

# Reflections on Drug Policy and its Impact on Human Development: Innovative Approaches

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HIV, HEALTH AND DEVELOPMENT





**Reflections on  
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and its Impact  
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Development:**  
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*Empowered lives. Resilient nations.*



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## Acronyms and abbreviations

ACLU	American Civil Liberties Union
CARICOM	Caribbean Community and Common Market
CND	Commission on Narcotic Drugs
ECOSOC	Economic and Social Council
EU	European Union
GDP	Gross domestic product
HIV	Human Immunodeficiency Virus
INCB	International Narcotics Control Board
LBHM	Lembaga Bantuan Hukum Masyarakat
LEAD	Law Enforcement Assisted Diversion
OHCHR	Office for the High Commissioner for Human Rights
OSF	Open Society Foundations
OST	Opioid substitution therapy
PACS	Programme to Support Community Coca Leaf Control
PAPS	Sectoral Budgetary Support Programme for Integrated Development with Coca
SDG	Sustainable Development Goal
UN	United Nations
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNDP	United Nations Development Programme
UNGA	United Nations General Assembly
UNGASS	United Nations General Assembly Special Session
UNODC	United Nations Office on Drugs and Crime
WHO	World Health Organization

Current approaches to drug policy have not proven to be effective in reducing the supply and demand of illicit drugs. Without effective drug control strategies that counter or prevent drug-related harms, poverty, inequality and exclusion will persist and we will not deliver on the 2030 Agenda for Sustainable Development.

Drug policy cuts across core areas of sustainable development: health and well-being, gender equality, peace, justice and strong institutions amongst others. Drug control and human development policies share a common objective of reducing drug-related harm. Yet there has been growing attention to the harmful consequences of many drug control laws, policies and enforcement practices on the poor and marginalized. In 2015, as a contribution to the debates leading up to the 2016 United Nations General Assembly Special Session on Drugs, UNDP released a discussion paper describing the development dimensions of drug policy.

Many countries are now exploring different policy solutions that address the harmful consequences of drug policy approaches on their citizens. These include alternatives to arrest and incarceration for minor drug offences, scaling up harm reduction programmes, decriminalization of drug users and small farmers and increased access to pain medication. In the context of HIV, we cannot hope to “end AIDS” if we don’t prioritize populations at the greatest risk of contracting HIV, a group that includes people who use drugs. This paper – *Reflections on Drug Policy and its Impact on Human Development: Innovative Approaches* – describes some of these initiatives in an effort to enrich the body of evidence about what works and what does not. These initiatives might help countries better understand how to address drug-related issues in their respective economic, political and social circumstances.

Ultimately rational, rights-based and evidence-informed strategies can contribute to making drug policy more effective, more just and more coherent with the aspirations and goals of the 2030 Agenda for Sustainable Human Development.

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## Introduction

Drug control policies have left an indelible footprint on human development. In many instances, they have fuelled the poverty, marginalization and exclusion of people and communities linked with illicit drug use or illicit drug markets. They have entrenched and exacerbated systemic discrimination against poor and the most marginalized populations and resulted in widespread human rights violations.

Involvement in drugs — whether its cultivation, production, sale or use — has traditionally been treated as a criminal problem, with the solution found through law enforcement. In recent years, there has been growing recognition that this vision is narrow and counterproductive. There has likewise been growing recognition that the connection between drugs and crime is not so straightforward and that drug control efforts focused on criminal law responses have had harmful ‘unintended’ consequences.

UN Secretary-General Ban Ki-moon has also identified illicit drugs and crime as a “severe impediment” to achieving sustainable development, as well as to securing human rights, justice, security and equality for all (UN, 2012). There has also been increased attention to the multidimensional relationship between drug control and development outcomes and to devastating consequences of drug control efforts on public health, security and development. As various UN organizations have observed, these efforts’ harmful collateral consequences include: creating a criminal black market;



Drying coca by the roadside, Chapare, Bolivia. *Photo: Andean Information Network.*

fuelling corruption, violence and instability; threatening public health and safety; generating large-scale human rights abuses, including abusive and inhumane punishments; and discrimination and marginalization of poor and the most marginalized populations, including people who use drugs, indigenous peoples, women and youth (UNDP, 2015; UNODC, 2008; OHCHR, 2014; WHO, 2011; UN Women, 2014; UNAIDS, 2014).

UNODC has recognized the “vicious cycle” of drug production, drug trafficking, poverty and instability, as well as the harmful consequences of drug control policies on the health and human rights of people who use drugs and those who live in communities where drugs are cultivated.

The Global Commission on HIV and the Law, convened in 2010 by UNDP on behalf of UNAIDS, and the Global Commission on Drug Policy, convened in 2011, have likewise raised concerns about the health, human rights and development consequences of drug control. They have called for the consideration of viable alternatives to the current punitive and prohibitionist approaches (Global Commission on HIV and the Law, 2012; Global Commission on Drug Policy, 2014).

In June 2015, UNDP published a discussion paper on addressing the development dimensions of drug policy that described the disproportionate negative impacts of drug enforcement policies on poor and the most marginalized populations, including poor farmers who cultivate illicit drug crops and those who live in the communities through which they are trafficked and in which they are sold. It focused in particular on the impact of drug control policy on key areas of UNDP’s work: poverty and sustainable livelihoods; public health; the formal economy; governance, conflict and the rule of law; human rights; gender; the environment; and indigenous peoples (UNDP, 2015).

Many countries have experimented with policy solutions to address the harmful consequences of drug control efforts – many of which depart from punitive approaches to drug control. This paper describes some of these initiatives in an effort to enrich the body of evidence about what works and what does not. These initiatives might help countries better understand how to address drug-related issues in their respective economic, political and social circumstances.

The paper builds on UNDP’s 2015 paper on addressing the development dimensions of drug policy. It briefly introduces the current international drug control systems and gaps therein in the context of the Sustainable Development Goals (SDGs), followed by some initiatives undertaken by various governments and civil society organizations from different countries to address the harmful consequences of drug control efforts. The paper goes on to discuss case studies of some of the policy solutions with which Member States and civil society are experimenting to address the harmful consequences of drug control policy. The case studies include:

- alternative development in Thailand;
- the protection of indigenous peoples’ rights and promotion of sustainable development in Bolivia;
- a legal aid programme in Indonesia providing support to people who use drugs;
- alternatives to arrest and incarceration for low-level drug offences in the United States;
- the decriminalization of drugs for personal and religious use in Jamaica; and
- access to pain medication in Uganda.

## The International Drug Control System

The international drug control system, comprising three drug control treaties,<sup>1</sup> recognizes the “health and welfare of mankind” as its overarching concern. It establishes a “dual drug control obligation: to ensure adequate availability of narcotic drugs, including opiates, for medical and scientific purposes, while at the same time preventing illicit production of, trafficking in and use of such drugs” (INCB, 1996).

The 1961 Single Convention sets out the general obligation to: “Take such legislative and administrative measures as may be necessary: ... (c) subject to the provisions of this convention, to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs” (Art. 4(c)). Recreational drug use and traditional, cultural or religious uses of certain plants fall outside this definition. States parties are, therefore, required by international law to prohibit these behaviours and activities.

The 1961 Single Convention requires that States abolish a range of traditional practices, including traditional uses of coca leaf, quasi-medical use of opium and traditional or religious uses of cannabis by set deadlines that have long since passed (Art. 49(2)(d)–(g)). The 1988 Convention against Illicit Traffic in Narcotic Drugs requires States to criminalize the cultivation of these plants for cultural purposes (Art. 3(1)). It also requires States to criminalize the possession of controlled substances for personal consumption other than for medical or scientific purposes (ibid.) A safeguard clause permits States to opt out of the requirement to criminalize personal possession if this would be unconstitutional or otherwise contrary to their legal systems (UNODC, 1998). This safeguard clause does not apply to cultivation, however.

