

15 May 2015

## Submission: Impact of the world drug problem on the enjoyment of human rights

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Referring to para. 1 of the Human Rights Council Resolution A/HRC/28/L.22 **Penal Reform International (PRI)**<sup>1</sup> and **Harm Reduction International**<sup>2</sup> welcome the opportunity to provide information relating to ‘the impact of the world drug problem on the enjoyment of human rights, and recommendations on respect for and the protection and promotion of human rights in the context of the world drug problem, with particular consideration for the needs of persons affected and persons in vulnerable situations’.

This submission focuses on the human rights impact of current drug policies in the criminal justice system, and is based on PRI’s publications ‘The unintended negative consequences of the war on drugs’<sup>3</sup> and PRI’s 2015 Global Prison Trends report.<sup>4</sup> It also draws on a compilation of research relating to women in criminal justice systems,<sup>5</sup> and some unpublished research on infectious diseases in prisons undertaken by HRI.

### Introduction

The enforcement of overly punitive laws for drug offences has not only proven ineffective in curbing the production, trafficking, and consumption of illicit substances, but had many negative consequences, including overloading criminal justice systems, overwhelming the courts, fuelling prison overcrowding and exacerbating health problems. Focusing already limited resources on low-level offenders and drug users has prevented governments from targeting the perpetrators of organised crime who benefit from, and fuel for their financial benefit, the drug addictions of usually poor and marginalised users.

At the same time there is no evidence that punitive enforcement measures significantly deter the

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<sup>1</sup> Penal Reform International (PRI) is an independent non-governmental organisation with consultative status with ECOSOC that develops and promotes fair, effective and proportionate responses to criminal justice problems worldwide. PRI has a Regional Office based in Astana.

<sup>2</sup> Harm Reduction International (HRI) is a leading non-governmental organisation with ECOSOC consultative status working to reduce the negative health, social and human rights impacts of drug use and drug policy by promoting evidence-based public health policies and practices, and human rights-based approaches to drug policy.

<sup>3</sup> Penal Reform International, The unintended negative consequences of the ‘war on drugs’, 2013, <http://www.penalreform.org/resource/unintended-negative-consequences-war-drugs-mass-criminalisation-punitive/>

<sup>4</sup> Penal Reform International, Global Prison Trends 2015, Special Focus ‘Drugs and imprisonment’, <http://www.penalreform.org/resource/global-prison-trends-2015/>

<sup>5</sup> Penal Reform International, Women prisoners: Women in criminal justice systems and the added value of the UN Bangkok Rules, 2015, <http://www.penalreform.org/resource/women-in-the-criminal-justice-system-the-added/>

use of drugs. As studies suggest deterrence is at best marginal compared to the wider social, cultural and economic factors that drive drug use.<sup>6</sup>

*'Effective drug control cannot exist without fair criminal justice and successful crime prevention', Yury Fedotov, UNODC Executive Director (2010)*

## 1. Proportionality of sentences

The so-called 'war on drugs' has resulted in the prosecution of drug offences in many countries with lengthy sentences, often without differentiation, for those involved in trafficking, as well as for use and possession of narcotics.

For example, in most US States possession is classed as a felony leading to harsh prison terms which in many cases is mandatory.<sup>7</sup> Recent figures show that in England and Wales in 2013-14 almost 2,000 people received immediate prison sentences for possessing Class C drugs which include tranquillisers, valium and anabolic steroids.<sup>8</sup>

The 'war on drugs' has seen the unwavering application of punitive criminal sanctions for drug offenders, with little differentiation between use and possession, at one end of the scale, and large-scale trafficking with links to organised crime, at the other end. This has given rise to a dramatic increase in the number of persons disproportionately criminalised for small-scale drug offences.<sup>9</sup> In the USA, for example, approximately 40 per cent of all drug arrests in 2005 were for simple possession of marijuana, and in the 1990s marijuana possession arrests accounted for 79 per cent of the growth in drug arrests.<sup>10</sup> The majority of small-scale drug offenders have no history of violence or high-level drug selling activity.

It has been estimated that amongst the approximately 10 million prison population, at least one million people are in prison for a drug-related offence. A 2013 UNODC study suggests that offences related to drug possession currently comprise more than eight out of 10 of total global drug-related offences. The study states that the global increase in drug-related crime is driven mainly by a rising number of offences related to drug possession, particularly in Europe and Africa. As a result of such trends, offences related to drug possession currently comprise 83 per cent of total global drug-related offences.<sup>11</sup> Moreover the vast majority of traffickers in prison are low level offenders.

Before the recent reforms in Ecuador, for example, a small-scale drug trafficker could end up with

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<sup>6</sup> The War on Drugs: Creating crime enriching criminals, Count the Costs, p. 11.

<sup>7</sup> 'Penalties and sentencing', <http://www.drugabuse.net/drug-policy/penalties-for-drug-abuse/>, <accessed 27 January 2015>.

<sup>8</sup> UK Ministry of Justice, Drugs: Misuse, <http://www.theyworkforyou.com/wrans/?id=2014-09-09.208713.h&s=drugs#g208713.r0> <accessed 27 January 2015>.

<sup>9</sup> Small-scale drug offences are usually taken to encompass both possession for personal use as well as possession for dealing, however there are no clear thresholds on what is considered 'small-scale'. Quantitative thresholds can become overly complex depending on whether you go by weight or by purity. Often 'small-scale' refers to what role and influence the individual plays in the supply chain. This is why judicial discretion is so critical.

