatives by land vehicle		Adulterating cocaine derivatives for retail sale
	Encroachment on cultivated land		Macerating dried coca leaves		Transporting derivatives by land on foot		Packaging cocaine derivatives for retail sale
	Preparing coca seedlings		Decanting macerated coca leaf		Transporting derivatives by inland waterways		Distributing cocaine derivatives for retail sale
	Preparing the field for cultivation		Procuring cylinders to produce cocaine paste		Packaging derivatives for transport to export zones		Selling cocaine derivatives on public streets
	Procurement of agrochemicals		Chopping fresh coca leaves		Transporting derivatives by land in vehicles to intermediate points		Selling in entertainment venues
	Application of agrochemicals		Mashing chopped coca leaves into cylinders		Transporting derivatives by land by foot to intermediate points		Selling in prisons
	Sowing coca leaf seeds	Cocaine hydrochloride production	Building a laboratory to refine cocaine		Transporting derivatives by inland waterway to intermediate points		
	Installing coca leaf seedlings		Renting a laboratory to refine cocaine		Stockpiling cocaine derivatives at intermediate points		
	Coca care in the field		Oxidizing and washing the cocaine paste		Transporting cocaine derivatives to export zones		
	Collecting coca leaf seeds		Refining cocaine by traditional method		Stockpiling cocaine derivatives in export zones		
	Selling fresh coca leaf		Refining cocaine with shortcuts		Packaging of cocaine derivatives for export, according to mode of transport		
	Transporting fresh coca leaf				Exporting with overland shipments		
	Drying coca leaf in the sun				Exporting with passengers by land		
	Drying coca leaves in ovens		Exporting with inland waterway shipments				
Selling dried coca leaf		Exporting with passengers by inland waterway					
Packaging dried coca leaf for transport		Exporting with containerized cargoes by sea					
Transporting coca leaf		Exporting with airfreight shipments					
Supply of chemical inputs	Procurement of chemical inputs from legal sources		Exporting with passengers by air				
	Diverting controlled chemical inputs		Exporting with clandestine flights				
	Conditioning of chemical inputs diverted for transport		Conditioning clandestine airstrips				
	Transporting non-controlled chemical inputs to production areas						
	Transporting diverted controlled inputs to production areas						
	Acquiring diverted controlled chemical inputs						
	Transporting chemical inputs to ponds and laboratories						
	Storing chemical inputs in production areas						
	Reusing chemical inputs						
	Manufacturing chemical inputs						

- Legal
- Informal or ambiguously regulated
- Illegal

NOTE: Data is as of 2015–2016 (outside ENACO's regulatory arc).

SOURCE: Adapted from the Peruvian Penal Code.

The margin between legal and illegal coca leaf and cocaine production and trade in Peru. The production of coca leaf, the trade of coca leaf and the production chain required for the manufacture of cocaine are legal and regulated. What is illegal is to carry out these activities outside the regulatory framework; a framework that can only be enforced by ENACO.¹⁵

Parameters and assumptions. To analyze the potential impacts of cocaine legalization in Peru, we assume a global legalization scenario that specifically excludes other controlled narcotic substances. This approach covers behaviours associated with coca leaf and cocaine derivatives, including supply, production, trade and consumption. Legalization of coca leaf and cocaine derivatives would ultimately reduce retail prices. The reasoning behind this is that the costs and risks associated with illicit production and untaxed sales would be lower compared to complete prohibition, where penalties include significant prison time. Illicit sales would also undercut the prices of heavily taxed legal retail sales. Therefore, a prospective examination of the legalization of coca leaf and cocaine production and trade should focus on regulating behaviour rather than simply removing prohibition of a specific commodity.

Possible impacts of legalization on drug control policies

One potential impact of legalization would be to modify the state's control over the chain of production and trade of coca leaf and cocaine derivatives. We consider four lines of impact:

- **Some repressive functions would be eliminated.** Legalization resolves prohibition and therefore the repressive functions of the Special Project for the Control and Reduction of Coca Cultivation in the Upper Huallaga (CORAH), the Anti-Drugs Directorate of the Peruvian National Police (DIRANDRO) and other repressive components of drug policy under the auspices of DEVIDA would require reconsideration. The legalization of cocaine and coca leaf crops would alter the fundamental objectives of the repressive bodies and would lead to a reformulation of key institutions. These organizations would be transformed into the operational forces of an entity that would assume ultimate control of the new legal commodity (as well as policing any efforts to divert it into contraband). The US\$79 million budget that was used for repression in 2023 could be reallocated to support the new institutional framework for the control of coca leaf and cocaine derivatives (which also has a repressive component, but with a regulatory focus).
- **Control functions would be transferred to control and regulation functions.** It is worth considering how control bodies of different institutions could be brought together for the common purpose of regulating the different stages in the chain of production and trade of coca leaf and cocaine derivatives. These control bodies include entities such as the Tax Administration, Labour Inspection, Transport Superintendence and the offices of the Ministry of Health that regulate food and pharmaceuticals. Budget allocation, the creation of protocols and normative, procedural and regulatory instruments – as well as local training and assistance from international organizations – would allow for the development of a specialized bureaucratic body.
- **Existing functions on the control and regulation of legal coca leaf and cocaine derivatives would be strengthened.** Given that ENACO already possesses a monopoly on the legal supply of coca leaf and industrialized cocaine derivatives, it is logical to think of it as the likely governing and coordinating body of all agencies that might control coca leaf and cocaine derivatives. Under ENACO's leading coordinating role, policy and instruments could be developed to establish and enforce regulations governing the production and trade of coca leaf and cocaine derivatives.