The 1988 Convention provides that States must take “appropriate measures” to prevent illicit cultivation and to eradicate illicit crops, respecting traditions, human rights and environmental standards (Art. 14(2)). This safeguard provision is undermined, however, by the requirement that any measures must not be less stringent than those set out in the 1961 Single Convention. This presents a serious challenge to ensuring sustainable livelihoods for rural communities dependent on illicit crops. It can make it difficult to ensure proper sequencing to allow licit alternatives to be put in place before any eradication is carried out.

## The 2030 Agenda for Sustainable Development

In September 2015, world leaders adopted by consensus the 2030 Agenda for Sustainable Development, including 17 SDGs. They made commitments to end poverty and hunger, ensure health and well-being, fight inequality and injustice, and combat climate change and other environmental harms. The development and implementation of the 2030 Sustainable Development Agenda has been taking place alongside preparations for a UN General Assembly Special Session on Drugs (UNGASS 2016) taking place in New York in April 2016.

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<sup>1</sup> Single Convention on Narcotic Drugs of 1961 as amended by the 1972 protocol, 30 March 1961, 520 UNTS 7515; Convention on Psychotropic Substances of 1971, 1019 UNTS 14956; United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, 1582 UNTS 27627.



A shipment of oral morphine pills arrived at Dakar's Dantec Hospital in July 2013, after a shortage.

*Photo: Angela Chung/Human Rights Watch.*

SDG 3 on health includes the only mention of drugs in the SDGs, target 3.5: "Strengthen prevention and treatment of substance abuse, including narcotic drug abuse and harmful use of alcohol." Yet illicit drug markets and efforts to address them cut across many aspects of the SDGs, including poverty eradication (SDG 1); food security and sustainable agriculture (SDG 2); health and well-being (SDG 3); gender equality (SDG 5); decent work and economic growth (SDG 8); reduced inequalities in and between countries (SDG 10); making cities and settlements safe (SDG 11); climate change (SDG 13); biodiversity and land degradation (SDG 15); and peaceful and inclusive societies, access to justice, and inclusive and accountable institutions (SDG 16). This underlines the importance of ensuring that development is a central, not marginal, concern of drug policy at the international, regional and national levels.

The SDGs represent a powerful commitment by UN Member States to ensure a life with dignity for all and to leave no one behind. They provide a context within which to review drug laws and policies to ensure that drug control efforts address the root causes of engagement in the drug trade and in turn promote sustainable development.

Drug control policy should not be a negative factor hampering the attainment of national and global aspirations to advance human development and the 2030 Agenda for Sustainable Development more broadly. Instead, it should play a positive role in advancing these goals and objectives. The 2030 Agenda for Sustainable Development provides an opportunity to establish different measures of success for drug policy, with a clear articulation of metrics related to the impact of drug policies on peace, development and human rights.

### Rural Development

Efforts to provide alternative livelihoods to people who produce coca, opium poppy and marijuana range from 'alternative development' programmes as a drug control strategy with a localized focus on crop substitution and niche intervention in areas of cultivation to a more integrated, holistic strategy that mainstreams counter-narcotics objectives into national development strategies and programmes with the aim of addressing the root causes that drive illicit crop cultivation.

*"It's crucial to create more flexibility for the countries to create their own solutions, based on their local context. Today the international community controls how drugs are criminalized. They should allow for countries to develop diverse strategies to protect their people. We need a broader menu of options that doesn't depend on penal law."*

Organization of American States, 'Scenarios for the drug problem in the Americas 2013–2025' (2013)

Many small-scale farmers in drug-producing countries grow illicit drug crops out of poverty and the absence of viable licit alternatives. Coca, opium poppy and cannabis are non-perishable, high-value commodities that can be grown in marginal terrain, in poor soil, with limited or no irrigation, and can provide income for those who are land-, food- and cash-poor (Mansfield, 2006). Addressing the root causes that sustain the cultivation of illicit crops is critical to achieving SDG 1 on poverty eradication, SDG 2 on ending hunger and SDG 8 on sustained economic growth. This can be done through long-term investments in sustainable livelihood strategies, strengthening access to ownership and local control over

land, developing markets and infrastructure for crops or products to replace drug crops and ensuring the meaningful involvement of farmers in development strategies. Thailand and Bolivia present different ways to meet these objectives.

### *Thailand's alternative development projects*

Thailand's alternative development projects (the Royal Highlands Project and the Doi Tung Development Project, initiated by King Bhumibol Adulaydej and the late Princess Srinagarindra) have been highlighted by UNODC as well as in policy and academic literature as the leading example of successful alternative development. These projects received technical and financial support from UN and bilateral donors, and together are credited with reducing the area under poppy cultivation by almost 99 percent between 1965 and 2013 and for generating alternative, non-opium livelihoods (UNODC, 2015).

The success of these projects has been attributed to: the leadership of the royal family (in particular, the King); the provision of economic support and alternative support in exchange for an agreed voluntary crop eradication schedule; the deployment of law enforcement only once non-opium livelihoods were in place; and the recognition of the role played by opium in indigenous medical practice and ritual, with authorities distinguishing between small amounts cultivated for personal use and commercial cultivation (UNODC, 2015). As UNODC and others have noted, an economic boom generating an average annual growth in gross domestic product (GDP) of 6 percent per year between 1965 and 2013 also played a role in the Thai projects' success.

Alternative development programmes have been criticized by development experts for their limited success in reducing illicit crop cultivation and achieving the broader aims of sustainable development. They have benefited farmers who are easy to reach, not dependent on illicit crops for livelihoods and well positioned to transition to alternative incomes because of resource advantages, such as land ownership (Buxton, 2015; van Dun et al., 2014). Focusing on relatively privileged landowning farmers connected to the legal economy further marginalizes the most insecure and vulnerable, such as sharecroppers and landless farmers, by generating and reinforcing existing inequalities (ibid.). In many crop-cultivating areas — for example, Afghanistan, Myanmar and Peru — they further inscribe gender equality because women are barred as a matter of law or practice from holding title to land (GIZ, 2014).

### ***Protecting indigenous rights and promoting sustainable development: The story of Bolivia***

Bolivia is the world's third largest producer of coca, the plant from which cocaine, as well as the secret ingredient in Coca-Cola, is derived. Coca leaves have been an essential part of Andean economic life and culture for thousands of years.

*"We are not drug addicts when we consume the coca leaf. The coca leaf is not cocaine. We have to get rid of this misconception. . . . This is a millennia-old tradition in Bolivia, and we would hope that you will understand that coca leaf producers are not drug dealers."*

**Evo Morales, President of the Plurinational State of Bolivia, Commission on Narcotic Drugs, 12 March 2012**

In its natural form, coca is a mild stimulant that suppresses hunger, thirst, pain and fatigue, aids in digestion, provides vitamins and minerals lacking in local staples and has medicinal uses, including treating altitude sickness (Farthing and Kohl, 2014). Coca is an essential part of indigenous rituals and social interactions. Indigenous people have been chewing coca leaf for centuries, and millions of people in the Andean region of South America chew coca and drink coca tea daily.

In 2009, Bolivia enacted a new Constitution that gives the coca leaf legal protection, declaring that it is part of its cultural heritage and its biodiversity and a factor of social cohesion. The new Constitution also asserts that coca in its natural state is not a narcotic, distinguishing it from cocaine (Art. 384). Bolivia then argued that the obligation to abolish the traditional practice of chewing coca violated the rights of indigenous peoples. The UN Permanent Forum on Indigenous Issues welcomed this approach and urged Member States to support Bolivia's initiative (ECOSOC, 2010).

After unsuccessfully proposing to amend the 1961 Single Convention on Narcotic Drugs (ECOSOC, 2009), Bolivia withdrew from the Convention in 2012 (UNSG, 2011). In 2013, Bolivia re-acceded to the treaty with a reservation protecting the right to permit traditional coca leaf chewing, the consumption and use of coca leaf for cultural and medicinal purposes and the cultivation, trade and possession of coca to the extent necessary for these uses.<sup>2</sup>

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<sup>2</sup>The reservation reads as follows: "The Plurinational State of Bolivia reserves the right to allow in its territory: traditional coca leaf chewing; the consumption and use of the coca leaf in its natural state for cultural and medicinal purposes, such as its use in infusions; and also the cultivation, trade and possession of the coca leaf to the extent necessary for these licit purposes. At the same time, the Plurinational State of Bolivia will continue to take all necessary measures to control the cultivation of coca in order to prevent its abuse and the illicit production of the narcotic drugs which may be extracted from the leaf"

(See [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=VI-18&chapter=6&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VI-18&chapter=6&lang=en))

Bolivia's withdrawal and re-accession to the 1961 Single Convention is an important example both for development and indigenous rights and sets the stage for its further efforts, described below.