<sup>10</sup> Bryan Stevenson, Drug Policy, Criminal Justice and Mass Imprisonment, Working Paper Prepared for the First Meeting of the Global Commission on Drug Policies, Geneva, 24-25 January 2011.

<sup>11</sup> UNODC, *World crime trends and emerging issues and responses in the field of crime prevention and criminal justice*, 2013.

a longer sentence than a convicted murderer (maximum sentence for homicide 16 years).<sup>12</sup> In Ukraine, the possession of minimal amounts of drugs (from 0.005g) can lead to three years in prison.<sup>13</sup> In Russia, solution traces in a used needle can lead to one and a half years in prison. In Georgia, drug urine tests can lead to imprisonment.<sup>14</sup> Under the notorious ‘three strikes laws’ that have become popular in the USA, drug offenders with no history of violence may face mandatory minimum sentences in excess of 25 years in prison. Thousands of low-level drug offenders have been sentenced to life imprisonment with no chance of parole as a result of such laws.<sup>15</sup> Penalties which are tougher on low-level drug offenders than on bank robbers, kidnappers and murderers raises concerns in terms of undermining both the notion of proportionality and of fairness of the law.

Disproportionate penal policies also exist with regard to pre-trial detention. In many countries, pre-trial detention is mandatory for drug offences.<sup>16</sup> In others, persons accused or convicted of drug offences are denied access to alternative sentences that are available to those accused of other types of offences. In Brazil, for instance, the 2006 law prohibited replacement of imprisonment with alternative sentences for drug offences, even though Brazilian law allows alternatives in the case of sentences up to four years for all other offences perpetrated without violence or grave threat, which would be the case for many instances of drug offences.<sup>17</sup> A ban on early release for drug offences (among other offences) was found to be disproportionate in comparison with other offences for which early release was possible by the Working Group on Arbitrary Detention.<sup>18</sup>

Research suggests that punishment has a limited impact upon reducing illicit drug use, with countries which impose severe penalties for possession and personal consumption of drugs no more likely to deter drug use in the community compared to countries imposing less severe sanctions.<sup>19</sup> A recent survey conducted by the UK government found that ‘evidence from other countries show that levels of drug use are influenced by factors more complex and nuanced than legislation and enforcement alone’.<sup>20</sup>

*‘Drug dependency is a health disorder, and drug users need humane and effective treatment – not punishment’, Yuri Fedotov, UNODC Executive Director (2010)*

## 2. Discrimination on ethnic grounds

In some States, ethnic minorities and marginalised groups living in poverty are disproportionately targeted by drug enforcement efforts.<sup>21</sup> Statistics also show that very large proportions of foreign

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<sup>12</sup> Systems Overload: Drug Laws and Prisons in Latin America, Transnational Institute and Washington Office on Latin America, 9 December 2010, p. 52.

<sup>13</sup> Golichenko, M., and Merkinaite, S., In breach of international law: Ukrainian drug legislation and the European Convention for the Protection of Human Rights and Fundamental Freedoms, Discussion Paper, 2011.

<sup>14</sup> Otiashvili, D., Kirtadze, I. and Tsertsvadze, V., How efficient is street drug testing?, Policy Brief, Alternative Georgia, Tbilisi, 2011.

<sup>15</sup> Drug Policy, Criminal Justice and Mass Imprisonment, supra at n. 2.

<sup>16</sup> Systems Overload: Drug Laws and Prisons in Latin America, supra at n. 11, p. 6. (Bolivia, Brazil, Ecuador, Mexico and Peru)

<sup>17</sup> Systems Overload: Drug Laws and Prisons in Latin America, supra at n. 11, p. 35

<sup>18</sup> UN Working Group on Arbitrary Detention, Mission to Mexico, E/CN.4/2003/8/Add.3, 17 December 2002, Para 44.

<sup>19</sup> UNODC, *From coercion to cohesion: Treating drug dependence through health care, not punishment*, Discussion Paper, New York, 2010.

<sup>20</sup> UK Home Office, *Drugs : International comparators*, October 2014,

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/368489/DrugsInternationalComparators.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/368489/DrugsInternationalComparators.pdf), <accessed 27 January 2015>.

<sup>21</sup> UN High Commissioner for Human Rights, 16 June 2014.

nationals in prison are charged with or convicted of drug related offences particularly trafficking.

Drug law enforcement also disproportionately impacts on minorities. In the USA, African Americans make up 13 per cent of the population. Yet they account for 33.6 per cent of drug arrests and 37 per cent of people sent to state prison on drug charges. Black people are 3.7 times more likely to be arrested for marijuana possession than white people despite comparable usage rates.<sup>22</sup> Similar racial disparities have been observed elsewhere including the UK, Canada and Australia.<sup>23</sup>

### 3. Death penalty

In 2012, the death penalty was prescribed in law in 33 countries or territories for drug-related offences,<sup>24</sup> including China, Indonesia, Iran, Laos, Malaysia, Pakistan, Qatar, Saudi Arabia, Singapore, Thailand, UAE, Viet Nam and Yemen.<sup>25</sup> Around 1,000 people are executed every year as a result.