- The Peruvian state has limited capacity to control legal products.** Given the state's current limited logistical and operational capacity in most coca-growing areas and in areas where coca derivatives are produced, legalization would prove a challenging process to manage on the ground. Likewise, considering the state's more general limited capacity to regulate the sales of various existing legal products (minerals, timber, coca leaf linked to ENACO, fishing, etc), one cannot assume that the results for cocaine, were it to be legalized, would be any better. Instead, one would see a large market for non-formal coca leaf and cocaine production and trade. In other words, a shift from illegal to non-formal.

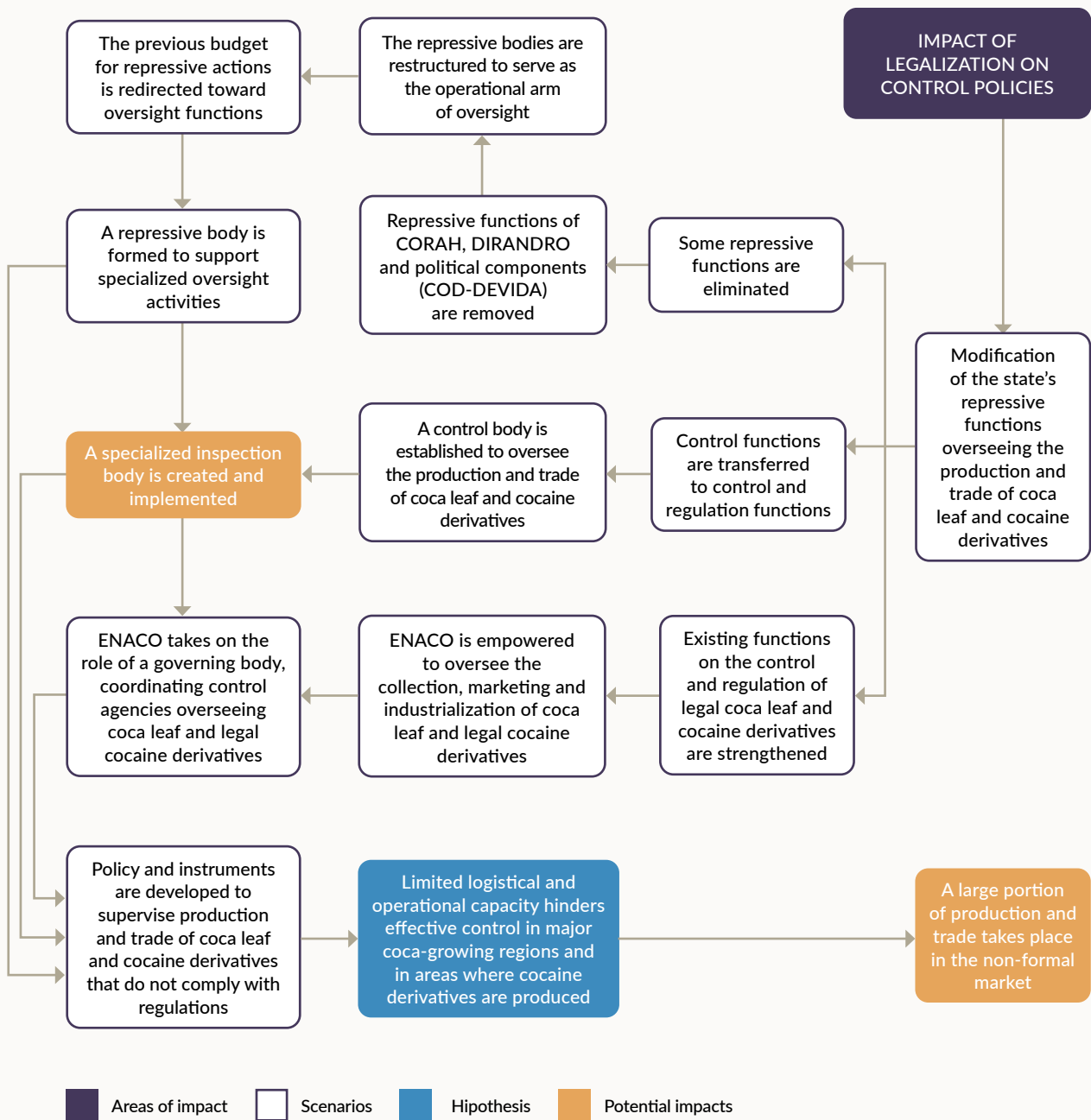


FIGURE 1 Potential impacts of legalization on drug control policy.