### ***'Coca yes, cocaine no'***

Most coca in Bolivia is grown in two semi-tropical regions: the Yungas, east of Bolivia's capital, La Paz, and in the Chapare. In both areas people cultivate coca as a cash crop, complemented by rice, bananas, citrus fruits and other initiatives. In the 1980s, coca production increased exponentially, in response to growing demand, in particular from the United States, corresponding with profound domestic economic and political crises.

*"It's not only about making money off a crop. In the old-fashioned alternative development approach, we substitute one illicit crop for a licit crop. It's about a more comprehensive approach that includes access to essential services like schools, hospitals, and roads in areas that traditionally have been hard to reach."*

**Antonino De Leo, UNODC Representative in Bolivia, August 2015**

When Evo Morales assumed the presidency in 2006, his government formalized a cooperative coca cultivation programme initiated by the previous administration in 2004. Under the banner of 'coca yes, cocaine no', the programme allows each registered farmer to grow a small plot of coca or cato (equal to 1,600–2,500m<sup>2</sup>) for the legal market. Grounded in principles of 'community coca control', it was conceived as a locally managed means to ensure subsistence income, maintain a high price for the coca leaf and reduce police and military violence.

'Community coca control' encourages farmers and their unions to exercise internal and informal controls to avoid State-applied sanctions. Coca federations' leaders and compliance offices monitor cultivation through routine visits and eliminate excess coca. Farmers must also produce receipts for coca leaf sold. If the government monitoring agencies find surplus coca, they can take away a farmer's cato rights for a year, and permanently for repeat offenders.

In 2008, with funding from the European Union (EU), the EU and the Government of Bolivia designed and implemented the Sectoral Budgetary Support Programme for Integrated Development with Coca (PAPS). The package included the Programme to Support Community Coca Leaf Control (PACS), a participatory coca control strategy headed by growers. EU support to Bolivia has continued to approach coca cultivation as a subsistence issue and a problem of structural inequality, poverty and exclusion.

The key elements of the EU-funded programme include:

- land titling for coca farmers;
- in exchange, coca growers join a biometric register to facilitate identification and monitoring of cultivation, sale and transit of the coca leaf;
- the government's Integrated Development in Coca-Growing Regions Directorate registers and periodically measures each cato of coca by satellite and shares this information with UNODC;
- UNODC shares georeferenced aerial photography and satellite imagery and accompanying analysis, and carries out joint in situ verification missions with Bolivian authorities;

- a sophisticated database, SISCOCA, cross-references coca cultivation, land titling and the biometric register of authorized growers and traces coca leaf transport and sales;
- integrated development projects complement subsistence income generated by the *cato*; and
- community coca control: the empowerment of the community to self-police to restrict coca cultivation to the one *cato* limit. This includes training for union representatives on database use, and community joint action to monitor and restrict coca planting.

This approach has been called a form of harm reduction for the supply side (Farthing and Ledebur, 2015). It prioritizes reducing police and military violence, ensuring a subsistence income for growers by permitting legal cultivation of coca and promoting its industrialization. In turn, it reduces the amount of coca diverted to production as cocaine. This approach also maintains a commitment to aggressive efforts to combat the production of illegal coca paste and cocaine production and trafficking.

Not all Bolivians stand to benefit from the *cato* programme, however, as it was designed to support farmers who grew coca in established coca-growing areas. The poorest, most marginalized Bolivians have no land to title and thus are ineligible for its benefits. Bolivia's community coca control initiative has, nevertheless, provided farm families with a subsistence income and increased food security. It has strengthened governance and citizenship by improving access to information, enhancing legal identity and supporting meaningful citizen participation in government decisions and implementation of the programme. In providing a secure income, it has enabled farmers to take risks with other income-generating activities, including cultivating other crops, fish farming and opening small businesses (ibid.). There is evidence that community control of coca has also helped limit corruption (Bojanic, 2014).

In August 2015, UNODC reported that the area under coca bush cultivation had declined for the fourth straight year. It declined by 11 percent in 2014 and by more than one third (34 percent) between 2010 and 2014 (UNODC, 2015b). Precise collaborative monitoring and ground verification provides reliable crop estimates to implement policy. Violence has plummeted since the 2004 *cato* accord, alongside a reduction in coca production to 2003 levels (ibid.; ERBOL, 2014).

UNODC (2015c) has lauded Bolivia's successful coca control efforts, emphasizing the critical role of Bolivia's commitment to dialogue, coca grower unions' participation, and the policy of respect for human rights in ensuring sustained coca reduction. The Organization of American States (OAS, 2013a) has cited Bolivia's social control programme as an example of "best practices that are not just well known but are also available for implementation and replication" and of "initiatives that enrich dialogue and can inspire each country to understand how it can successfully manage the various challenges posed by drugs within its particular context and economic, political, and social circumstances". The EU has also been a key supporter of Bolivia's coca control efforts, describing them as "...a success; you can see the impact in the effective and sustained reduction of coca production..." (ERBOL, 2014).



Licor de Coca.

Photo: A.I.N

Bolivia's experience with supply-side harm reduction could inspire and inform supply-side interventions and development policies in other countries. As experts have noted, it is most immediately relevant to countries where illegal and legal markets exist or can be developed, such as its neighbour, Peru, and, to a lesser extent, Colombia, though it cannot simply be adapted to other, different contexts. It demonstrates that respecting growers and local organizations and ensuring their meaningful participation in the design and implementation of coca control efforts can contribute to reduce poverty and hunger as well as sustain coca reduction.

### Legal empowerment initiatives

Legal empowerment can reduce poverty and vulnerability, improve security and assist with the peaceful resolution of disputes for poor and marginalized people who use drugs, cultivate illicit drug crops or live in these communities. For criminalized populations, such as people who use drugs, access to competent legal counsel can help secure access to health care, housing and social welfare benefits, prevent unlawful or excessive detention and address police violence or abuse. Strengthening legal literacy and legal aid services can also be instrumental in protecting or establishing land rights; establishing identity and citizenship; and promoting the meaningful involvement of poor farmers who cultivate illicit crops, and poor and marginalized people who live in areas where these crops are grown, in decisions affecting their lives.

Lembaga Bantuan Hukum (LBH) Masyarakat's community legal aid work illustrates how legal empowerment efforts can be critical to meeting SDG 3 on health and SDG 10 on inequalities for poor, marginalized and criminalized persons.

#### *LBH Masyarakat, Community Legal Aid Institute, Jakarta, Indonesia<sup>3</sup>*

LBH Masyarakat (LBHM) is a community legal aid project that provides free legal aid for poor and marginalized people in Jakarta, Indonesia. LBHM has an expansive view of legal aid that goes beyond its use as a tool to obtain justice through conventional means, such as litigation and high-level advocacy. LBHM also views legal aid as an important tool for community empowerment. By providing legal and human rights information and education, LBHM engages poor and marginalized people, including people who use drugs, people living with HIV, people from evicted fishing communities, prisoners and pre-trial detainees, to provide legal advice and advocate for people from their own and other marginalized communities.

LBHM was established in 2007 to address the limits of conventional legal aid and public interest litigation for poor and marginalized people in Indonesia. A number of factors, including the paucity of advocates, the limited scope of legal case outcomes and the corruption of police and judiciary, made it extremely difficult for many people to gain access to justice. Given these challenges, LBHM developed a novel approach to legal aid, focusing on community legal empowerment, which it sees as the first step on a long path towards achieving social justice.