China, Iran, Saudi Arabia, Vietnam, Malaysia and Singapore, and to a lesser extent, Egypt, Indonesia, Kuwait, Pakistan, Syria, Thailand and Yemen issue the majority of death sentences, and have carried out executions for drug-related offences.<sup>26</sup>

For example, China has carried out mass public executions of drug offenders, using the UN's International Day Against Drug Abuse and Illicit Trafficking on 26 June in recent years.<sup>27</sup> According to Iran Human Rights, in the first months of 2013 Iran publically executed by hanging at least 40 people convicted of drug offences, including one woman. 900 prisoners awaiting execution in Malaysia in October 2012 were drug offenders.<sup>28</sup> In October 2014, 111 prisoners on death row in Pakistan were drug offenders.<sup>29</sup>

The International Covenant on Civil and Political Rights (ICCPR) specifies that in countries which have not abolished the death penalty, the sentence of death may be imposed only for the 'most serious crimes'.<sup>30</sup> The phrase 'most serious crimes' has been interpreted by UN bodies as meaning 'intentional crimes with lethal or other extremely grave consequences'<sup>31</sup> and to be 'read restrictively to mean that the death penalty should be quite an exceptional measure'.<sup>32</sup> In 2012, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions interpreted the 'most

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<sup>22</sup> 'New ACLU Report Finds Overwhelming Racial Bias in Marijuana Arrests', *ACLU website*, 4 June 2013, <https://www.aclu.org/criminal-law-reform/new-aclu-report-finds-overwhelming-racial-bias-marijuana-arrests> <accessed 27 January 2015>.

<sup>23</sup> Global Commission on Drug Policy, *Counting the costs*, 2014.

<sup>24</sup> The Death Penalty for Drug Offences: Global Overview 2012, Harm Reduction International, 2012.

<sup>25</sup> Amnesty International, *Death sentences and executions*, 2013.

<sup>26</sup> The Death Penalty for Drug Offences: Global Overview 2011, International Harm Reduction Association, 2011.

<sup>27</sup> The Death Penalty for Drug Offences: Global Overview 2010, International Harm Reduction Association, 2010.

<sup>28</sup> 'Possible moratorium on death sentence pending govt's final decision', *New Straits Times*, 20 October 2012, <http://www.nst.com.my/latest/possible-moratorium-on-death-sentence-pending-govt-s-final-decision-1.159690>, <accessed 27 January 2015>

<sup>29</sup> 'Britain urged to suspend aid to Pakistan as hangings loom', *The Daily Telegraph*, 23 October 2014, <http://www.telegraph.co.uk/news/worldnews/asia/pakistan/11181240/Britain-urged-to-suspend-aid-to-Pakistan-as-hangings-loom.html> <accessed 27 January 2015>.

<sup>30</sup> See Article 6(2), International Covenant on Civil and Political Rights.

<sup>31</sup> Safeguard 1 of the UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, approved by UN ECOSOC resolution 1984/50 of 25 May 1984.

<sup>32</sup> General Comment No. 6 on article 6 of the ICCPR, adopted on 27 July 1982, para. 7.

serious crimes' threshold as 'only intentional killing'.<sup>33</sup> Drug offences do not meet this threshold,<sup>34</sup> and executions for such offences are therefore in violation of international human rights law.<sup>35</sup>

#### 4. Health in prison

The current system for international drug control favours criminalisation and punishment over health and human rights, which is demonstrated in part by the billions of dollars spent every year on arresting and incarcerating drug users instead of investing in harm reduction.<sup>36</sup> This prioritisation has exacerbated the spread of HIV, hepatitis C (HCV) and other health-related harms by deepening the marginalisation and stigmatisation faced by people who use drugs, and undermining their access to essential prevention, care and treatment services.<sup>37</sup> These effects are especially visible in prisons.

According to global figures, 10-48 per cent of males and 30-60 per cent of females are using or dependent on illicit drugs on entry to prison,<sup>38</sup> and one in six prisoners is thought to be a 'problem drug user'.<sup>39</sup> There is also evidence that many prisoners initiate drug use for the first time in prison.<sup>40</sup> For example, between three and five per cent of women prisoners surveyed in 2014 in Jordan and nine per cent in Tunisia stated that they started using drugs or alcohol while in detention.<sup>41</sup> A Belgian study carried out in 2008 found that more than one-third of prisoners who used drugs prior to imprisonment had started to use an additional drug – generally heroin – upon entering prison.<sup>42</sup>

In most countries, HIV, HCV and tuberculosis prevalence rates in prison are drastically higher than in the general population. The TB notification rate in prisons, for example, ranges from 11 to 81 times higher than in the general population,<sup>43</sup> and in some countries is as much as one hundred times more likely in prisons.<sup>44</sup> Rates of HIV and HCV among prisoners in many countries are also considerably higher – global HIV prevalence has been estimated to be two to 50 times higher among the prison population than in the general public, while HCV rates are even higher.<sup>45</sup> This is

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<sup>33</sup> UN document A/67/275, 9 August 2012, para. 50.

<sup>34</sup> See UN document CCPR/CO/69/KWT, 27 July 2000, para. 13; UN document. CCPR/CO/84/THA, 8 July 2005, para. 14; UN document. A/50/40, 3 October 1995, para. 449; UN document E/CN.4/1997/60, 24 December 1996, para. 91; UN document E/CN.4/2004/7, 29 December 2007, paras. 51-53; press release of the UN High Commissioner for Human Rights, 10 March 2009; letter of the UN Special Rapporteurs on the question of torture and the right of everyone to the enjoyment of the highest attainable standard of physical and mental health to the Chairperson of the 52nd Session of the Commission on Narcotic Drugs, 10 December 2008.