Possible impacts on organized crime in Peru

We consider three potential key impacts of the legalization of cocaine production and trade on organized crime in Peru:

- **Organized crime would develop business initiatives to exploit certain aspects of the legal cocaine production and trade chain.** Legalization would formalize some production and trade activities, and organized crime would develop mechanisms and business forms that allow it to be tangentially incorporated into the formal economy (largely in order to generate fronts for the insertion of non-legal production and laundering of the proceeds of this trade). The legal businesses developed by organized crime would supply a modest portion of the cocaine legally produced in Peru to international buyers. Under this logic, organized crime would develop contacts with legal stockpilers of coca leaf and chemical inputs, as well as with private security companies to protect the production and trade of legal cocaine.
- **Organized crime would retain a key role in the production and trade of cocaine outside the legal sphere.** Legalization would impose certain costs, which would be borne by legitimate businesses, and provide organized crime networks with an incentive to skirt these costs by increasing their dominance of cocaine production and trade dynamics outside the legal sphere. Costs would arise from procedures such as sanitary certifications, legal supply chains for the purchase and sale of inputs and raw materials, formal and skilled employment and labour rights, among other factors. To avoid or limit oversight and control, organized crime would expand and specialize its corruption mechanisms, while also infiltrating regulatory bodies, albeit for different purposes than under prohibition. The unregulated cocaine trade would quickly therefore develop a competitive advantage against the regulated cocaine trade. In addition, it would continue to export illegal cocaine to international buyers (due to the lower cost).
- **Organized crime would develop mechanisms to participate in other illicit economies linked to production areas or to the cocaine production and trade chain.** Through the formal private security forces that organized crime would create to protect the various stages in the production and trade of legal (and non-legal) cocaine, mechanisms for extorting money from legal actors would be enhanced.

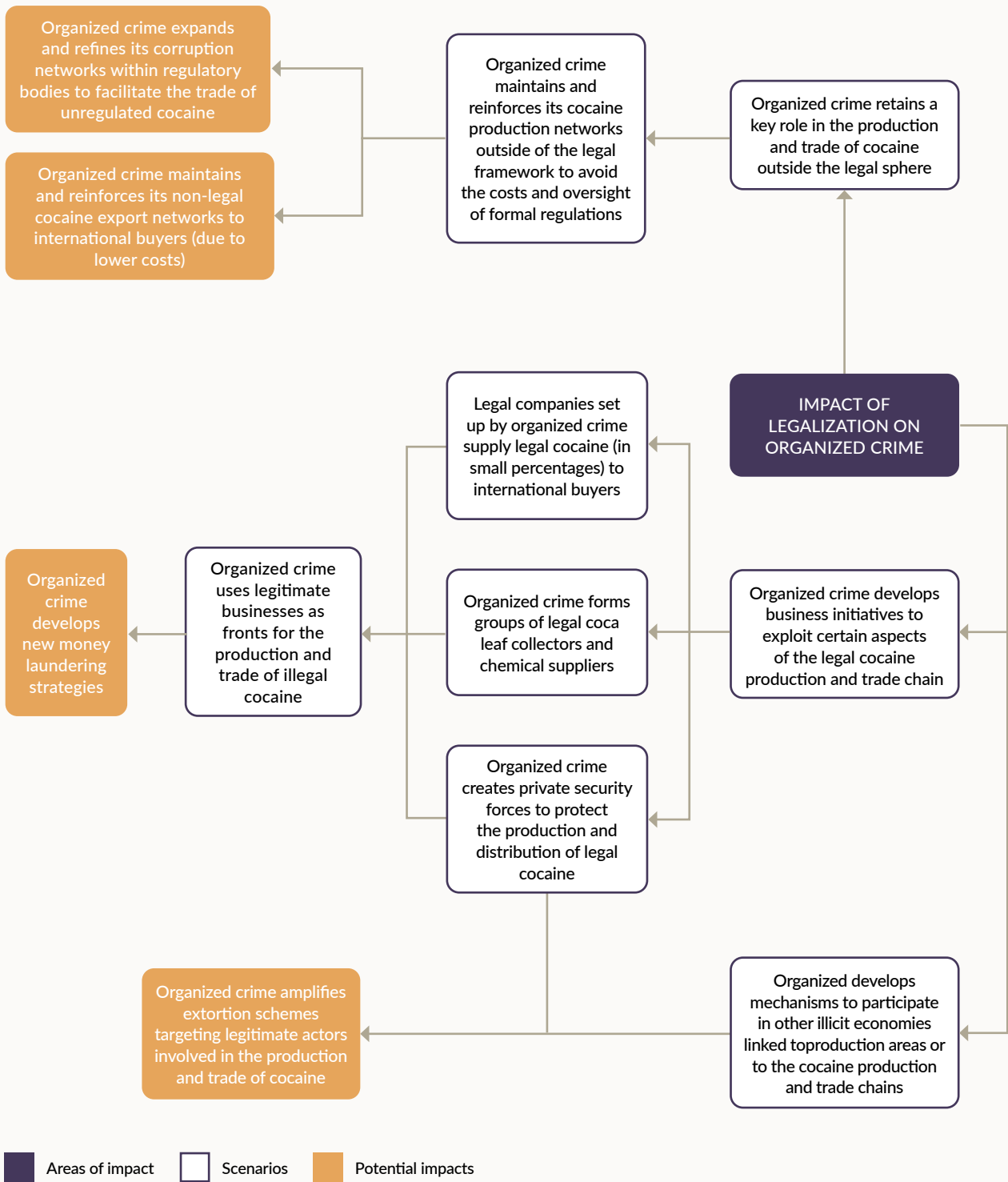


FIGURE 2 Potential impacts of legalization on organized crime in Peru.