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<sup>3</sup> This summary is based on the following sources: Personal communication with Ricky Gunawan, Director, LBH Masyarakat, 9 December 2015; International Bridges to Justice, 'Using Innovative Models and Youthful Enthusiasm to Spread Legal Empowerment in Jakarta', International Bridges to Justice, Geneva, 2010; Ricky Gunawan presentation: Access to Justice for Drug Users: A Community Legal Empowerment Approach in Indonesia; and Open Society Foundations, 'Bringing Justice to Health: The Impact of Legal Empowerment Projects on Public Health', Open Society Foundations, New York, 2013

Since 2007, LBHM attorneys have trained more than 200 people who use drugs as paralegals to provide “legal first aid” to their peers accused of crimes, in detention or facing police violence or other human rights abuses. Candidates are recruited from the community and receive intensive training on Indonesian law, human rights law and due process. Those who pass an exam on these three subjects are accepted as paralegals; those who fail are encouraged to repeat the course and the exam.

Drug user paralegals’ work is diverse and includes community education and training to educate people who use drugs and the larger community about their legal rights, as well as casework with individual clients, providing them with immediate legal assistance and documenting human rights violations they face. Paralegals accompany clients to court to ensure they receive due process. They visit detention centres to provide legal counselling to detainees and work to reduce the length of pre-trial detention and mitigate other hardships they face — in particular, by visiting them after arrest, interviewing them about relevant circumstances and trying to secure their release. If alerted to abuses against detainees, they may interview witnesses by telephone or otherwise document these abuses. They assist LBHM lawyers by filing complaints and meeting with police or relevant officials, drafting letters and collecting background information to support legal claims. Paralegals also work as community educators, conducting training sessions on Indonesian law at meetings

convened by local AIDS organizations and groups for people who use drugs.

‘Michael’ was arrested on drug charges, despite Indonesian law providing that people who use drugs who are registered in compulsory rehabilitation centres (Institusi Penerima Wajib Lapor — IPWL) cannot be prosecuted for initial instances of drug use. ‘Zack’, an LBHM paralegal, worked with Michael’s family, the clinic and the legal team to ensure Michael’s access to methadone treatment while detained and to support his legal defense. Zack collected documentation from the clinic to prove that Michael was an IPWL patient, which was used as evidence in court; persuaded the clinic doctor to testify on Michael’s behalf in court; and provided advice on legal strategy. The court agreed that, as an IPWL patient, Michael could not be prosecuted. He was subsequently found innocent of drug use charges against him and released from jail.

Paralegals are an important bridge between detainees and their families, sometimes performing functions that the family cannot. They may be the ones who inform the family about an arrest, contact them if money is needed for bail and deliver food to them. They may also be best placed to bring antiretroviral medications to detainees or take testimony from those who have not disclosed their HIV status or drug use to their family members.

LHBM also provides paralegal training for young people who use drugs, which includes sessions focused on child rights and juvenile justice. Like many of its projects, this initiative was developed in response to requests from communities themselves for legal support and human rights education tailored to their needs.

Attorney Ricky Gunawan, LBHM's director, emphasizes that community paralegals provide “early access to justice” to their communities. They are poised to be first to identify legal problems faced by community members and to reach out to them. Moreover, community members may seek out and rely on paralegals' advice more than lawyers, whom they often perceive as expensive and lacking interest. Community-based paralegals also help counter corruption by law enforcement and the judiciary by explaining legal rights as well as the potential harms of giving bribes.

LBHM actively recruits law students as interns to support its work. Notably, it accepts even first-year students as volunteers, where other legal aid organizations accept only those with at least four years of university training. Ricky Gunawan notes that this investment has paid off in developing young legal aid lawyers as well as exciting new projects, many of which have come from their recruits, some from first-year university students. And, most importantly, their focus on community empowerment and active recruiting has extended the reach of their advocacy and aid.

### **Alternatives to arrest and incarceration for low-level drug offences**

Worldwide, millions of people are imprisoned for minor, non-violent drug-related offences, despite the international drug control convention's provisions permitting application of alternatives to conviction in cases of a “minor nature”. A substantial proportion of those behind bars have not been convicted of any crime but are detained pre-trial. The vast majority of these untried prisoners pose no threat to society. People who use drugs are also vastly overrepresented among these pre-trial detainees (OSF, 2014).

Offences related to drug possession for personal use comprise more than 80 percent of total global drug-related offences, according to a UNODC (2013) study. Policing efforts focus on people who are easy to arrest, whose offences are considered ‘flagrant’ — open drug use and small-scale dealing or trafficking. Leaders of criminal organizations and more complex crimes are rarely arrested or punished.

Many, if not most, of those incarcerated are poor and from economically, politically and socially marginalized groups. These include ethnic and racial minorities, non-citizens, homeless people, persons with mental disabilities as well as people who use drugs or are living with drug dependencies. One or more of these factors make poor and marginalized people vulnerable to arrest and detention. In many jurisdictions, they make easy targets for arrest by corrupt police officers and those seeking to meet arrest quotas. People who are poor and otherwise marginalized are less likely to have access to a lawyer and may have no money to pay bail or bribes or lack the social or political connections necessary to secure their release. And those at the lower level of the criminal chain are easily replaceable in criminal networks.

Measuring success by the numbers of people arrested, convicted and incarcerated and the volume of drugs seized creates perverse incentives for law enforcement. It encourages police to engage in violence or other abuse to achieve these goals. It can also encourage police to seek out low-level offenders, the ‘low-hanging fruit’ such as people who use drugs in the streets or commit minor drug-related crimes. Incarceration, in turn, fuels poverty and social exclusion of prisoners and their families, many of whom suffer due to lost income and employment. This is compounded by the stigma of having been incarcerated or having an incarcerated person as a member of one's household. Having a criminal

record can negatively affect access to future employment, education, housing and child custody and also civil rights such as voting (OAS and IACW, 2014). Poor conditions and a lack of HIV services, including drug dependence treatment, in prisons can fuel HIV, viral hepatitis and tuberculosis infections among people who use drugs and increase overdose risk (UNODC et al., 2015).

### ***Decriminalization of drugs for personal and religious use: national experiences***

Concerns about the harmful effects of a punitive criminal justice approach on the health and human rights of people who use drugs have prompted a number of governments to reject the criminalization of possession of small quantities of drugs for personal use, either in law or in practice. Portugal and the Czech Republic have decriminalized possession of small quantities of all drugs for personal use, while in The Netherlands and Germany, for example, possession for personal use is illegal, but guidelines are established for police and prosecutors to avoid imposing punishment (Eastwood, Fox and Rosmarin, 2016). Many Latin American countries, including Colombia, Mexico and Argentina, have removed criminal sanctions or decriminalized small-scale possession for personal use, either by court decree or through legislative action (ibid.). While it is difficult to make generalized conclusions across a wide range of such decriminalization policy models, longitudinal and comparative analyses suggest that there is no clear link between more punitive enforcement and lower levels of drug use, and that moves towards decriminalization are not associated with increased use (Degenhardt et al., 2008; EMCDDA, 2010). In Portugal, for example, since 2001, when the law decriminalizing the possession and use of illicit drugs in small enough amounts to suggest personal use came into effect, there has been a small rise in drug use, which is comparable to neighbouring countries, and a rapid decline in HIV incidence linked to injection, as well as decreases in school-age drug use and injecting drug use by school-age children and a fall in lifetime heroin use in young people aged 16–18 years (Rolles, 2016).

Uruguay and four US states have gone beyond decriminalization of possession to legalize and regulate cannabis markets for non-medical use. The approaches vary among jurisdictions from a more strictly government-controlled model in Uruguay to the more commercial models in the United States.

Given the recent and ongoing implementation of these policies, outcome data remain limited. Early reports from Colorado, the first jurisdiction to open regulated commercial sales, indicate that fears of a spike in youth use have not materialized, while there has been a dramatic fall in cannabis-related arrests and prosecutions (ibid.).

### ***Jamaica: Drug decriminalization and expungement of past convictions for minor use or possession***

Addressing barriers posed by criminal convictions on employment and other life prospects may be an important component to ensuring that several groups have access to decent work and, by consequence, economic growth needed to achieve SDG 8.

