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Submission to the Global Commission on HIV and the Law – Asia Pacific Regional Dialogue

The International Drug Policy Consortium is a network of civil society organisations and other professional networks that come together to advocate for more humane, just and effective drug policies. We work in several regions of the world to promote drug laws, policies and practices that comply with human rights and public health principles, and in particular that create an 'enabling environment' for effective HIV prevention, treatment and care. We have extensive experience of working with civil society and policy makers in the Asia/Pacific region, and agree that harsh drug control laws and their enforcement are a significant barrier to the scaling up of HIV prevention, treatment and care programmes in the region.

Injecting drug use is a key driver of the HIV epidemic in Asia as a whole. An estimated 4.5 million people inject drugs in Asia and UNAIDS estimates that around 16% of these are living with HIV, although prevalence is much higher in some countries (Burma/Myanmar has around 38% prevalence, Thailand has between 30% and 50% prevalence)¹.

Laws and practices relating to the control of the illicit drug trade are highly punitive in this region and governments are still committed to make ASEAN drug-free by 2015². This goal underpins a zero-tolerance approach to drug use which manifests itself in a harsh legislative environment that criminalises people who use drugs and reinforces stigma and discrimination towards an already vulnerable and marginalised population group. This repressive approach does not prioritise the health of people who use drugs and presents significant structural barriers to evidence-based harm reduction and drug treatment programmes. There have been some trends in the region to move towards harm reduction in an effort to address HIV in people who inject drugs as can be seen in China and Malaysia, however there are still counterproductive laws and practices which undermine these efforts.

We ask that the Commission considers the following issues in relation to addressing punitive laws and practices that effectively criminalise the lives of people who use drugs in South East Asia³ and calls on governments to address these issues as a matter of urgency.

The impact of criminalising drug use on HIV prevention, treatment and care for people who use drugs

Sentencing and prisons:

Drug use is heavily criminalised in nearly all countries of the region with the exception of Vietnam which decriminalised in 2009⁴. This level of criminalisation goes beyond the

¹ UNAIDS. (2010) *Report on the Global AIDS Epidemic 2010*. Geneva.
http://www.unaids.org/GlobalReport/Global_report.htm

² According the 'ACCORD Plan of Action'.

³ For the purposes of this submission, South East Asia will comprise Thailand, Malaysia, Burma/Myanmar, China, Vietnam, Laos and Cambodia.

requirements set out in the current UN Conventions on Drug Control. The 1988 Convention does not require punishment for drug consumption while allowing considerable flexibility to Parties when addressing possession for personal use and other offences of a minor nature, explicitly mentioning the possibility of diversion towards treatment and rehabilitation instead of prison sentences⁵.

Across Asia, 68% of countries in the region have exceeded the maximum capacity of their prison systems while a total of 28% of countries in Asia have exceeded the maximum prison capacity by more 150% or more⁶. In Thailand for example it is estimated that there are around 170,000 people in prison and a further 44,000 held in pre-trial detention⁷. There are estimates that between 60% to 80% of those incarcerated in Thailand are serving time for non-violent drug related offences⁸.

The criminalisation of drug use and the disproportionate levels of sentencing for drug use offences, results in a high number of people who use drugs, particularly people who inject drugs, being incarcerated in overcrowded prison settings. Prisons are a high-risk setting for HIV transmission. HIV infection rates tend to be higher in prisons than national averages while there is very poor coverage of HIV prevention services, including harm reduction interventions such as needle and syringe programmes (NSP) and opioid substitution therapy (OST)⁹. The importance and effectiveness of providing HIV prevention, treatment and care in prisons is well documented¹⁰.

The high-level of criminalisation places a heavy burden on judicial and penitentiary systems and diverts valuable resources away from effective drug treatment and HIV prevention efforts. Discussions around decriminalisation of drug use and the possession for personal use are very nascent in South East Asia. Advocacy efforts have focused more strongly on the provision of harm reduction services particularly for people who inject drugs and on the issue of compulsory centres for drug users (CCDUs). The capacity of civil society organisations and representatives of affected populations to also challenge unsupportive legislative frameworks needs to be strengthened.

