



INN ISSUE BRIEF: Smart on Drugs, Not War on Drugs

Throughout the world the predominant approach to the use of illicit drugs is to criminalize those who use and/or possess such substances. Despite the growing evidence that such an approach carries with it devastating health harms and human rights abuses, whilst failing to suppress drug use, many countries are reluctant to take a different course of action. The dominant narrative is one of law enforcement underpinning the so called 'War on Drugs'.

But by its own metrics, global drug policy centered around prohibition has been a complete failure. In 2003 an [estimated 185 million people](#) (aged 15 -64 years old) had used an illicit substance in the previous year, increasing to 271 million people by 2017.

It is not only demand that continues to grow, but law enforcement has failed to consistently stem the production of illicit drugs too. Manufacturing of cocaine is the highest since records began. And whilst opium production fell by 25% in 2017, this followed [a jump in production of 65%](#) between 2016 and 2017; the fall in production was linked to overproduction in previous years and a drought in Afghanistan – it had little to do with the impact of law enforcement.

The huge financial profits that can be made from the [illicit drug trade are fueling violence and corruption](#) in many parts of the world. The Global drug market is estimated to be worth between [\\$426 billion and \\$652 billion \(USD\)](#) annually.

Drug policy has the potential to limit such violence and reduce harm. But the enforcement of drug prohibition is a policy model associated with egregious human rights abuses, a significant rise in the global prison population and prison overcrowding, as well as undermining the health of people who use drugs.

Section 1 – Challenging preconceived notions related to drugs

Are illicit substances (scheduled drugs) more harmful than legal substances?

Whilst we are well acquainted with the notion that scheduled drugs are inherently more harmful than legal substances, when compared to the individual and societal harm of scheduled drugs, [research shows that alcohol is actually the most harmful substance](#). Whilst heroin, crack cocaine and methamphetamine were the most harmful drugs for an individual, alcohol was the most harmful overall [due to the costs to society associated with its use](#).



Is cannabis a 'gateway drug'?

The notion that cannabis is [a 'gateway drug' has been debunked](#). There has never been evidence that cannabis use leads to use of other scheduled drugs; this was a political, moralistic claim rather than a scientific one. The largest illegal drug consumed is cannabis with [an estimated 188 million 'last year' users](#) globally. This figure dwarfs other drug markets, with an estimated 53 million users of opioids and 18 million people who use cocaine. If cannabis use lead people to use other substances, we would see a greater number of people using other drugs. Whilst it is true that many people who use other substances have used cannabis, the inverse is also true and there are many people who use drugs but have no history of cannabis use.

But, we need the threat of criminal sanctions to deter the use of drugs, right?!

The criminalization of drug use and possession offenses does not deter consumption of scheduled drugs. Global drug prohibition has been a failure on its own metrics; the use of drugs has increased, as has production and supply of drugs. The [UK's Home Office carried out a comparative study of fourteen countries](#) including Japan and Sweden, who take a tough enforcement approach, Portugal, where drug possession has been decriminalized since 2001 and Uruguay, a country that has never criminalized use or possession. The report concluded that they did not "observe any obvious relationship between the toughness of a country's enforcement against drug possession and levels of drug use in that country".

Okay, so maybe law enforcement doesn't curb demand. But surely supply side enforcement has a significant impact?

Supply side enforcement, for example drug seizures, has not been effective at disrupting the drugs market. Importantly, there is evidence that increased enforcement against those involved in the [supply side of the market can actually increase violence](#) and unintended consequences include the long- and short-term negative impacts of involvement with the criminal justice system. In an [evaluation of the UK Drug Strategy](#), the Home Office found that: *"Illicit drug markets are resilient and can quickly adapt to even significant drug and asset seizures. Even though enforcement may cause wholesale prices to vary, street-level prices are generally maintained through variations in purity. There is evidence that some enforcement activities can contribute to the disruption of drug markets at all levels, thus reducing crime and improving health outcomes, but the effects tend to be short-lived."*



Section 2 – What's the problem?

Twenty per cent of the Global Prison population are incarcerated for drug offenses, those incarcerated are largely there for low level non-violent drug offenses

As of [2018 it is estimated that over 11 million people are incarcerated globally](#), of those imprisoned about [20 per cent are there for drug offenses](#), demonstrating the scale and impact drugs prohibition has on the prison population. Those incarcerated have largely been involved in low level drug offending, with many people arrested, prosecuted and imprisoned for personal possession and/or use of drugs. The UN estimates that [83 per cent of total global drug offenses](#) are for personal possession of drugs, and in many countries this is driving the rise in prison populations.

The War on Drugs contributes to mass incarceration and racial injustice in the USA

Over [45 per cent of those incarcerated](#) in US federal prisons were there for drug offenses, one in five of those imprisoned in the US across all prison estates – federal, state, youth – are there for a drugs offense. In State prisons, of the nearly 200,000 people detained for a drug offense [22% are there because of a simple possession charge](#). Pre-trial detention is driving the local US jail population, with 76% of the population there on remand. Again [drug offenses are a significant driver of this situation](#), with 25% held on remand there for a drug related crime, shockingly 56% of those remanded for drugs are there for simple possession.