Jamaica's Dangerous Drugs (Amendment) Act 2015, which came into force in April 2015, decriminalized the possession and use of small amounts and smoking of cannabis (ganja) and legalized its cultivation and consumption for religious, medicinal and research purposes. In 2014, as this Act was being discussed, Jamaica also reformed its legislation to

permit the prompt expungement of convictions for possession of small quantities or use of ganja and for possession of ganja paraphernalia. Pursuant to this amendment, a person's criminal record will be expunged once they apply for a police record. A person's criminal record will also be expunged once the person's fingerprints are taken at any parish divisional headquarters of the Jamaica Constabulary Force (Criminal Records (Rehabilitation of Offenders) (Amendment) Act 2014 and Order 2015).

The Dangerous Drugs (Amendment) Act 2015 provides that possession of up to 2 ounces of cannabis is a petty offence for which the police may issue a fine for Jamaican \$500 (US\$4). People cannot be arrested, charged or brought to court, and it will not result in a criminal record. People under the age of 18 or who appear to be dependent on ganja will be referred to the National Council on Drug Abuse in addition to having to pay a fine. The law also permits cultivation of up to five plants and cultivation and distribution of cannabis for medical and religious purposes, and establishes a licensing agency to regulate a legal medical cannabis industry. This is a significant change from prior law, which made possession of cannabis punishable by up to five years in prison and a fine of Jamaican \$100 (US\$1.25) per ounce.

The Justice Ministry expects the legislation to have "positive implications" for Jamaica, such as "acknowledging the constitutional rights of the Rastafari community, who use ganja as a sacrament" and reducing "the heavy burden of cases on the Resident Magistrates' Courts" (Ministry of Justice, 2015). The amendments to the Dangerous Drugs Act were not novel, as decriminalization of ganja in Jamaica had been the subject of considerable study for years. In 1977, a Joint Select Committee of Parliament created to study ganja use and legislation recommended legalization of cannabis for medicinal use. The Committee also recommended that there was a substantial case for decriminalization of possession of up to 2 ounces of cannabis for personal/private use (ibid., 2014).

In 2001, the National Commission on Ganja recommended the decriminalization of private use of small quantities of ganja by adults and for use as a religious sacrament, the implementation of a public information campaign to discourage use by young persons and the establishment in collaboration with other countries of a Cannabis Research Agency to coordinate research on ganja. These recommendations were endorsed by a 2003 joint parliamentary committee (ibid.).

In February 2015, alongside Jamaica's enactment of its new ganja legislation, the Caribbean Community and Common Market (CARICOM) established the Cannabis Commission to determine whether cannabis should be reclassified to make it more accessible for all types of use, including for religious, recreational, medical and research purposes. It will study social, economic, health and legal issues regarding cannabis use in the Caribbean to make this determination (CARICOM, 2015).

The Jamaican government has emphasized its commitment to compliance with the UN drug conventions and has made clear its position that the ganja legislation falls squarely within what is permissible under the conventions. First, the use of controlled substances such as ganja for medical and scientific purposes is explicitly permitted by the conventions. In addition, the conventions also make clear that States can opt out of the requirement to criminalize possession for personal consumption if it would be unconstitutional or otherwise contrary to the "basic concepts of its legal system" (1988 Convention, Art. 3(2); UNODC, 1998).

In this context, as former Minister of Justice Mark Golding has stated, decriminalization of the possession of ganja for personal use is permissible to protect rights to privacy and religious freedom guaranteed under Jamaica's Charter of Rights (Ministry of Justice, 2014). Jamaica's decision to decriminalize possession and use of small quantities of ganja and to provide for automatic expungement of past convictions for these offences stems from its concern about the serious harmful consequences of criminalization, in particular on young men. Together, these amendments could have a profound effect on the lives and prospects of thousands of Jamaicans. By October 2015, arrests for cannabis-related offences had decreased by 1,000 per month (Jamaica Gleaner, 2015). The Jamaican government has estimated that there will 15,000 fewer arrests each year as a result of its new legislation.

These changes have been labelled as "transformational" by senior government officials in Jamaica, given that in Jamaica, as elsewhere, a criminal record for "what was in fact a very minor and common offence" (ganja use or possession) often bars the offender from certain jobs, affects their chances of getting a visa to work or travel overseas and generally limits their life prospects (Jamaica Observer, 2015).

### **Law Enforcement Assisted Diversion, Seattle**

After concluding that Seattle's existing approach to drug law enforcement was a costly and ineffective way to address drug crime and related public safety issues, with a tremendously disparate impact on African-Americans, the City of Seattle agreed to take a different approach to the problem (Defender Association, 2010). In 2011, the city initiated the Law Enforcement Assisted Diversion (LEAD) programme, the first pre-booking diversion programme in the United States. LEAD is modelled on arrest referral programmes in the United Kingdom.<sup>4</sup> It was developed in partnership with local elected officials, prosecutors, defence attorneys, law enforcement and local community members to address

*"While the idea that individuals involved in the drug economy require access to resources and treatment is not new (indeed, drug courts across the nation are premised on this idea), LEAD devotes a substantial proportion of its resources to services for participants. Unlike drug court, LEAD does not require the presence of judges, court staff, prosecutors, or public defenders. The resources saved from keeping participants out of the criminal justice system are directed towards those individuals."*

**Lisa Daugaard and Anita Khandelwal, 'Finding Common Ground among Communities and Police in Seattle', 2011**

low-level drug and sex work crimes in Seattle, Washington. The programme allows law enforcement officers in the field to redirect low-level drug users, sellers or sex workers to community-based services tailored to their specific needs, instead of incarceration and prosecution. LEAD provides comprehensive, on-demand services, including drug treatment, housing assistance, education, stipends and legal assistance within a harm reduction framework (LFA, 2011). It also uses peer outreach workers and provides counselling and leadership development. By engaging and assisting offenders, LEAD aims to reduce neighbourhood and individual-level harm associated with Seattle's drug and sex markets, including redressing the harm caused by racially disparate enforcement and to preserve expensive criminal justice resources for more serious or violent offenders.

<sup>4</sup> See [http://www.ihra.net/files/2011/08/08/2.06\\_Sondhi\\_-\\_Arrest\\_Referral\\_Briefing\\_.pdf](http://www.ihra.net/files/2011/08/08/2.06_Sondhi_-_Arrest_Referral_Briefing_.pdf).



A police officer talks to a woman in downtown Seattle. The area he patrols has been the source of many referrals to the Law Enforcement Assisted Diversion program, aimed at keeping low-level drug offenders and sex workers out of jail by instead offering services for counseling, housing and job training.

*Photo: Ted S. Warren*

The impetus for LEAD came from litigation challenging selective enforcement of drug laws against African-Americans in Seattle resulting in drug arrests that were dramatically racially disproportionate to the offender population.

Research on drug enforcement in Seattle undertaken in support of the litigation showed that African-Americans were significantly overrepresented in drug arrests and that this overrepresentation was pronounced. In 2006, for example, while a majority of Seattle residents who used and delivered serious drugs were white, more than two thirds of those arrested for delivery of any serious drug were black. The most striking finding was that a black drug deliverer was more than 24 times more likely to be arrested than a white drug deliverer committing the same crime (Beckett, 2012).