<sup>35</sup> Rick Lines, A 'Most Serious Crime?' – The Death Penalty for Drug Offences and International Human Rights Law' *Amicus Journal*, No. 21, pp. 21-28, 2010

<sup>36</sup> See generally, Harm Reduction International, *The funding crisis for harm reduction*, 2014.

<sup>37</sup> See two reports by the Global Commission on Drug Policy: *The War on Drugs and HIV/AIDS: How the Criminalization of Drug Users Fuels the Global Pandemic* (June 2012); *The Negative Impact of the War on Drugs on Public Health: The Hidden Hepatitis C Epidemic* (May 2013).

<sup>38</sup> Fazel, S., Bains, P., & Doll, H. Substance abuse and dependence in prisoners: a systematic review. *Addiction*, 101, 181-191.

<sup>39</sup> WHO, Prisons and Health, 2014.

<sup>40</sup> Jürgens R et al, 'HIV and incarceration: prisons and detention'. *Journal of the International AIDS Society*, 2011;14:26, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3123257/>, <accessed 27 January 2015>.

<sup>41</sup> Penal Reform International, *Who are women prisoners? Survey results from Jordan and Tunisia*, 2014.

<sup>42</sup> Todts, S. et al, *Usage de drogue dans les prisons belges: monitoring des risques sanitaires*, Modus Vivendi, 2008.

<sup>43</sup> Prisons and Health – WHO Guide, 2014.

<sup>44</sup> International Committee of the Red Cross, News Release: *Tuberculosis in prisons: A major health problem*, 22 March 2013.

<sup>45</sup> Marriner, J., Schleifer, R., "The Right to Health in Prisons", in *Advancing the Human Right to Health*, José M. Zuniga et al (eds), Oxford University Press, 2013.

closely related to the fact that people from communities already disproportionately affected by these diseases, including people who inject drugs, also face disproportionate rates of incarceration. It is also associated with poor and overcrowded prison conditions, inadequate health care and lack of harm reduction services, as well as high rates of unsafe injecting drug use.<sup>46</sup> This combination of factors creates an extremely high-risk environment for the spread of infectious diseases. Indeed, imprisonment has been identified as a risk factor for acquiring HIV infection in countries in Western and Southern Europe, Russia, Canada, Brazil, Iran and Thailand.<sup>47</sup>

Prisoners' right to the highest attainable standard of health is protected under human rights law,<sup>48</sup> and minimum standards of medical care have been articulated and codified in numerous international instruments, including the UN Standard Minimum Rules on the Treatment of Prisoners and the UN Basic Principles for the Treatment of Prisoners. Prisoners' right to health includes, but is not limited to, the right to a standard of health care equivalent to that available outside of prisons.<sup>49</sup> This necessarily consists of preventive measures comparable to services and treatment available in the community. According to the Committee on Economic, Social and Cultural Rights, 'States are under the obligation to respect the right to health by, *inter alia*, refraining from denying or limiting equal access for all persons, including prisoners and detainees...to preventive...health services.'<sup>50</sup> Very few prison administrations, however, provide health care services that meet these obligations. For example, the provision of harm reduction interventions, such as needle and syringe programmes (NSPs), remains extremely limited in comparison to what is available in the community - as of 2014, only eight countries implemented NSPs in prison settings.<sup>51</sup> Where harm reduction measures have been introduced, levels of disease have fallen among prisoners, for example in Moldova.<sup>52</sup> Unfortunately where access to drug treatment programmes is available, these are often discriminatory towards women, available only in men's prisons<sup>53</sup> or in less advantageous conditions (eg without a separate 'clean zone').<sup>54</sup>

The spread of infectious diseases in places of detention also engages other rights, including the right to be free from cruel, inhuman or degrading treatment. Indeed, United Nations human rights bodies and the European Court of Human Rights are increasingly finding that issues relating to infectious diseases in detention – including the inadequate prevention, care or treatment of infectious diseases,<sup>55</sup> the denial of harm reduction services or essential medicines to people who

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<sup>46</sup> Injecting drug users make up about one third to one half of prison populations. See Dolan, K. *et al.* People who inject drugs in prison: HIV prevalence, transmission and prevention. *International Journal of Drug Policy* 26(2015), S12-S15.

<sup>47</sup> Jurgens R, Ball A, and Verster A., Interventions to reduce HIV transmission related to injecting drug use in prison, *Lancet Infectious Disease*, 2009, 9(1): 57-66.

<sup>48</sup> Rick Lines, 'The Right to Health of Prisoners in International Human Rights Law', *International Journal of Prisoners Health*, 2008;4(1):3-53.

<sup>49</sup> *Basic Principles for the Treatment of Prisoners*, United Nations General Assembly, UN Doc. A/45/49 (1990), Principle 9.

<sup>50</sup> UN Committee on Economic, Social and Cultural Rights, *General Comment 14: The right to the highest attainable standard of physical and mental health*, UN Doc. E/C.12/2000/4 (2000), para. 34.

<sup>51</sup> Harm Reduction International, *Global State of Harm Reduction*, 2014.

<sup>52</sup> UN Secretary General's Special Envoy on HIV/AIDS in Eastern Europe and Central Asia, 'Is Moldova Leading the World on Harm Reduction in Prisons?', *Huffington Post blog*, 2 May 2014, [http://www.huffingtonpost.com/michel-d-kazatchkine/is-moldova-leading-the-world-on-harm-reduction-in-prisons?b\\_4731043.html](http://www.huffingtonpost.com/michel-d-kazatchkine/is-moldova-leading-the-world-on-harm-reduction-in-prisons?b_4731043.html), <accessed 27 January 2015>.