Diversion and drug treatment:

There has been a trend in the region to start to recognise that people who use drugs should be treated as 'patients not criminals'¹¹. Unfortunately in efforts to divert people who use drugs away from the criminal justice system and provide alternatives to incarceration, many

⁴ This has still been problematic. Drug use is no longer a criminal offence but is still considered a 'social evil' that constitutes an administrative offense. In such cases, access to due process is virtually non-existent. Those caught or suspected of drug use are no longer subject to criminal justice procedures but in many cases are detained in compulsory centres for drug users (CCDUs) often without access to drug treatment, harm reduction and HIV services.

⁵ See United Nations. (1988) United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988. Article 3 (2) and Article 4(c). Available at: <http://daccessdds.un.org/doc/UNDOC/GEN/N98/773/95/PDF/N9877395.pdf?OpenElement>.

⁶ ICPS. 2010, *Current situation of Prison Overcrowding*.

⁷ ICPS. 2009, *World Prison Population List (8th Edition)*.

⁸ UNODC. (2006) *HIV/AIDS and Custodial Settings in South East Asia*, http://www.aidslex.org/site_documents/PR-0043E.pdf

⁹ Ibid.

¹⁰ WHO. (2007) *Effectiveness of Interventions to address HIV in prisons*. Evidence for Action Technical Papers. http://whqlibdoc.who.int/publications/2007/9789241596190_eng.pdf

¹¹ See Thailand's Narcotic Addict Rehabilitation Act, B.E. 2545 (2002). <http://www.thailawonline.com/en/thai-laws/laws-of-thailand/241-narcotics-addict-rehabilitation-act-be-2545-2002.html>

governments in South East Asia have adopted a compulsory drug 'treatment' model that is more akin to detention and involves very little in the way of evidence-based treatment.

These compulsory detention centres are strongly associated with the arbitrary arrest of people suspected of drug use, who are often detained for unspecified periods sometimes without trial or due process. In many cases the centres are run by security or military forces (such as in Thailand)¹² without any appropriately trained medical staff. Detainees are subject to forced detoxification, forced labour, military style exercises and other types of 'punishment' in the name of rehabilitation. In fact, the human rights violations which are committed in these centres are well documented¹³. HIV risk in these centres is extremely high due to the lack of harm reduction services (or in most cases any type of health care provision). Governments in the region are becoming increasingly aware that these compulsory detention centres are not an appropriate model but yet seem reluctant to dismantle such centres.

There are some recent efforts by UNODC, UNAIDS and UNESCAP to engage both civil society and regional governments on this issue to seek a way forward. These efforts should be supported by the Commission and in particular holding governments accountable for the contradictory legal and policy contexts in which such centres operate.

Policies and practices that undermine harm reduction in the community:

There have been some efforts in the region to scale up the provision of HIV prevention services for people who inject drugs, some form of NSP is available in fifteen countries and OST is available in twelve countries of the region¹⁴. Coverage across the region is very poor overall and far below what is required to have an impact on HIV prevalence amongst people who inject drugs.

In addition to poor coverage of such services, the criminalisation of people who use drugs encourages policies and practices that severely hamper access to such services. IDPC has received reports of police harassment to both clients and staff of drop-in centres where NSP and OST are provided in Thailand, Burma/Myanmar, Malaysia, Cambodia and China. This discourages people who use drugs from accessing such services for fear of arrest, persecution and forced treatment. There are a number of initiatives¹⁵ in the region to sensitize law enforcement towards harm reduction practices but progress is slow as the legal framework remains unchanged.