The litigation sparked an open dialogue among law enforcement, prosecutors, public defenders, local elected officials and community members who agreed that the current system was inadequate and in need of reform. These conversations culminated in the development of LEAD. The diverse stakeholders that collaborated in the programme design included members of the affected communities, local neighbourhood and business associations, community-based organizations, senior law enforcement officials, prosecutors, public defenders, and representatives of city and county government. All stakeholders are represented on LEAD's Policy Coordinating Group, which governs the programme.<sup>5</sup>

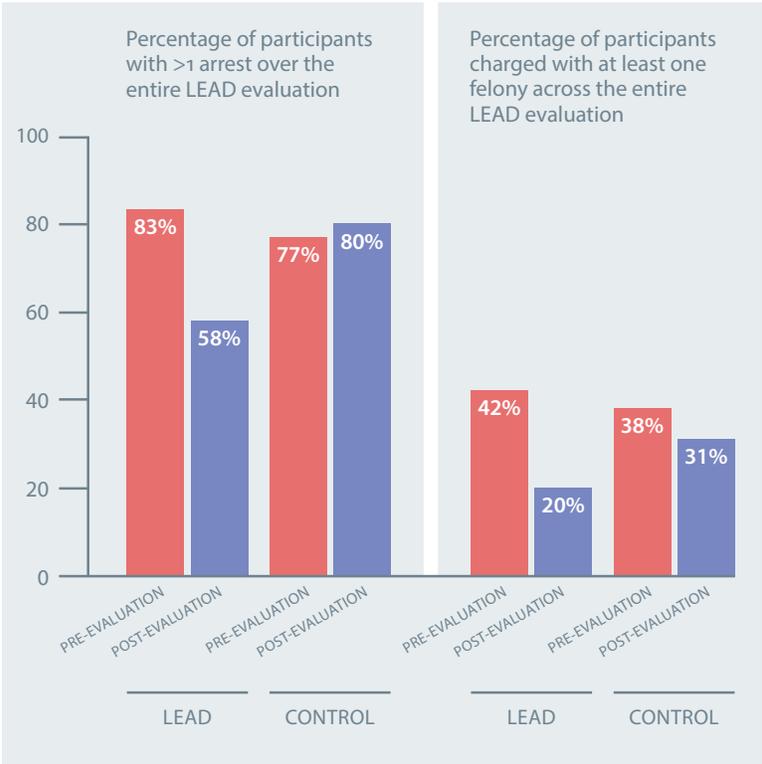
LEAD differs in significant ways from the United Kingdom's arrest referral programmes that inspired it. A key difference is that LEAD is not a police initiative, but the result of a commitment from diverse stakeholders to develop and implement a new approach to addressing harmful consequences of existing drug policy. The fact that the diversion in LEAD is made before booking reduces the stigma affiliated with criminal involvement and saves time and money. Finally, LEAD provides participants with immediate case management services and access to additional resources not available through existing public programmes.

As UNDP and others have noted, the success of drug policy efforts has mainly been measured by specific and narrow metrics of supply and demand: numbers of people arrested, convicted and incarcerated for drug law violations; volumes of drugs seized; hectares of illicit crops eradicated. These measures reflect the scale of enforcement efforts but reveal very little about the impact of drug law enforcement on people's lives. They may also encourage police to seek out small offenders, such as people who use drugs or commit minor drug-related crimes, as they are easy targets for arrest when seeking to meet quotas.

Seattle's LEAD programme focuses instead on positive measures of police and multiagency collaboration. From the outset, LEAD stakeholders committed to rigorous evaluation to measure short- and long-term programme outcomes, including reductions in drug use and recidivism, cost-effectiveness and improvements in psychosocial functioning, housing and individual and community quality of life.

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<sup>5</sup> Stakeholders include King County Prosecuting Attorney's Office, Seattle City Attorney's Office, Seattle Police Department, the King County Sheriff's Office, King County Executive, Mayor's Office, Washington State Department of Corrections, Defender Association, American Civil Liberties Union (ACLU) of Washington, and community members.

The initial results appear to be promising. A series of multi-year evaluations by the University of Washington have found that LEAD has significantly reduced recidivism as well as utilization of the criminal justice and legal systems and associated costs. LEAD participants were 58 percent less likely to be rearrested than a control group that went through the regular justice system (Collins, Lonczak and Clifasefi, March 2015). In turn, fewer bookings, time spent in prison or jail and fewer felony cases significantly reduced costs (ibid., June 2015). These positive evaluations encouraged local partners to renew their commitment to the LEAD approach and for Seattle to fund the programme's extension (it had initially been supported by private foundations) and its expansion beyond the pilot area.



Source: Collins, Lonczak and Clifasefi, March 2015

A number of cities in the United States have taken note of Seattle's success and adopted LEAD programmes. In 2013, Santa Fe, New Mexico, adopted a LEAD/pre-booking diversion programme to address opioid misuse, dependence and overdose and rising property crime rates, as well as the financial costs of related policing. Under the plan, non-violent, low-level opiate drug offenders for whom probable cause exists for an arrest are redirected from jail and prosecution and linked to treatment and rehabilitation (LEAD Santa Fe, 2013).

Albany, New York, signed a memorandum of understanding in June 2015 among law enforcement, city and county officials, county health and mental health departments, public defenders and civil rights and drug policy organizations to develop and implement a LEAD programme (Albany County LEAD, 2015).

## Addressing gender dimensions of drug control policy

The disproportionate impact of current drug control policies on women is well documented. Thus, addressing the disproportionate impact of these policies on women would constitute an important contribution to achieving SDG 5 on gender equality and SDG 10 on inequalities within and between countries.

Poor and otherwise marginalized women often become involved in the drug trade because discrimination limits their opportunities for education and employment. While they are usually employed at the lowest levels, such as transporting or selling small quantities of drugs, they often suffer the same harsh consequences, including severe criminal penalties, as those with greater involvement in the drug trade. In many countries throughout the world, drug law enforcement results in disproportionate penalties by subjecting ‘drug mules’<sup>6</sup> to the same severe penalties as large-scale drug traffickers (Metaal and Youngers, 2011).

*“Whoever heard of a female drug lord? As the terms ‘kingpin’ and ‘drug lord’ denote, men are almost always at the head of major drug operations, and yet the rate of imprisonment of women for drug crimes has far outpaced that of men. Families and children suffer — but why?”*  
American Civil Liberties Union, ‘Caught in the Net’, 2005

Women comprise a minority of prisoners overall, but their numbers are increasing and at a rate faster than for men.<sup>7</sup> Globally, more women are incarcerated for drug offences, mostly non-violent, than for any other crime (Turquet, 2011). In many countries, women from racial minorities, including indigenous women, represent the fastest-growing segment of the prison population. Worldwide, women incarcerated for non-violent drug offences are the fastest-growing prison population. Many, if not most, are mothers and the primary if not only caregivers for their children.

Evidence suggests that a significant number of women are used to smuggle drugs across borders for small sums of money (CND, 2015). Although they play a small role in drug trafficking, they often receive harsh sentences. More broadly, women who commit low-level drug crimes may receive harsher sentences than more serious offenders. This gender disparity in sentencing has been attributed to harsh criminal laws and sentencing guidelines that impose more serious sentences for drug-related offences than for crimes such as rape and murder. There is evidence that in many countries in the Americas the gender disparity is due to the ease with which low-level crimes can be prosecuted and because women who commit low-level drug crimes do not have the information that enables men to plea-bargain with prosecutors in exchange for lighter sentences or to escape imprisonment (OAS and IACW, 2014; UNGA, 2013).

In recent years, a number of countries have enacted legislative or policy reforms to address disproportionate penalties for low-level drug trafficking. In some cases, these reforms have been enacted to address women’s problems in particular and have explicitly included women as their focus. Some countries have taken action to address disproportionate sentences for small-scale drug trafficking by executive or legislative action. While these reforms may be gender-neutral, they are sometimes enacted with women in mind (Giacomello, 2013).

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<sup>6</sup> Drug ‘mules’ or ‘couriers’ are people who are paid a fee, wage or salary or who are coerced or tricked into carrying drugs across international borders for another person or a criminal network. The term ‘mule’ can have pejorative connotations.

<sup>7</sup> About 6.5 percent of the world’s prisoners are women. In most prison systems, women are between 2 and 9 percent of the total prison population. Between 2000 and 2013, the number of female prisoners worldwide increased by 40 percent (PRI, 2015).

In some countries — for example, Argentina — pre-trial detention or a sentence can be suspended for pregnant or nursing women, women with young children and those who care for children with disabilities.<sup>8</sup> Legislation in Costa Rica permits reduced sentences for women who smuggle drugs into prison if they live in poverty or are heads of households living in situations of vulnerability, care for minor children, senior citizens or persons with disabilities, or are senior citizens living in conditions of vulnerability. If these conditions are met, the sentence may be served under house arrest, on probation or in an alternative detention centre. The law applies retroactively. More than 200 low-level drug offenders have been released from prison since it came into effect in August 2013 (ibid.).

