

IDPC Briefing Paper

Drug policy issues in Cambodia

November 2014

Introduction

This briefing paper aims to highlight current drug policy issues relevant to proportionality of sentencing in Cambodia, and to discuss some relevant international principles and practices which may be relevant to consideration of those issues.

Context

The drug market in Cambodia is characterized by transit trafficking flows and consumption.ⁱ Available data reported by the United Nations Office on Drugs and Crime (UNODC) show the quantities of drugs seized by law enforcement agencies from 2008 to 2012 as being amongst the lowest in Southeast Asia, with increased seizures of crystalline methamphetamine (from 1.9 to 33.5 kg), ecstasy (from 33 to 1,373 kg) and cocaine (from 0.2 to 41 kg), and a drop in seizures of methamphetamine pills, heroin and cannabis during that time period. While data on the prevalence of drug use are not adequate or reliable enough to outline precise trends, both drug policy officials and health experts working with people who use drugs observe rising trends in the use of ATS, such as methamphetamine and crystalline methamphetamine via smoking in addition to prescription drug use, and a corresponding decline in the injecting use of opiate-based drugs.ⁱⁱ The government estimates there are approximately 13,000 people who use drugs in the country, of which about 1,300 are people who inject drugs.ⁱⁱⁱ

Drug policy issues

Harm reduction services for people who use drugs

The National Authority for Combating Drugs (NACD) was established as an inter-ministerial agency in the mid-1990s to respond to drug-related problems ranging from consumption to supply, which then proceeded to develop drug control laws with the support of the UNODC, World Health Organisation and UNAIDS. Although drug use is portrayed as a moral weakness, the Government began to respond to it as a health instead of criminal issue when HIV prevalence amongst people who inject drugs rose in the early 2000s.^{iv} Measures were introduced which aimed to reduce the harms relating to drug use, notably the risks of HIV transmission through the implementation of sterile needle/syringe programmes and methadone maintenance therapy. These harm reduction measures are explicitly supported in the NACD's *National Plan on Drug Control, 2013 – 2015*, *Law on the Control of Drugs, 1997* (the national drug control law) and the National AIDS Authority's (NAA) *National Strategic Plan for a Comprehensive and Multi-Sectoral Response to HIV/AIDS, 2011-2015*.

The apparently increasing trend of non-injecting drug use, and use of ATS and prescription drugs, gives rise to an emerging need for new and varied harm reduction responses.

Sentencing and treatment for people who use drugs

Cambodia's drug control law offers people arrested for using drugs (verified by a positive urine test or possession of a small amount) a coerced choice between up to 6 months imprisonment and drug treatment and parole. A civil court, acting on a complaint by a spouse, parent, relatives or the prosecution, can also order a person arrested for drug use to attend a treatment facility. Although these legal provisions were intended as a health-based response to drug use, the treatment facilities to which people are sent are compulsory detention centres with few or no medically trained staff, and run by the police, military police or the Ministry of Social Affairs.^v

In apparent acknowledgement of the need to implement alternative drug treatment services, the Prime Minister on the international day against international drug trafficking and abuse on 26 June 2014, called on several government ministries and civil society organisations to work together to establish "community-based drug rehabilitation centres" first in Phnom Penh by the end of 2014, followed by other provinces. He indicated that these centres could replicate the community-based treatment services piloted in Banteay Meanchey province with the support of the UNODC. The Prime Minister also called for the strengthening of the implementation of the Village/Commune Safety Policy as a means of supporting the community-based drug rehabilitation centres, as well as the "health services in existing temporary centers" (presumably referring to the compulsory detention centres).^{vi}

The Prime Minister's statement in June 2014 has led to efforts by government and civil society representatives to coordinate the development and implementation of a model of community-based treatment services that could effectively address the seemingly increasing use of ATS in the country. However it is highly uncertain how the Village/Commune Safety Policy, which includes objectives to eliminate the production, dealing and use of drugs in all communes and villages, can effectively support the implementation of voluntary, evidence-based drug treatment services.^{vii} In addition, to ensure the diversion of people who use drugs away from prison and

towards health services, as envisaged by the drug control law, the collaboration of police, prosecutors and judges is required. Otherwise, people arrested for drug use may face prosecution and ordered to a term of imprisonment for up to 6 months.

Drug-related arrests

Although data on the numbers of people imprisoned for drug offences, and the type of drug and offence for which they are imprisoned, does not appear to be publicly available, UNODC data for the period 2008 to 2012 shows that the rate of drug-related arrests made in Cambodia increased drastically from 394 to 1,788. The increased seizures of crystalline methamphetamine, ecstasy and cocaine during the same period suggests that some of the arrests may relate to those drugs, however it is unclear as to the extent to which people are imprisoned for low-level, nonviolent offences including drug consumption.