Impact on the local economy of coca leaf producers

The coca growing economy sustains the production of the coca leaf and cocaine value chain. Legalization would potentially result in three key impacts for growers:

- **Local producers would have limited organizational and operational capacity to comply with regulatory requirements.** This would result in a continuation and possible increase in non-legal production of coca leaf and cocaine derivatives. Consequently, practices that generate water and land contamination (due to the use of agrochemicals for cultivation, and chemical inputs for cocaine paste and cocaine production), deforestation (for non-legal crops) and other crimes associated with non-legal production would be maintained or increased. It is also possible that unskilled labour and associated risk situations (labour exploitation, forced labour, human trafficking, etc) would increase. While administrative sanctions, fines and prosecution could be imposed upon producers who do not comply with regulations, official corruption will also increase as side-deals are reached between coca producers and law enforcement officials. Informal 'tribute payments' might be collected from those who do not comply with the regulations (as occurs in Peru's extractive sectors, notably timber and gold).
- **The emergence of an oligopoly.** According to the dynamics of production and transformation of coca leaf into cocaine paste and cocaine hydrochloride, a national legal business cartel economy would be generated for the various stages of production and trade. This would generate a legal oligopoly, stretching from cultivation to retail sales. The oligopoly would in turn favour the cartelization of pharmaceutical cocaine derivatives by large companies. Only these companies would have the financial, technical and operational capacity needed to comply with the regulations generated by legalization.
- **Comprehensive and sustainable alternative development activities in coca-growing areas would disappear or be reformulated.** With the legalization of coca leaf and cocaine, existing alternative development programmes would lose their purpose and would require modification, partly to focus on sustainability rather than creating alternative livelihoods. This modification could also be associated with the development of banking, financial instruments and state development mechanisms aimed at local producers (as well as private initiatives). Through such instruments, mechanisms for the legal production and trade of coca leaf and cocaine by local producers' associations could be developed. Non-governmental organizations could embed similar practices with successful local entrepreneurship in the management of legal coca leaf and cocaine production and trade. However, in view of the state's limited capacity in coca growing areas and the prevalence of corruption, producers ignoring sustainability requirements would likely be largely unimpeded in selling their products to the national cartel. The national cartel would in turn control various stages in the legal production and commercialization of coca leaf and cocaine (especially in terms of access to international buyers, as is the case with other commodities).