<sup>53</sup> Harm Reduction International, *The global state of harm reduction 2012: Towards an integrated response*, 2012, p129.

<sup>54</sup> Eg Penal Reform International, *Who are women prisoners? Kazakhstan and Kyrgyzstan*, 2014, p17; and Penal Reform International, *Women in prison in Russia: at a glance*, 2010.

<sup>55</sup> See, for example, the following European Court of Human Rights cases: *Khodobin v. Russia*, (Application no. 59696/00), 26 October 2006; *Yakovenko v. Ukraine*, (Application no. 15825/06), 25 October 2007; *Testa v. Croatia*, (Application no. 20877/04), 12 July 2007; *Mechenkov v. Russia*, (Application no. 35421/05), 7 February 2008; *Logvinenko v. Ukraine*, (Application no. 13448/07), 14 October 2010; *Gladkiy v. Russia*, (Application no. 3242/03), 21 December 2010; *Kozhokar v. Russia*, (Application no. 33099/08), 16 December 2010; *Vasyukov v. Russia* (Application no. 2974/05), 5 April 2011; *Irakli Mindadze v. Georgia*, (Application no. 17012/09), 11 December 2012; *Koryak v. Russia*,

use drugs,<sup>56</sup> or conditions that aggravate or favour the spread of infectious diseases<sup>57</sup> – can contribute to, or even constitute, conditions that meet the threshold of ill-treatment.

Given that in most countries HIV and HCV prevalence rates in prison are significantly higher than in the general population, and that the majority of prisoners eventually return to their communities, it is both a public health and human rights imperative for prison authorities to ensure that prisoners have access to harm reduction services and programmes.

## 5. Gender disparities

Prison statistics show that a higher percentage of women than of men are in prison for drug offences. Worldwide statistics show that drug-related offending is particularly high among women prisoners, and both domestic and international anti-drug policies have been identified as a leading cause for the rising rates of incarceration of women around the world.

For example, a 2012 study revealed that more than one in four women in European and Central Asian prisons were imprisoned for drug offences.<sup>58</sup> Over 31,000 women across Europe and Central Asia were imprisoned for drug offences, with almost 70 per cent of all women prisoners in Tajikistan, 40 per cent in Georgia, about 50 per cent in Estonia, Portugal and Spain, almost 70 per cent in Latvia and 37 per cent in Italy.<sup>59</sup> In Kazakhstan and Kyrgyzstan too, a high percentage of women prisoners surveyed in 2012 were convicted for drug-related offences (about a third).<sup>60</sup> In China, drug offences by women prisoners accounted for 41.88 per cent of crimes.<sup>61</sup> In Canada, about a third of women prisoners were convicted of drug-related offences.<sup>62</sup> In Thailand, this figure was 57 per cent.<sup>63</sup>

Particularly high rates of women imprisoned on drug-related charges are documented in Latin America, with percentages up to 70 per cent.<sup>64</sup> Between 2006 and 2011, the female prison population in the region almost doubled, increasing from 40,000 to more than 74,000 prisoners, usually for low-level trafficking offences.<sup>65</sup>

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(Application no. 24677/10), 13 November 2012; *Salakhov and Islyamova v. Ukraine*, (Application no. 28005/08), 14 March 2013; *E.A. v. Russia*, (application no. 44187/04), 23 May 2013; *Reshetnyak v. Russia*, (application no. 56027/10), 8 January 2013; *A.B. v. Russia*, (Application no. 1439/06) 14 October 2014; *M.S. v. Russia*, (Application 8589/08), 10 July 2014.

<sup>56</sup> See, for example, Human Rights Committee, Concluding Observations: Republic of Moldova, UN Doc. CCPR/CO/75/MDA, 5 August 2002; European Court of Human Rights, *McGlinchey and Others v. the United Kingdom* (2003); Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment of punishment, Manfred Nowak*, UN Doc. A/HRC/10/44, 14 January 2009; United Nations General Assembly, *Report of the Special Rapporteur on the right to the highest attainable standard of physical and mental health, Anand Grover*, UN Doc. A/65/255, 6 August 2010; Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment of punishment, Juan E. Méndez*, UN Doc. A/HRC/22/53, 11 February 2013; Human Rights Committee, *Concluding Observations on the Seventh Periodic Report of the Russian Federation*, UN Doc. CCPR/C//RUS/7, March 2015 (Advanced Unedited Version).

<sup>57</sup> See, for example, European Court of Human Rights, *Kalshnikov v. Russia*, (Application no. 47095/99), 15 July 2002.

<sup>58</sup> Cause for Alarm: *The Incarceration of Women for Drug Offences in Europe and Central Asia, and the need for Legislative and Sentencing Reform*, Eka Iakobishvili, Harm Reduction International, March 2012.

<sup>59</sup> E. Iakobishvili, Cause for Alarm (2012), p. 5.

<sup>60</sup> Penal Reform International, *Kazakhstan and Kyrgyzstan* (2013), p. 12.

<sup>61</sup> Lei et al. (2014), pp. 20, 21.

<sup>62</sup> EurekAlert (2011).

<sup>63</sup> Department for Corrections, Ministry of Justice, Thailand, [www.correct.go.th/eng/statistics.html](http://www.correct.go.th/eng/statistics.html)

<sup>64</sup> E. Iakobishvili, Cause for Alarm (2012), p. 5.