Across the criminal justice system black and Hispanic people are more likely to be stopped and frisked, arrested, prosecuted and punished for drugs. This is despite the fact that the [white population are more likely](#) to engage in drug offenses when compared to other ethnic groups in the US. Drug law enforcement is used as a tool to harass, surveil and oppress racial minorities across the world not only in the US.

Drug offenses are driving the prison population in many parts of the world not just the US

In the **Philippines**, President Duterte, who when he took office in 2016, declared a drug war that has led to the [brutal extra judicial killing of up to 27,000 Filipinos](#) in the last 3 years on the grounds that they are alleged drug users or drug dealers. The Filipino police have 'death lists' which details the names of people **suspected** of being involved in drug use or supply, those on the list can surrender themselves to police to avoid being murdered. By 2018, this had led to the [imprisonment of 188,300 people](#), an increase in the prison population of 108% since 2005. The Philippines now has the [most overcrowded prison population in the world](#), operating at 463% per cent capacity. In Manila City jail it has been reported that a jail space intended to house 170 men was in fact occupied by 518 people.

Brazil has also seen an explosion in its prison population which can be traced back to reforms in their national drugs legislation in 2006. Brazil is the world's [third largest incarcerator](#) behind the US and



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China, with [744,216 people imprisoned](#) in federal and state prisons. In 2006 the number of people incarcerated stood at [401,236](#) but a change in drug legislation in the country in that year has contributed to the 85% growth in the number of people in prison. The [2006 Drug Law \(Law 11,343/06\)](#) ironically sought to reduce the risk of those caught in possession of drugs ending up in prison, but at the same time it increased the penalties for people supplying drugs from a minimum three years imprisonment to five years. However, there was [a lack of clarity in the law](#) to distinguish between a consumer and supplier, with the decision as to who was a consumer based on a large number of factors, such as the quantity of drugs seized or circumstances of the offense, used by a judge to determine the facts of the case. At the same time, the conditions for establishing trafficking offenses were very broad. The fact that a case has to be determined by a judge in the first instance has led to significant numbers being subject to pre-trial detention. It is estimated that [44% of the prison population are pre-trial detainees](#). The lack of clarity in the law and what constitutes personal use has also led to a greater number of people being incarcerated for trafficking offenses - by 2012 the number of people imprisoned for drug trafficking offenses had increased by 123% from 60,000 in 2007 to 134,000 in 2012.

Thailand has the [fifth highest prison population in the world](#), as well as the highest rate of imprisonment amongst ASEAN countries, and suffers from significant prison overcrowding. The situation for those detained in Thai prison's is dire and is associated with significant human rights abuses. The most significant factor driving Thailand's [prison overcrowding is drug offenses](#) - an estimated 70 per cent of the male prison population and 87 per cent of the female prison population have been imprisoned for a drug related offense. The level of prison overcrowding in [Thai prisons is as high as 224 per cent](#).

Across many regions of the world increased imprisonment rates are being driven by the 'War on Drugs', contributing to prison overcrowding and creating significant health harms for those incarcerated. Reforms of the drug laws that no longer criminalize people who use drugs and those who commit low level supply offenses could have a significant impact on reducing the global prison population.

Drugs and health in prison

The failure of governments to curb drug use through punitive and repressive laws is nowhere more apparent than when we look at drug use within prisons. The [UN estimates](#) that a third of all prisoners, regardless of the offense they were incarcerated for, have used drugs at least once whilst serving their sentences, with one in eight reporting drug use in the last month. The risk of contracting a communicable disease, such as HIV, HBV, HCV and tuberculosis is [2 to 10 times higher](#) for those in prison than the general population.

[Injecting drug use is also high amongst people who are incarcerated](#), with Canada reporting 34% of its population of incarcerated people injecting drugs, 55% in Australia, and a range of 2% to 38% in Europe. At the same time there is a significant lack of needle exchange programs (NSP) in prisons - these are programs that allow for the supply of sterile equipment and are highly effective at reducing



transmission of blood borne viruses – according to the Global State of Harm Reduction report only 10 countries have at least one prison with NSP globally. The incidence of [HIV is much higher amongst the prison population](#) than the general public, and prevalence of the disease is approximately 10 per cent of those incarcerated.

The effect of mass incarceration is clear when we look to the US, where research has demonstrated the impact of disproportionate imprisonment of people of color. In [2009 African Americans represented](#) 12% of the US population but accounted for 50% of new HIV infections. Overcrowded prisons are a breeding ground for infectious diseases due to high levels of violence, lack of basic hygiene, poor diets and other human rights abuses. It is estimated that the incidence of tuberculosis is [more than 20 times higher amongst people](#) who are in prison compared to the general population.