Proportionality of sentencing for drug offences

International legal principles on proportionality

Proportionality is a key principle of the rule of law with the primary aim of protecting people from cruel or inhumane treatment. It is established in international treaties such as the International Covenant on Civil and Political Rights, and regional human right rights agreements in ASEAN,^{viii} the European Union and Americas, and even incorporated in the constitutions and criminal laws of some countries, including Germany, Argentina and Brazil. The principle requires that an individual's rights and freedoms may only be limited to the extent that it is appropriate and necessary for achieving a legitimate purpose. The Universal Declaration of Human Rights defines such a purpose as "securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."^{ix} It further requires that of the range of available options for restricting an individual's rights and freedoms in order to achieve a legitimate purpose, the option that is least intrusive to fundamental rights should be adopted.

Application of proportionality to determining drug offences and penalties

Each of the UN drug control conventions state that the fundamental objective of the conventions is to improve the health and welfare of mankind. The conventions seek to achieve that objective by restricting the non-medical use of controlled substances, for example recreational use, while at the same time ensuring their availability for medical purposes. This means that a factor in determining the proportionate sentence for a drug offence should be the potential harm that a controlled substance, and the activities associated with it, may cause to the health and welfare of a community.

The principle of proportionality is particularly relevant to drug offences because many governments impose disproportionate penalties in the belief that harsh punishment will deter individuals from engaging in drug-related activities. However, there is no evidence that harsh penalties have been effective in deterring people from using drugs or engaging in other drug-related activities.

Alternatives to conviction and punishment for minor cases

It is important to note that for some drug-related activities, it is not necessary for there to be any punishment or criminal conviction. The UN drug control conventions do not require drug use, and possession, purchase and cultivation relating to personal use, to be treated as a criminal offence or to be punished. In addition, the 1988 UN drug convention does not require criminal penalties and imprisonment for “appropriate cases of a minor nature,” but instead advises that member states “may provide, as alternatives to conviction or punishment, measures such as education, rehabilitation or social integration, as well as, when the offender is a drug abuser, treatment and aftercare.”^x

The International Narcotics Control Board and the UNODC have both called on countries to ensure that their sentencing for drug offences meet international standards of proportionality. In 2012, the UNODC issued advice in a human rights guidance note emphasising the need for proportionality in determining penalties for drug

offences and alternatives to conviction and punishment:

Responses to drug law offences must be proportionate...For offences involving the possession, purchase or cultivation of illicit drugs for personal use, community-based treatment, education, aftercare, rehabilitation and social integration represent a more effective and proportionate alternative to conviction and punishment, including detention.^{xi}

Developments towards improving the proportionality of sentencing for drug offences in other countries

In the past few years, countries in **Latin America** have been discussing new and alternative approaches to drug control policy. Many of them believe that they are paying a disproportionate price in the ‘war on drugs’: they have seen communities suffering extreme levels of violence, justice systems that are not able to function properly because they are overwhelmed with drug-related cases, a wide range of abuses in overcrowded prisons, and small farmers that are pushed off their land by large drug producers. In the past, many countries in Latin America have enthusiastically engaged in attempts to eradicate crops, disrupt drug traffickers, and deter users by imposing long prison sentences, even up to 40 years. But those measures have not worked and many of those countries are still suffering from widespread gang violence, overloaded court and prison systems, and social upheaval related to the drug market.

Countries in Latin America are now asking the most fundamental questions about current drug control strategies, with several of governments involved in the regional body known as the Organisation of American States (OAS) calling for it to move away from the strategy of criminalising and punishing everyone involved in the drug market. As a result in June 2013, OAS states agreed on a declaration “For a comprehensive policy against the world drug problem in the Americas,” where ensuring the proportionality of criminal justice penalties for drug-related offences were considered vital. For example in paragraph 18, the OAS declares that:

“member states, in accordance with their domestic law, to continue strengthening measures and policies, including a gender perspective, as appropriate, to reduce overcrowding in prisons, while promoting greater access to justice for all, and establishing penalties that are reasonable and proportionate to the severity of the crime, and supporting alternatives to incarceration in appropriate cases, particularly by increasing access to rehabilitation, comprehensive health care, and social reintegration programs.”