UNODC (2015a) has cited Costa Rica’s law as an example of good practice in drugs legislation:

*“This reform represents good practice, not just because it includes the gender perspective but also because it does not establish a minimum sentence for these crimes. Thus, the law allows judges to use their discretion, giving them the authority to take the woman’s particular situation into account and make use of measures other than imprisonment, such as house arrest, probation, women’s refuges or restricted freedom with electronic tagging devices.”*

In many countries, women who engage in international drug transportation or trafficking comprise the majority of foreign female inmates (Giacomello, 2013). Some countries have reacted to the increase in the number of foreign drug couriers in prison by reducing sentences, given that most are women who are first-time offenders for a non-violent offence, vulnerable mothers and sole caregivers and providers.

In 2012, for example, England and Wales introduced new sentencing guidelines to promote consistency and proportionality in sentencing for drug offences. Under the guidelines, in sentencing an offender, the court must take into account the harm caused, measured by the quantity of drugs involved, and the role the offender played in importing the drug: a “leading role” in directing or organizing production; a “significant role” or someone with an operation or management function within a chain, or a lesser role, defined as someone who “performs a limited function under direction; engaged by pressure, coercion, intimidation; involvement through naivety/exploitation; no influence on those above in a chain; very little, if any, awareness or understanding of the scale of operation; if own operation, solely for own use (considering reasonableness of account in all the circumstances)” (Crown Prosecution Service, 2012).

The guidelines were issued following a research and consultation process with the judiciary, legal practitioners and drug policy organizations, and focus groups and online surveys with members of the public. The consultation process also included interviews with women charged or imprisoned for transporting drugs into the country, to discuss the

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<sup>8</sup> See, for example, Argentina Criminal Procedure Code Article 495 (suspension of custodial punishment for women who are pregnant or have children less than six months at the time of the sentence); Paraguay, Criminal Procedure Code article 238 (limits pre-trial detention for women who are nursing or in last months of pregnancy) and Penal Code Art. 43 (sentence can be delayed for pregnant women or women with children less than one year old); Colombia Criminal Procedures Code Article 314 (house arrest instead of pre-trial detention permitted for last two months of pregnancy and first six months following birth and accused head of household with minor or permanently disabled child in her care); Venezuela, Organic Criminal Procedures Code (no pre-trial detention for pregnant women or if breastfeeding until six months after birth).

background and circumstances leading to the offence, reactions to the sentences they received and the impact of these sentences on their lives and their families. The work focused on women in response to concerns about 'drug mules', characterized as poor foreign nationals, often women coerced into transporting drugs and for whom imprisonment may be particularly difficult because of language and cultural differences and distance from their families. The women's testimony informed the development of sentencing guidelines for drug-'trafficking'/'importing' offences appropriate to the circumstances leading up to the offence and the role they played in it (UK Sentencing Council, 2011). A study measuring the early impact of the guidelines from their implementation during the last three quarters of 2012 and for 2013 concluded that, overall, the guidelines had achieved their intended aim of greater proportionality, with those in lesser roles receiving shorter sentences than those with leading roles. However, the consideration of drug weight as a factor produced arbitrarily harsh sentences for those in a lesser role and reduced punishment for those with greater culpability than drug mules (Fleetwood, 2015).

Drug policy experts have pointed to these guidelines as significant for drug policy reform. First, taking into account the defendant's role in the offence and key factors such as degree of coercion to which the courier was subjected and the extent of profit they were seeking in deciding the seriousness of the offence is a novel approach that has the potential to promote proportionality (ibid.). Second, the Sentencing Council's use of interviews to understand the human impact of the punitive drug laws and focusing more broadly on the life experiences of women involved can be useful as a reference point for other countries engaged in policy reform (Giacomello, 2013). Yet while this is an important step, the guidelines do not go far enough in addressing disproportionality in sentencing. As experts have noted, the range of sentences possible for low-level, non-violent drug offences is disproportionately harsher than for serious violent offences such as rape and grievous bodily harm (Release, 2012).



Across Latin America, the effects of disproportionate punishment for low-level, non-violent drug offences are particularly severe for women. Their incarceration serves as a stain on their record that prevents them from obtaining gainful employment upon release, pushing them into a vicious cycle. These women are in Costa Rica's Buen Pastor prison.

*Photo: Washington Office on Latin America.*

## The Bangkok Rules

The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), adopted by the UN General Assembly in 2010, provide comprehensive standards for the treatment of women prisoners, offenders and accused persons.

Throughout, they encourage the use of gender-specific and non-custodial measures and sanctions that take into account the accused's history, the circumstances of the offence and her care responsibilities, and address issues such as mental and physical health care, safety and security, and pregnancy. Rules relating to non-custodial measures include:

### Rule 2

1. Adequate attention shall be paid to the admission procedures for women and children, due to their particular vulnerability at this time [...].
2. Prior to or on admission, women with caretaking responsibilities for children shall be permitted to make arrangements for those children, including the possibility of a reasonable suspension of detention, taking into account the best interests of the children.

### Rule 41

The gender-sensitive risk assessment and classification of prisoners shall:

- a) Take into account the generally lower risk posed by women prisoners to others, as well as the particularly harmful effects that high-security measures and increased levels of isolation can have on women prisoners;
- b) Enable essential information about women's backgrounds, such as violence they may have experienced, history of mental disability and substance abuse, as well as parental and other care responsibilities, to be taken into account in the allocation and sentence planning process;
- c) Ensure that women's sentence plans include rehabilitative programmes and services that match their gender-specific needs;

- d) Ensure that those with mental health-care needs are housed in accommodation which is not restrictive, and at the lowest possible security level, and receive appropriate treatment, rather than being placed in higher security level facilities solely due to their mental health problems.

### Rule 58

Taking into account the provisions of rule 2.3 of the Tokyo Rules, women offenders shall not be separated from their families and communities without due consideration being given to their backgrounds and family ties.

Alternative ways of managing women who commit offences, such as diversionary measures and pre-trial and sentencing alternatives, shall be implemented wherever appropriate and possible.

### Rule 60

Appropriate resources shall be made available to devise suitable alternatives for women offenders in order to combine non-custodial measures with interventions to address the most common problems leading to women's contact with the criminal justice system. These may include therapeutic courses and counselling for victims of domestic violence and sexual abuse; suitable treatment for those with mental disability; and educational and training programmes to improve employment prospects. Such programmes shall take account of the need to provide care for children and women-only services.

### Rule 64

Non-custodial sentences for pregnant women and women with dependent children shall be preferred where possible and appropriate, with custodial sentences being considered when the offence is serious or violent or the woman represents a continuing danger, and after taking into account the best interests of the child or children, while ensuring that appropriate provision has been made for the care of such children.

## Ensuring healthy lives and promoting well-being for all at all ages

### Access to pain relief in Uganda

Ensuring the availability of controlled substances for medical purposes, a requirement of the UN drug control conventions, is critical to achieving SDG 3 on health — in particular, the targets around access to medicines, ending epidemics and combating communicable diseases, strengthening drug treatment and prevention, and universal health coverage. Uganda's efforts to increase access to pain relief and palliative care, including opioid analgesics such as morphine, provide lessons for other countries.

According to a report by the INCB (2016), nearly 5.5 billion people, or 75 percent of the world's population, have limited or no access to opioid analgesics, such as morphine or codeine, for truly effective pain treatment. Uncontrolled pain can be debilitating and have a profound effect on the quality of life of people suffering from serious life-limiting illnesses and on their families. The need for pain relief and palliative care is growing due to the world's ageing population and the increasing prevalence of cancer and other non-communicable diseases (WPCA and WHO, 2014).