<sup>65</sup> D. Tomasini (2012), cited in OAS, *Women and Drugs in the Americas* (2014), p. 29

The offences involving women in many countries are non-violent, usually involving small quantities of drugs.

Research, for example in Argentina, showed that women's primary role in drug trafficking is that of a mule,<sup>66</sup> which makes them typically easy targets for drug enforcement authorities, even though it does little to disrupt drug trafficking networks. All of the women charged with drug trafficking interviewed in Argentina were transporting small quantities of illegal substances across the border.<sup>67</sup> As a consequence, harsh prison sentences, including for non-violent, low-level drug crimes, appear to affect women disproportionately.<sup>68</sup>

In Ecuador, 77 per cent of women in prison were incarcerated for drug-offences compared to 33.5 per cent of the male prison population, indicating a gendered disparity.<sup>69</sup> In Georgia, for example, quantities for which women spend 7-10 years in prison often do not exceed 0.5mg of heroin.<sup>70</sup> An older study in the US also found that women were over-represented among low-level non-violent drug offenders, with minimal or no prior criminal history and not representing principal figures in criminal organisations or activities. Nevertheless they received sentences similar to high-level drug offenders under the mandatory sentencing policies.<sup>71</sup>

Other research has also indicated that more serious offenders, mainly male, escape imprisonment or have their sentences reduced by entering plea-bargaining deals and providing assistance to the prosecution, which women are usually unable to provide.<sup>72</sup>

The UN Committee on the Elimination of Discrimination against Women (CEDAW) has expressed its concern about the imprisonment of women with petty offending backgrounds, including drug offences. In relation to the United Kingdom, the Committee expressed concern at the number of women 'imprisoned for drug offences or because of the criminalisation of minor infringements, which in some instances seem indicative of women's poverty.'<sup>73</sup>

## 6. Drug policies, marginalisation and development

There is a link between substance use and poverty. People who use drugs, or are accused of small-scale drug offences, often belong to vulnerable, poor and socially excluded groups, and disproportionately represent ethnic and other minority groups. An overwhelming percentage of drug users are struggling with unemployment, poor skills, low income, poor housing, and bad health and family environments.<sup>74</sup> The undifferentiated criminalisation of drug offences has contributed to marginalisation, discrimination and the transmission of HIV/AIDS and other blood-

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<sup>66</sup> transporting drugs, often by swallowing them or introducing them into their body cavities.

<sup>67</sup> Cornell Law School's Avon Global Center for Women and Justice et al. (2013), pp. 2, 17, with reference also to Transnational Institute, drug laws and prisons in Latin America, supra note 10, at 97 (studies suggest 'a growing number of women, often the sole providers for their families, enter the drug trade simply to put food on the table for the children.')

<sup>68</sup> Cornell Law School's Avon Global Center for Women and Justice et al. (2013), p. 15, with reference also to a report from the Office of the Human Rights Ombudsman in Buenos Aires.

<sup>69</sup> Special Rapporteur on violence against women, A/68/340 (2013), para. 26.

<sup>70</sup> Eka Iakobishvili, Cause for alarm: The Incarceration of Women for Drug Offences in Europe and Central Asia, and the need for Legislative and Sentencing Reform, Harm Reduction International, 2012, p. 24.

<sup>71</sup> Amnesty International, Women in Prison Factsheet (2005), citing Department of Justice, Bureau of Justice Statistics, Prisoners (1997)

<sup>72</sup> Special Rapporteur on violence against women, A/68/340 (2013), para. 26.

<sup>73</sup> UN document CEDAW/C/UK/3 and Add.1 and 2, and CEDAW/C/UK/4 and Add.1, para. 312, 1999.

<sup>74</sup> Martina Melis and Marie Nougier, Drug policy and development: How action against illicit drugs impacts on the Millennium Development Goals, International Drug Policy Consortium, October 2010, p. 10.



borne diseases.

Rather than deterring them in future, the criminalisation of drug users drives them further into the cycle of poverty. Once marked with the stigma of a criminal sentence, access to work, housing and education is even further jeopardised, and it drives this group away from health and social services. In many countries, such as Russia and Georgia, a drug conviction or even a positive drug test may result in problems accessing social welfare, public housing and funding for higher education.<sup>75</sup>

Criminalising users, as well as criminalising drug treatment and harm reduction activities, has also contributed to the global HIV/AIDS and hepatitis C epidemics.<sup>76</sup> Criminal laws banning syringe/needle provision (and possession) create a climate of fear for people who use drugs, driving them away from life-saving HIV prevention and other health services, and encouraging high risk behaviour, such as sharing needles and syringes, which increases the risk of HIV, hepatitis C and other blood-borne infections, and leads them to avoid treatment for addiction.<sup>77</sup> In many countries, such as Russia, established opiate substitution therapy (most commonly methadone, but also buprenorphine) remain illegal.<sup>78</sup>

Research conducted in the USA, where ethnic minorities are many times more likely than whites to be imprisoned for drug-related offences, has found that disproportionate imprisonment rates are one of the key reasons for the markedly elevated rates of HIV infection among African Americans.<sup>79</sup>

## 7. Drug detention centres

The 'war on drugs' has also led to mass detention of drug users in compulsory 'drug detention centres', in particular in South-East Asia.<sup>80</sup>

In China for example, the UN Programme on HIV/AIDS estimated that there were approximately 500,000 people undergoing compulsory drug detention in such 'treatment centres' at any one time in China during 2009.<sup>81</sup> UN monitors also found a treatment facility in Brazil to be more like a prison than a hospital, 'as evidenced by the architecture of this facility and by the fact that patients had to keep their heads down and their hands behind their backs when walking through the facility and when talking to staff'.<sup>82</sup> Inadequacies of informal rehabilitation centres in Peru were exposed

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<sup>75</sup> Martina Melis and Marie Nougier, Drug policy and development: How action against illicit drugs impacts on the Millennium Development Goals, International Drug Policy Consortium, October 2010, pp. 6,7.