The **United States** has also acknowledged its disproportionate sentencing of drug offences and the need to address the problem of its overcrowded prisons, one of which is the huge costs of maintaining a large and growing prison population. Half of the people in federal prisons are serving sentences for drug offenses, and 55% of those people are serving sentences of more than 10 years. Last year, the US started introducing policy changes to the prosecution and judgment of low-level, non-violent drug offences, to reduce the length of prison sentences given for drug offences and to introduce more alternatives to imprisonment. This change was announced by the U.S. Attorney General Eric Holder in August 2013, when he declared:

Too many Americans go to too many prisons for far too long, and for no truly good law enforcement reason...By reserving the most severe penalties for serious, high-level, or violent drug traffickers, we can better promote public safety, deterrence, and rehabilitation – while making our expenditures smarter and more productive.^{xii}

Recommendations

Disproportionate sentencing frameworks compound negative socio-economic conditions and increase the vulnerability of marginalised groups, hence fail to tackle the motivations that drive many to commit drug trafficking offences. There is a need to review existing sentencing framework for drug offences, to ensure that penalties for drug offences are the least intrusive option available, and are appropriate and necessary for meeting the

legitimate aim of ensuring the health and welfare of the community. Consideration could also be given to imposing no punishment or reduced or suspended sentences, as well as alternatives to imprisonment, for minor cases where appropriate.

In considering the relevance of principles and practices of proportionality in sentencing of drug offences for Cambodia, including in supporting effective, evidence- and rights-based approaches to drug use and drug dependence, IDPC proposes the following recommendations to policymakers:

1. Review the proportionality of Cambodia’s sentencing framework for drug offences, with input from affected communities including people who use drugs, which could include review of whether:
 - a. distinctions are made between the types of drug-related activities (eg. use, small/medium/large-scale trafficking, user-dealer)
 - b. distinctions are made between the role played by an accused individual in the drug market (e.g. person who uses drugs recreationally, person dependent on drugs, ‘drug mule’,^{xiii} low-level smuggler, member of organized crime network)
 - c. mitigating factors are taken account of to determine whether a sentence should be reduced (e.g. vulnerable socio-economic circumstances, low motivation for financial gain, first-time offence, no involvement in organized crime), and
 - d. aggravating factors are taken account of to determine whether a sentence should be increased (e.g. involvement of violence, minors or in organised crime).
2. Identify categories of drug cases of a minor nature, for which alternatives to conviction and imprisonment may be considered, especially cases of drug use and possession for personal use, and low-level, nonviolent offences.
3. Work with police and other law enforcement officers, prosecutors, judges, and lawyers to implement measures improving the proportionality of sentences for drug offences.

ⁱ Klein, A., Saphonn, V., & Reid, S. (2012) 'Reaching out and reaching up – Developing a low cost drug treatment system in Cambodia', *Harm Reduction Journal*, 9(1): 11

ⁱⁱ Personal communications with officials from the National Authority on Combating Drugs, and staff from a drop-in centre for people who use drugs.

ⁱⁱⁱ National AIDS Authority (2014) 'Cambodia Country Progress Report', <http://www.naa.org.kh/userfiles/image/download/1408680367339.pdf>

^{iv} Chheng, K., Leang, S., Thomson, N., Moore, T., & Crofts, N. (2012) 'Harm reduction in Cambodia: a disconnect between policy and practice', *Harm Reduction Journal*, 9(1): 30

^v Human Rights Watch (2009) 'Skin on the Cable: The illegal arrest, arbitrary detention and torture of people who use drugs in Cambodia', New York: Human Rights Watch, <http://www.hrw.org/sites/default/files/reports/cambodia0110webwcover.pdf>

^{vi} Prime Minister of Cambodia (26 June 2014) 'Address on the Occasion of the Commemoration of the International Day Against Drug Abuse and Illicit Trafficking'

^{vii} Thomson, N. et al. (2012) 'The village/commune safety policy and HIV prevention efforts among key affected populations in Cambodia: Finding a balance', *Harm Reduction Journal*, 9(1): 31

^{viii} Article 8 of the ASEAN Human Rights Declaration, at: <http://www.asean.org/news/asean-statement-communicues/item/asean-human-rights-declaration>

^{ix} Article 29(2) of the Universal Declaration of Human Rights states "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."

^x Article 3(4)(c) of the 1988 Convention

^{xi} *UNODC and the promotion and protection of human rights*, UNODC Guidance Note – Human Rights, May 2012, http://www.unodc.org/documents/justice-and-prison-reform/HR_paper_UNODC.pdf

^{xii} *Attorney General Eric Holder Delivers Remarks at the Annual Meeting of the American Bar Association's House of Delegates* (12 August 2013),

<http://www.justice.gov/iso/opa/ag/speeches/2013/ag-speech-130812.html>

^{xiii} Drug mules often come from extremely vulnerable social backgrounds, put their health at serious risk, in return for very low pay, and could have been coerced or exploited into carrying drugs.