The WHO (2011) considers morphine an essential medication for the relief of moderate to severe pain and palliative care, and recommends it be available to anyone with a medical need. Yet most of the world's morphine — 92 percent —

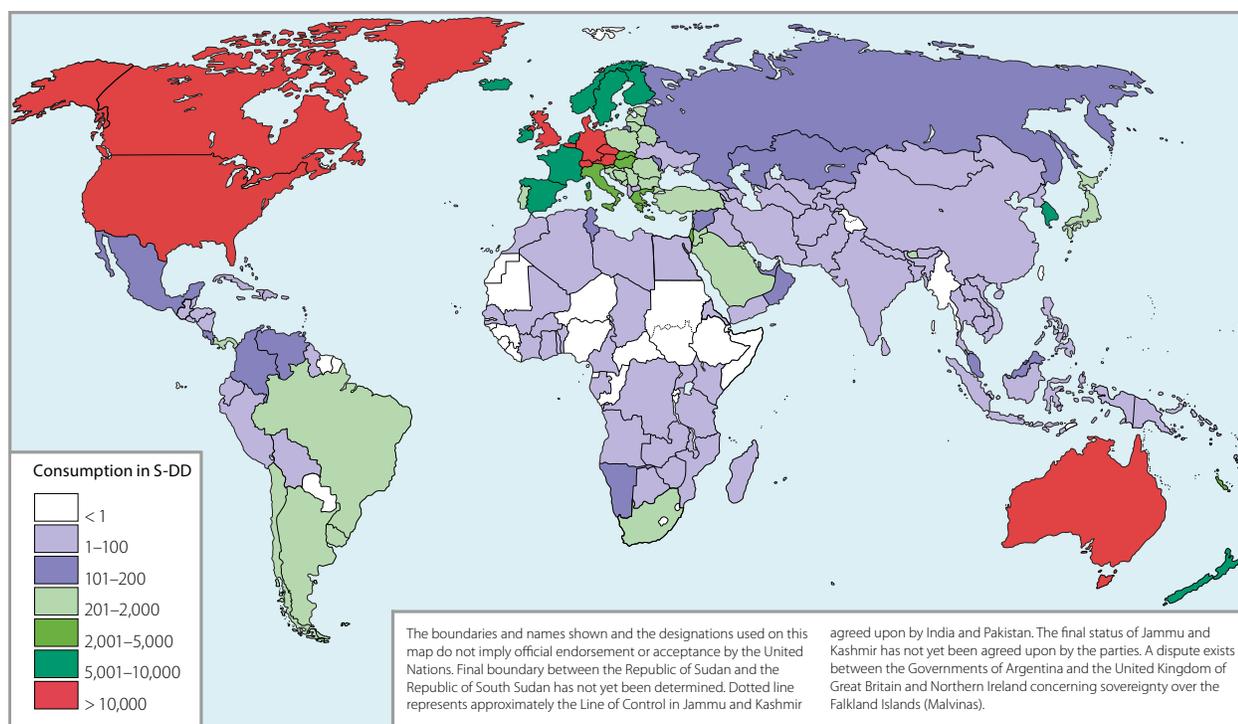


Figure 1. Availability of opioids\* for pain management, 2010–2012

Source: International Narcotics Control Board, 2016. \*Codeine, dextropropoxyphene, dihydrocodeine, fentanyl, hydromorphone, ketobemidone, morphine, oxycodone, pethidine, tilidine and trimeperidine. \*\* S-DDD: defined daily dose for statistical purposes

is consumed by 17 percent of the world's population, primarily in countries in North America, Western Europe and Oceania. Unnecessarily restrictive drug control regulations and practices, lack of relevant training for health care workers, poor availability of essential palliative care medications and fear among health care workers of legal sanctions for prescribing opioid medications are among the barriers to access to effective pain treatment, as recognized by the WHO (2011) and the INCB (2016). Research in a number of countries, including India, Kenya, Mexico, Senegal and Ukraine, has found that many people's pain is so severe that they become suicidal and contemplate, attempt or commit suicide (HRW, 2014).

The INCB (2005) has observed that while consumption of opioids for pain treatment is low, particularly in many Asian and African countries, important progress has been made in some developing countries. For example, it has commended Uganda for its leadership in efforts to improve access to pain treatment and palliative care. Uganda has been active in the field of pain management since the 1990s and has taken significant steps to ensure access to palliative care for those in need. It was the first African country to recognize palliative care as an essential clinical service, integrating pain treatment services into its health system, its national health plan and its national HIV/AIDS policies and guidelines. It was also the first African country to provide morphine free of charge to patients with cancer and to those living with HIV and AIDS (Uganda Ministry of Health, 2000; Jagwe and Merriman, 2007). Uganda also amended its national legislation to make opioid analgesics, in particular morphine, more available (INCB, 2005).

In 2004, Ugandan law was amended to modify its narcotics policy to allow specialized palliative care nurses and clinical officers to prescribe and supply morphine, after completing a specialized course in palliative care (*ibid.*). To date, more than 130 health professionals have graduated from Hospice Africa's Clinical Palliative Care course to complete the training (Hospice Africa, 2014). Uganda has also developed innovative ways to improve access to care, including at roadside clinics (Harding et al., 2013).

It is important to note that the Government of Uganda did not act alone. Strong advocacy by civil society, including community members and non-governmental organizations, as well as health care professionals, pharmacists and political leaders played a key role in introducing palliative care to Uganda in the 1990s. Such advocacy was also critical to create working relationships between the government, the WHO and religious and non-governmental organizations to systematically address barriers to access to pain relief and palliative care. South Africa, Kenya, Zimbabwe and Tanzania have also been called "beacon countries" in sub-Saharan Africa for their innovative efforts to provide palliative care in the face of low resources (Clark et al., 2007). There are also pan-African initiatives that are promoting palliative care and asserting that there is a human right to pain relief (Harding et al., 2003).

Uganda is the only African country — and one of 20 countries worldwide, including Australia, Canada, Switzerland, the United States and the United Kingdom — where palliative care services are at an advanced stage of integration into mainstream service provision. This is based on a number of factors: the development of a critical mass of palliative care activism in a wide range of locations; comprehensive provision of all types of palliative care by multiple service providers; broad awareness of palliative care on the part of health professionals, local communities and society in general; unrestricted availability of morphine and most strong pain-relieving medicines; substantial impact of palliative care on

policy, in particular on public health policy; the development of recognized education centres; academic links forged with universities; and the existence of a national palliative care association (WPCA and WHO, 2014).

Despite this progress, palliative care remains inaccessible to most Ugandans who need it, especially the rural population. It is estimated that less than 10 percent of those who need palliative care actually receive it, with a disproportionate burden on women and girls. There is still a widespread lack of awareness among the public, policymakers and even health care providers about the need for palliative care, as it is mostly perceived as end-stage support for people who are dying. Most palliative care is provided by isolated 'centres of excellence', without comprehensive integration into the different levels of the health system structure. Yet mainstreaming palliative care is a challenge, due to a shortage of trained staff, insufficient and unstable funding and inadequate health infrastructure (Nabudere and Obuku, 2014).

## Conclusion

As illustrated above, drug policy cuts across core areas of sustainable development: food security, health and well-being, gender equality, peace, justice and strong institutions, to name but a few. The 2030 Sustainable Development Agenda thus provides a framework to evaluate the development impact of drug control laws, policies and practices, as well as to design and implement development-sensitive drug control in response. In recent years, there has been growing attention to the harmful consequences of many of the current drug control laws, policies and enforcement practices on those living in poor or marginalized communities. However, the implications of such laws, policies and practices on the long-term development objectives of those who are poor, marginalized or excluded are often ignored when drug policies are discussed and set.

This paper describes some innovative approaches taken to address the harmful consequences of drug control efforts — many of which depart from punitive approaches to drug control. It is hoped that this illustrative sample will help other countries better understand how to address drug-related issues in their respective economic, political and social circumstances and prompt further innovation, as well as resources for the development and implementation of drug control that promotes sustainable development.

A palliative care nurse and paralegal from Nyeri Hospice provide legal services and pain medicines to a cancer patient in Nyeri, Kenya.

*Photo: Sven Torfinn.*



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