<sup>76</sup> See two reports by the Global Commission on Drug Policy: *The War on Drugs and HIV/AIDS: How the Criminalization of Drug Users Fuels the Global Pandemic* (June 2012); *The Negative Impact of the War on Drugs on Public Health: The Hidden Hepatitis C Epidemic* (May 2013).

<sup>77</sup> The War on Drugs: Undermining international development and security, increasing conflict, Count the Costs, p. 8.

<sup>78</sup> The War on Drugs: Undermining international development and security, increasing conflict, Count the Costs, p. 8.

<sup>79</sup> Johnson R, and Raphael S., The effects of male incarceration dynamics on acquired immune deficiency syndrome infection rates among African American women and men, *J Law Econ*, 2009,; 52(2): 251-293; and Adimora AA, Schoenbach VJ, Martinson FE, Donaldson KH, Stancil TR, and Fullilove RE, Concurrent partnerships among rural African Americans with recently reported heterosexually transmitted HIV infection, *J Acquir Immune Defic Syndr*, 2003, 34(4): 423-429.

<sup>80</sup> See, Parry J., Vietnam is urged to close drug detention centres after widespread abuse is discovered, *BMJ*, 2011; 343; and Amon J., Why Vietnamese don't want to go to rehab, Human Rights Watch, May 2010.

<sup>81</sup> Human Rights Watch 'Where Darkness Knows No Limits' Incarceration, Ill-Treatment and Forced Labor as Drug Rehabilitation in China'. 2010, (citing: UNAIDS May 2009 Report, 'AIDS in China: background information on the epidemic and the response,' unpublished document on file with Human Rights Watch, May 2009, p. 8.)

<sup>82</sup> Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Brazil, CAT/OP/BRA/1, 2012.

by two deadly fires in 2011 and 2012.<sup>83</sup>

While such centres vary in design and operation, reports consistently indicate that they fail to offer adequate physical or mental health treatment. There have been documented cases of forced labour, torture and other human rights abuses in these centres.<sup>84</sup>

In March 2012, 12 UN agencies therefore called on states to close compulsory drug detention and rehabilitation centres and implement voluntary, evidence-informed and rights-based health and social services in the community.<sup>85</sup>

## 8. Conclusions & recommendations

There is a growing recognition that drug use should be treated as a public health rather than a criminal justice problem. In its World Drug Report 2012, UNODC has suggested rebalancing drug control policy through alternative development, prevention, treatment and fundamental human rights.<sup>86</sup>

According to the UNODC, treating drug use as a public health issue and reducing the use of imprisonment is entirely consistent with international conventions.<sup>87</sup> UNODC's Executive Director told the 2014 Commission on Narcotic Drugs that 'a public health response to the drug use problem should consider alternatives to penalization and incarceration of people with use disorders'.<sup>88</sup>

The UN High Commissioner for Human Rights has also stated that it is 'possible, and consistent with current international drug control treaties, to re-frame some drug-related conduct as administrative offences, followed with a social and medical response'.<sup>89</sup>

As a consequence a number of countries have introduced a less repressive approach, particularly to the possession of small quantities of drugs. For example, Georgia,<sup>90</sup> Italy,<sup>91</sup> Malta,<sup>92</sup> Slovakia,<sup>93</sup>

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<sup>83</sup> Colectivo de Estudios Drogas y Derecho (CEDD), *In search of rights: drug users and state responses in Latin America*, 2014.

<sup>84</sup> Jurgens R and Csete J. In the name of treatment: ending abuses in compulsory drug detention centers, *Addiction*, 2012, 689-691.

<sup>85</sup> *Compulsory drug detention and rehabilitation centres*, Joint statement by UN bodies, March 2012, [http://www.unaids.org/en/media/unaids/contentassets/documents/document/2012/JC2310\\_Joint%20Statement6March12\\_FINAL\\_en.pdf](http://www.unaids.org/en/media/unaids/contentassets/documents/document/2012/JC2310_Joint%20Statement6March12_FINAL_en.pdf), <accessed 27 January 2015>.

<sup>86</sup> UNODC, *World Drug Report 2012*.

<sup>87</sup> Commission on Narcotic Drugs, *3rd Informal Civil Society Hearing, Presentation of Report of the Scientific Consultation Working Group conclusions on drug policy, health and human rights*, 12 March 2014, [http://www.cndblog.org/2014/03/3rd-informal-civil-society-hearing\\_3797.html](http://www.cndblog.org/2014/03/3rd-informal-civil-society-hearing_3797.html) and *Demand reduction roundtable*, 12 March 2013, <http://www.cndblog.org/2013/03/demand-reduction-round-table.html>, <accessed 27 January 2015>.

<sup>88</sup> UNODC, *Remarks of the UNODC Executive Director Opening of the High-level of the Implementation of the Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem*, 13 March 2014.