A further issue that has been raised repeatedly in relation to policies that undermine effective HIV prevention via harm reduction services is the requirement for 'drug user registration' which

¹² IHRA. (2010) 'Briefing 4 – Compulsory Drug Treatment'. Thematic Briefings on Human rights and drug policy. http://www.ihra.net/files/2010/11/01/IHRA_BriefingNew_4.pdf

¹³ Human Rights Watch. (2007) *Deadly Denial: Barriers to HIV/AIDS Treatment for People Who Use Drugs in Thailand*. <http://www.hrw.org/sites/default/files/reports/thailand1107.pdf>. International Harm Reduction Development Program. (2009). *Human Rights Abuses in the Name of Drug Treatment: Reports from the Field*.

http://www.soros.org/initiatives/health/focus/ihrd/articles_publications/publications/treatmentabuse_20090318

WHO. (2009) *Assessment of compulsory treatment of people who use drugs in Cambodia, China, Malaysia and Viet Nam: an application of selected human rights principles*.

http://www.who.int/hiv/topics/idu/drug_dependence/compulsory_treatment_wpro.pdf

¹⁴ IHRA. (2010) *The Global State of Harm Reduction*.

http://www.ihra.net/files/2010/06/29/GlobalState2010_Web.pdf

¹⁵ IDPC has been working in collaboration with the Malaysian AIDS Council on this issue in Malaysia. The Law Enforcement Harm Reduction Network, funded by the Nossal Institute works in Cambodia, Laos and Vietnam with law enforcement and the HIV/AIDS Asia Regional Programme (HAARP), funded by AusAID, targets law enforcement in six countries – Cambodia, China (Yunnan and Guangxi), Laos, Myanmar, Philippines, and Vietnam.

is supported by legislation. This requirement is mandatory in many countries of the region. China, Thailand and Burma/Myanmar all have drug user registration systems whereby information captured often when a person accesses healthcare related to their drug use (OST or NSP). The fear of being placed on registries that are shared with law enforcement and other authorities is a serious impediment to accessing services.

Other legislative barriers relate to the provision of NSP, for example in Thailand and Vietnam, NSPs can only operate underground, unregistered or quasi-legally as legislation prohibits their implementation and in Malaysia and Myanmar the possession of needles and syringes is still a criminal offence. In some countries OST, such as methadone and buprenorphine, are still scheduled as illegal despite being on the WHO List of Essential Medicines and strong evidence to show the efficacy of OST as an effective HIV prevention intervention¹⁶.

Recommendations:

- The Commission should call on policy makers in the region to treat their citizens who use drugs as 'patients not criminals', and focus on their social inclusion and reintegration.
- The Commission should encourage the reform of drug laws and policies to ensure that their enforcement does not undermine HIV prevention, treatment and care for people who use drugs. This includes the harmonisation of public health and drug control laws and policies. The Commission should also encourage dialogue and collaboration between responsible government agencies.
- The Commission should stimulate a regional discussion on the decriminalisation of drug use and possession for personal use¹⁷.
- The Commission should emphasise the importance of appropriate diversion mechanisms for people who use drugs who come into contact with the criminal justice system and also reinforce the critical importance of providing humane, evidence-based drug treatment for those who require it.
- The Commission should call on governments in the region to prevent human rights abuses in the name of drug treatment, including arbitrary deprivation of liberty, torture, cruel, inhuman and degrading treatment, and violations of the right to health.
- The Commission should support the mobilisation of resources to support drug law reform advocacy and harm reduction implementation. Injecting drug use is the key vector for HIV transmission in South East Asia and investments in HIV prevention should be proportional to the needs and risks across the region.

¹⁶WHO. (2006) *Effectiveness of drug dependence treatment in preventing HIV among injecting drug users*. Evidence for Action Technical Papers. http://www.who.int/hiv/pub/idu/drugdependence_final.pdf

¹⁷ See the 'Consensus Statement of the UN Reference Group on HIV and Injecting Drug Use 2010' which calls for an end to imprisonment for people who have committed no crime other than drug use or possession for personal use. [http://www.idurefgroup.com/idurgweb.nsf/resources/UN+Ref+Group+IDU+HIV+2010+consensus+statement/\\$file/2010+UN+IDU+Ref+Group+Statement.pdf](http://www.idurefgroup.com/idurgweb.nsf/resources/UN+Ref+Group+IDU+HIV+2010+consensus+statement/$file/2010+UN+IDU+Ref+Group+Statement.pdf)