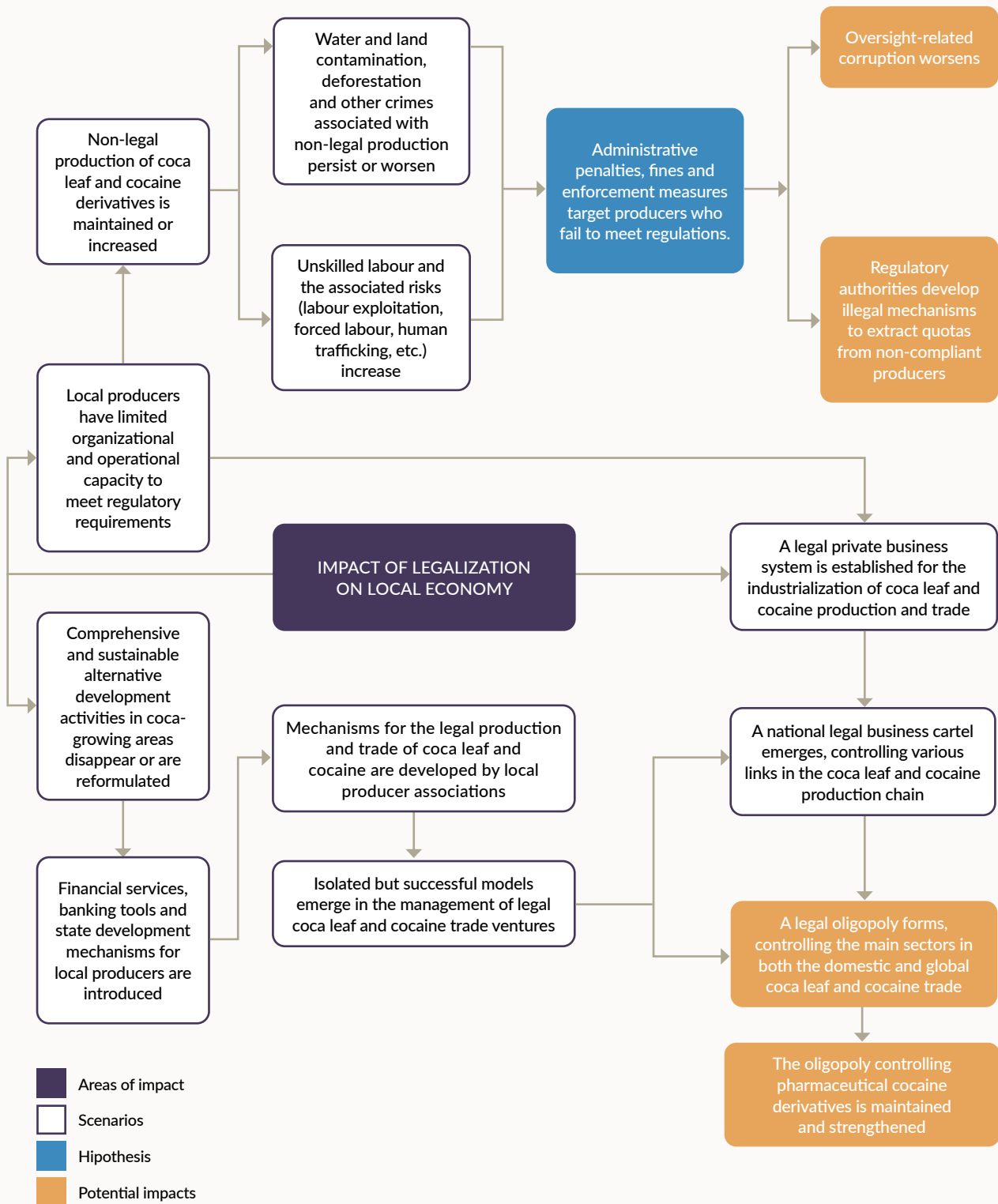


FIGURE 3 Possible impacts of legalization on the local economy of coca leaf farmers.

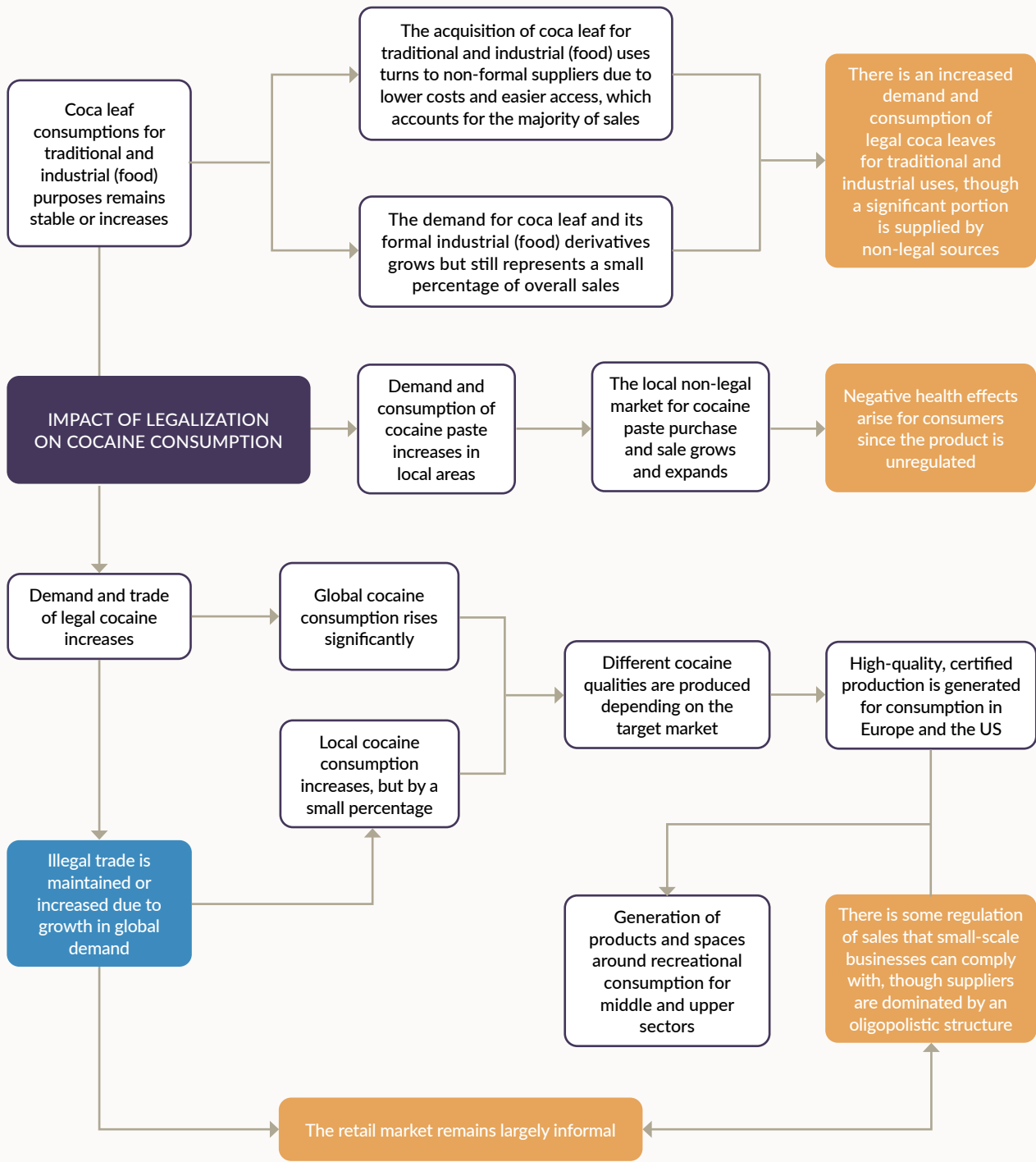
Impact on the local consumption of cocaine derivatives