<sup>89</sup> UN High Commissioner for Human Rights, 16 June 2014.

<sup>90</sup> 'Georgia: Tbilisi Struggles with Drug-Policy Reform', *Eurasianet.org*, 3 June 2014, <http://www.eurasianet.org/node/68434>, <accessed 27 January 2015>.

<sup>91</sup> 'Italy court strikes down drug law blamed for prison crowding', Reuters, 12 February 2014, <http://www.reuters.com/article/2014/02/12/us-italy-drugs-law-idUSBREA1B1FF20140212>, <accessed 27 January 2015>.

<sup>92</sup> 'Drug decriminalisation options being looked', *The Times of Malta*, 8 December 2013, <http://www.timesofmalta.com/articles/view/20131208/local/Drug-decriminalisation-options-being-looked-at.498012>, <accessed 27 January 2015>.

Dubai,<sup>94</sup> The Gambia,<sup>95</sup> Jamaica,<sup>96</sup> Ecuador<sup>97</sup> and Japan<sup>98</sup> have reduced or are planning to reduce the severity of the criminal justice response to drug users.

In August 2013, the US Attorney General instructed federal prosecutors to stop charging many non-violent drug defendants with offences that carry mandatory minimum sentences. More recently, the Justice Department has encouraged more applications for clemency by such offenders and the US Sentencing Commission voted to lower substantially its recommended sentences for drug dealers, and has made this retroactively applicable to 46,000 prisoners, whose sentences would be cut by an average of 25 months. Prisoners will not be released before November 2015 and the releases are to be phased in over a period of years.<sup>99</sup>

In light of the growing acknowledgement of the unintended negative consequences of the 'war on drugs' the undersigned organisations put forward the following recommendations:

- Review drug policies with a view to ensure more differentiated and proportional sanctions for drug-related offences.
- Abolish the death penalty for drug-related offences, in line with Article 6(2) of the International Covenant on Civil and Political Rights (ICCPR) according to which states that have not yet abolished the death penalty, this sentence may be imposed only for the 'most serious crimes'.
- Repeal mandatory pre-trial detention for drug offences in line with the requirements of an individual assessment of necessity and proportionality enshrined in Article 9 of the International Covenant on Civil and Political Rights.
- Review criminal laws relating to drug use and possession in light of the growing recognition that drug use should be treated as a public health rather than a criminal justice problem and in order to focus the limited resources of law enforcement on perpetrators of organised crime.
- Repeal criminal laws that ban syringe/needle provision (and possession), as such laws violate the right to health and drive people who inject drugs away from life-saving HIV prevention and other health services and encourages high risk behaviour, such as sharing needles and syringes.
- Rebalance control policies through alternative development, prevention, treatment, harm reduction and human rights.
- Address the gender disparities in sentencing policies, and provide for gender-sensitive non-custodial alternatives in the community in line with Rule 62 of the UN Rules for the

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<sup>93</sup> Sentencing for drug offences, *The Slovak Spectator*, 11 March 2013,

[http://spectator.sme.sk/articles/view/49338/2/sentencing\\_for\\_drug\\_offences.html](http://spectator.sme.sk/articles/view/49338/2/sentencing_for_drug_offences.html), <accessed 27 January 2015>.

<sup>94</sup> 'Dubai police reiterate amnesty for drug addicts seeking treatment', *ArabianBusiness.com website*, 11 August 2014, <http://m.arabianbusiness.com/dubai-police-reiterate-amnesty-for-drug-addicts-seeking-treatment-560813.html>, <accessed 27 January 2015>.

<sup>95</sup> 'Gambia reduces penalties For cannabis possession', *Jollofnews*, 27 August 2015, <http://www.jollofnews.com/index.php/national-news/health/511-gambia-reduces-penalties-for-cannabis-possession>, <accessed 27 January 2015>.

<sup>96</sup> 'Jamaica considers marijuana legalisation and production', *BBC website*, 22 January 2015, <http://www.bbc.co.uk/news/world-latin-america-30926714>, <accessed 27 January 2015>.

<sup>97</sup> The Global Initiative for Drug Policy Reform, *Ecuador*, <http://reformdrugpolicy.com/beckley-main-content/new-approaches/future-directions-for-drug-policy-reform/latin-america/ecuador-2/>, <accessed 27 January 2015>.

<sup>98</sup> 'Reducing rate of recidivism', *The Japan Times*, 8 July 2013, <http://www.japantimes.co.jp/opinion/2013/07/08/editorials/reducing-rate-of-recidivism/#.UdvU4jusiTo>, <accessed 27 January 2015>.

<sup>99</sup> 'Early release for thousands of drug convicts', *BBC website*, 18 July 2014, <http://www.bbc.co.uk/news/world-us-canada-28380649>, <accessed 27 January 2015>.

Treatment of Female Prisoners and Non-Custodial Measures for Women Offenders (the 'Bangkok Rules').

- Provide adequate healthcare and harm reduction programmes for drug users in prisons for the prevention, care and treatment of diseases such as HIV and hepatitis C, in order to fulfil their right to health and prevent ill treatment, and ensure gender equality in access to such programmes as well as gender-responsiveness in line with Rules 14 and 15 of the UN Rules for the Treatment of Female Prisoners and Non-Custodial Measures for Women Offenders (the 'Bangkok Rules').
- Close compulsory drug detention and rehabilitation centres and implement voluntary, evidence-informed and rights-based health and social services in the community.

End.