The possible impact of legalization on three areas of consumption of products in the coca leaf and cocaine derivatives value chain are as follows:

- **Consumption of coca leaf for traditional and industrial (food) purposes would remain the same or increase slightly.**¹⁶ While there could be an increase in demand for coca leaf and industrial (food) derivatives from formal origins, this would be minor compared to the increased volume of coca leaf coming from non-formal suppliers (due to its lower cost and ease of access). This indicates that formal companies would end up covertly buying informally produced coca leaf.
- **The demand and consumption of cocaine paste in local venues would increase.** A non-legal local market for the sale and purchase of cocaine paste would grow and develop, which would have a negative impact on the health of consumers.
- **Demand for and trade in legal cocaine would increase.** This would also maintain or increase the non-legal trade (due to growing global demand). Under the scenario of a substantial increase in global cocaine consumption and a modest increase in local cocaine consumption, different qualities of cocaine would be produced depending on consumers' locations. Officially certified high quality production would serve European and US consumers. However, although this would generate products and spaces around recreational consumption for the middle and upper sectors, and regulations that some small-scale companies could comply with, sales would be mostly informal, as has happened with other commodities.



Coca leaves for sale in a street market in Piura, Peru. © Christian Ender/Getty Images



Areas of impact
 Scenarios
 Hypothesis
 Potential impacts

FIGURE 4 Possible impacts of legalization on the consumption of cocaine derivatives.



LEGALIZATION OF OTHER COMMODITIES

It is also worth tentatively considering the examples of commodities (and trading thereof) that have, in some jurisdictions, progressed from being proscribed to legalized, and how far the consequences of such policy shifts might be mirrored under the scenario of a legalization of coca leaf and cocaine. Legalization does not imply the elimination of the informal – the examples of gold and timber testify to this – but rather the continuity and adaptation of a large non-legal component. In turn, the generation of spaces conducive to the trade of legal goods and services encourages the concentration of capital within large companies and multinational elites. This has been observed in other sectors,¹⁷ marking a trend of what could happen with the hypothetical legalization of cocaine.

Legalization would likely lead to the establishment of an enforcement body that is tasked with policing the legal aspects of the trade. However, based on the experience of regulations on (for example) gold or timber, there would be a high likelihood of a market developing outside the law (as a continuation of the existing one). While legalization is expected to regulate the market, a large margin of the economy will remain non-formal.

The legal economy of gold and timber in Latin America did not lead to the elimination of organized crime, but rather to its adaptation and relocation in the chain of extraction, production and trade. There is little to indicate that a different outcome would stem from a hypothetical legalization of cocaine. It is therefore reasonable to think that the existence of a large unregulated market will encourage the presence of criminal organizations that will find new ways of asserting their dominance over actors in the formal supply chain.

The operational and administrative limitations of coca leaf producers would leave them unable to comply with the regulatory parameters that any legalization implies. Beyond the isolated success stories showcased as model businesses, most production would remain informal.

The only enterprises capable of complying with specific regulations would therefore be large pharmaceutical or food companies, with competitive advantages in terms of resources, technology, investment and lobbying capacity. These corporations could co-opt the legal economy, promoting the generation of a national oligopoly that would trade with multinational companies.

In the scenario of increasing demand, the costs of formality and limited control capacities would create incentives for the non-formal cocaine trade. The costs and price premiums of legal cocaine could be covered by more affluent users. For those consumers with lower budgets, or even affluent users looking to buy at a discount to a heavily taxed legal market, the illicit market will remain attractive. Existing international cocaine trafficking networks will expand in size, offering better prices for consumers, as the elevated risks associated with production and trade under prohibition recede. Thus, despite legalization, global demand would largely be satisfied through illegal production and trade.

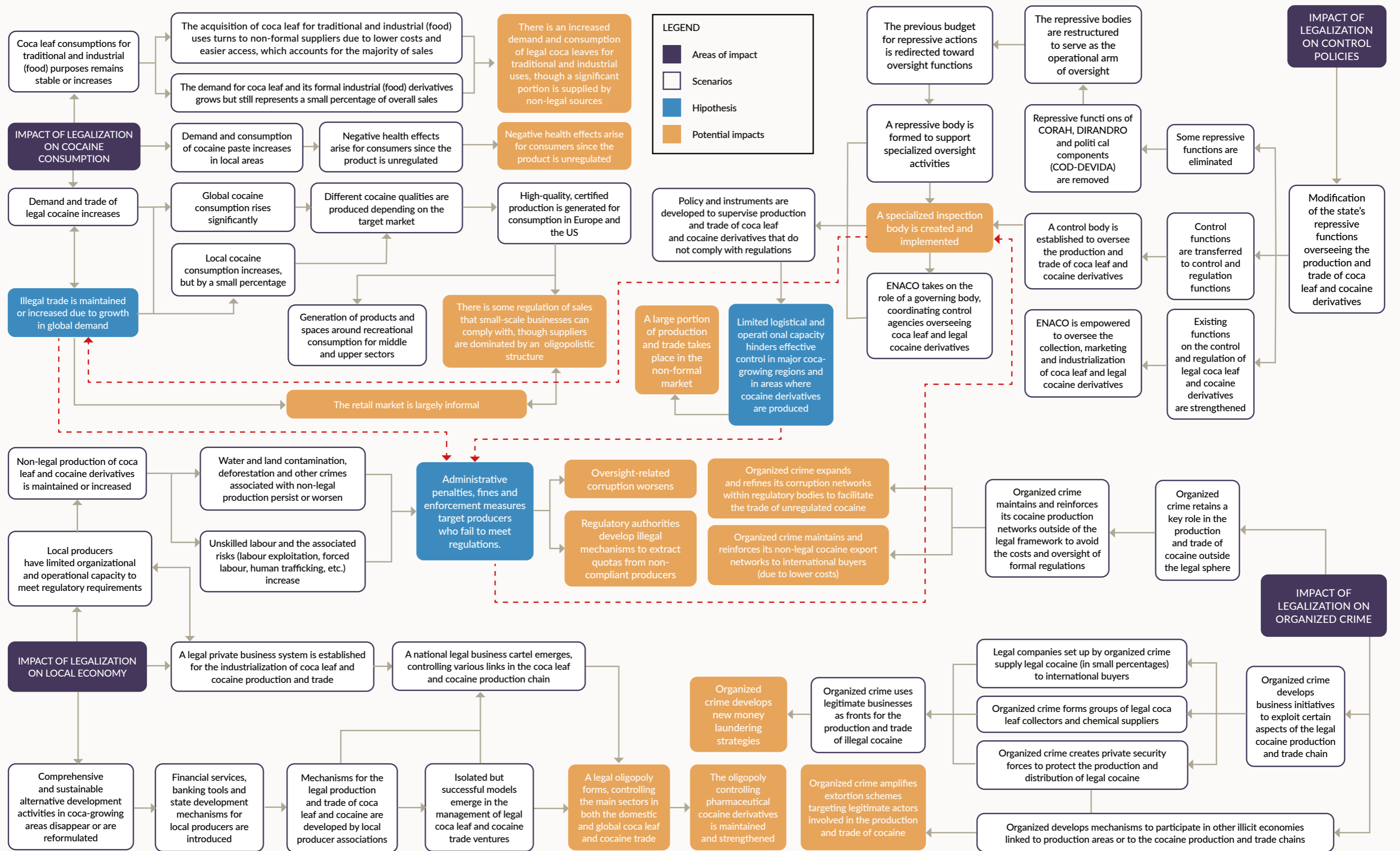


FIGURE 5 Summary of the impacts of hypothetical cocaine legalization.



CONCLUSION

An initial observation is key to the central exercise of this study: there are significant differences in what prohibition, decriminalization, legalization and regulation entail. As terms that appear recurrently in the debate on drug policy, it is striking that – in many cases – they are used lightly and even incorrectly. As in any debate and communication exercise, it is important to define the terms of reference precisely, especially when they have consequences for the lives of those involved in certain behaviours.

Legalization is not simply freeing conduct from criminal consequences and proscriptions. As this study argues, legalization implies an express and precise recognition of the normative framework, which necessarily results in a set of regulations. In this sense, legalization implies a positive recognition of a conduct, together with an inventory of details that guarantee that it is carried out within the framework of what is foreseen by the corresponding normative framework. It is not simply removing punishment of a conduct. Basically, legalization is a much more complex and nuanced process than decriminalization.

Another central finding of this study is the tendency to view coca leaf and cocaine derivatives as consumer goods. Such a view does not deny the traditional roots of the coca leaf and the ancestral values it represents. Even the recognition and promotion of the industrialization of the coca leaf and its derivatives implies assigning these elements this consumerist character. Industrialization, or to use another word, commercialization, means recognizing that the coca leaf is part of a supply chain aimed at transforming a raw material into a good that can circulate – legally, informally or illegally – to those who demand it.

The legalization and regulation of a consumer good is not alien to contemporary capitalist dynamics. Even timber and gold, associated with illegal markets and economies in Andean and Amazonian countries, are objects of regulated legal conduct. Nonetheless, they create violent situations analogous to the coca leaf and cocaine derivatives in many of these countries, due to excessive extraction and the inability of states to fully control this exploitation.

In this regard, while it is necessary to consider scenarios for a hypothetical legalization of coca leaf and coca derivatives (particularly in light of the poor results of prohibition), it is important to return to the discussion of legal supply chains. It is important to look in detail at the costs involved in their control, as well as the operational, technical and infrastructural capacities involved in managing their regulation. This exercise must take into consideration factors such as economic interests, de facto power structures and existing institutional precariousness.

The paths followed by similar consumer goods can offer clues about the possible scenarios that could evolve from a hypothetical legalization of coca leaf and cocaine derivatives. It is necessary to assess the extent to which the actors involved in these legal chains have managed to comply with regulations, as well as the capacity of states to oversee the health, labour, administrative, tax and customs responsibilities inherent in these economic activities. It is important also to look at how this transformation from illegal to legal has behaved in the case of medical cannabis (fully legalized since 2023), what types of actors have been able to comply with the regulations and what opportunities have arisen for the state to confront those who have failed to comply.

There is a need to contextualize this debate. The idea of a change of direction that, based on regulatory changes, would transform the lives of those involved is, to say the least, vague. Not only is there an existing institutional framework behind the current drugs control regime, but also the new institutional framework needed to manage regulation has not yet taken shape.

Under no circumstances, however, should these final considerations be understood as a manifesto for a continuation of the failing status quo. An invitation to look in detail and contrast the implications of these hypothetical scenarios does not automatically invalidate the urgency for change. Rather, the scenarios mentioned in this report should be understood in terms of the restraint, rationality and responsibility needed to think through sustainable alternative scenarios to an ineffective drugs control policy.



NOTES

- 1 See National Directorial Resolution 1707/2005, *Se declara patrimonio cultural inmaterial de la nación a los usos culturales tradicionales de la hoja de coca*, <https://derechodelacultura.org/archivos/9395>.
- 2 Peru was beset by a civil conflict between 1980 and 2000 that pitted the Shining Path, a Marxist insurgent group, against the Peruvian state.
- 3 See Legislative Decree 1241/2005 on strengthening the fight against illicit drug trafficking, <https://www.gob.pe/institucion/corahperu/normas-legales/851665-1241>.
- 4 See Peruvian Penal Code, 1991, Article 2, https://oig.cepal.org/sites/default/files/1991_codigopenal_peru.pdf.
- 5 Lily Ku Yanasupo, The importance of the concept of permission in the normative systems and the framework of constitutional states, *IUS ET VERITAS*, 60, (2020), 160–187, <https://revistas.pucp.edu.pe/index.php/iusetveritas/article/view/22720>.
- 6 See Peruvian Penal Code, 1991, Article 296, https://oig.cepal.org/sites/default/files/1991_codigopenal_peru.pdf.
- 7 Nicolás Zevallos Trigos, *El Mercado de la cocaína: fronteras (i)legales de la producción y comercio en el Perú*, Universidad Nacional de La Plata, Facultad de Ciencias Jurídicas y Sociales, 2022, <https://libros.unlp.edu.ar/index.php/unlp/catalog/book/2007>.
- 8 See Royal Spanish Academy, <https://dle.rae.es/regular?m=form>.
- 9 Ibid.
- 10 DEVIDA, *Análisis de compra-venta de hoja de coca en el Perú*, 2021, <https://www.gob.pe/institucion/devida/informes-publicaciones/2049305-analisis-de-compra-y-venta-de-hoja-de-coca-en-el-peru>.
- 11 DEVIDA, *La cadena de suministro de la hoja de coca para fines industriales en el Perú*, 2021, <https://www.gob.pe/institucion/devida/informes-publicaciones/2062359-la-cadena-de-suministro-de-la-hoja-de-coca-para-fines-industriales-en-el-peru>.
- 12 Ibid.
- 13 See <https://www.gob.pe/institucion/enaco/informes-publicaciones>.
- 14 DEVIDA, *Análisis de compra-venta de hoja de coca en el Perú*, 2021, <https://www.gob.pe/institucion/devida/informes-publicaciones/2049305-analisis-de-compra-y-venta-de-hoja-de-coca-en-el-peru>.
- 15 See Peruvian Penal Code, 1991, Article 296, https://oig.cepal.org/sites/default/files/1991_codigopenal_peru.pdf.
- 16 For traditional and premium products derived from coca leaf, such as coca leaf infusion, coca liqueur and coca flour, see <http://comercial.enaco.com.pe/>.
- 17 Francisco Durand, *Grupos económicos y tendencias a la privatización, extranjerización y concentración*, in Adolfo Figueroa et al, *Seminario: El Perú de los últimos 50 años*, Lima: Universidad de Ciencias y Humanidades, Fondo Editorial, 2014, p. 61–111, <https://biblioteca.clacso.edu.ar/Peru/idi-uch/20210512064739/Seminario-el-Peru-de-los-ultimos-50.pdf>; Francisco Durand, *La captura del Estado en los tiempos de la globalización*, in Narda Henríquez et al, *Desigualdades en un mundo globalizado*, Lima: Pontificia Universidad Católica del Perú, CISEPA, 2015, p. 49–74, https://www.researchgate.net/profile/Gerardo-Damonte/publication/311819940_Desigualdades_en_un_mundo_globalizado/links/585bf16908ae6eb8719c460c/Desigualdades-en-un-mundo-globalizado.pdf; Francisco Durand, *Poder político y gobierno minero*, in Darío Restrepo et al, *Gobernanza local, pueblos indígenas e industrias extractivas: transformaciones y continuidades en América Latina*, Lima: Sociéte suisse des améicanistes, 2016, p. 141–154, <https://www.flacsoandes.edu.ec/sites/default/files/%25f/agora/files/fa-agora-2015-fontaine.pdf>.



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