The War on Drugs targets people of color

The 'War on Drugs' is not equitably applied, despite drug use being ubiquitous amongst all social and racial groups, it is people of color and those living in poverty who are disproportionately targeted.

In the US black people are nearly [four times more likely to be arrested for cannabis possession](#) despite using the drug at a lower rate than the white population. Tens of thousands of people from communities of color are being criminalized: between 2001 and 2010, there were an estimated 8.3 million cannabis arrests, with 88 per cent being for simple possession.

The sentencing of black people in the US is also significantly disproportionate when we compare it to other more serious offenses. In 2007, the [average sentence for a person of color](#) in federal prison for a drugs offense was 58.7 months compare this to white people serving a sentence for a violent crime where the average sentence is 61.7 months. The harsh sentences dispensed to those from African American or Hispanic communities has been linked to the disparity in sentencing for crack cocaine versus powder cocaine.

The deleterious effect of being convicted of a [federal drugs offense goes beyond being imprisoned](#) and can affect every part of someone's life including employment, education, housing and their democratic rights. In the US people can be excluded from public housing, from accessing financial aid for college and university, and from accessing state aid. One of the most chilling effects is [voter disenfranchisement, in the US it is estimated that one in 13 black people](#) are ineligible to vote due to a felony conviction.

The racist nature of the war on drugs is not isolated to the US

In the [UK black people are nine times for likely to be stopped and searched for drugs](#) despite using substances at a lower rate than the white population. As 60% of all police stop and searches in the UK are for drugs, this policing activity is driving racial disparities in the criminal justice system. [Over 2 in 3 of these searches are for possession of drugs for personal use.](#) Black people in the UK are much more



likely to face harsher sanctions for possession of cannabis, with data showing that black people [are 12 times more likely to be prosecuted for cannabis possession](#) compared to the white population.

The experience of the US and UK is replicated around the world but [many countries do not record ethnicity data](#) in a large number of state activities, including the criminal justice system. Some analysis of the situation in other countries is available: [Amnesty's report exploring the war on drugs and extrajudicial killings in Brazil](#) found that between 2010-2013 there were over 1200 killings in the favelas of Rio De Janeiro and that 90% should be classed as extrajudicial executions – 79% of those killed were black, and 75% were aged between 15 and 29 years old.

The rate of incarceration of women across the world is increasing dramatically and is being driven by the War on Drugs

Since 2000 the number of women who have been [imprisoned globally has grown by 53%](#), compared to 20% for men. There is little doubt that [the War on Drugs is a driver for this development](#): “eighty-two per cent of all women in prison in Thailand are imprisoned for a drug offence; in the Philippines, the proportion of women in prison for a drug offence is 53% and in Peru and Costa Rica it is more than 60%”. [Research undertaken in 2012](#) concluded that 28% of women imprisoned in Europe and Central Asia were there for drug offenses.

Once again it is women of color who are disproportionately impacted. In the UK, [black women suffered the highest rates of disparity for drugs offenses](#) at 2.3 times more likely to receive a custodial sentence. In the US, the [percentage of women incarcerated has grown by 834%](#) over a forty year period, largely driven by imprisoning women for low level non-violent drug offenses; [25% of women have been convicted for a drug offense compared to 14% of men](#). African American women are [twice as likely to be incarcerated](#) compared to white women, and Hispanic women are 1.3 times more likely to be imprisoned.

The War on Drugs has impacts beyond the criminal justice system

Drug related deaths – The horrifying impact of the War on Drugs can be clearly seen in the increasing number of drug related deaths. In the US, there have been [over 67,300 drug related deaths](#), a dramatic increase from 38,329 in 2010, and in Canada there [have been 4108 \(in 2017\)](#). The UK has the [highest drug related death rate since records began](#) and experienced the highest increase in fatalities in the last year (16% in 2018) in England and Wales. Over half of all drug related deaths involve an opiate, with opioid deaths being more likely to be experienced by people who inject drugs and those most vulnerable and marginalised in society. This is reflected globally in regards to opioid related deaths: [the use of opioids accounted for 110,000 \(66 per cent\) of the 167,000 deaths attributed to drug use disorders](#).

Blood Borne Viruses – There are multiple health issues that the War on Drugs has a direct effect on, with one example being blood borne viruses. [People who inject drugs are at higher risk of dying from](#)



[both acute and chronic diseases](#). Over half of those injecting drugs in the UK reported having an open wound or abscess at an injection site, and [90% of hepatitis C infections estimated to have been acquired through IV drug use](#). In addition to this, people who inject drugs can face barriers in accessing the healthcare they need and are [more likely to leave hospital early](#) due to [stigmatisation](#). The lack of available and accessible harm reduction services, such as needle exchanges or drug consumption rooms, exacerbates this problem. This impact can be seen in Russia where the punitive policies and absence of those vital services have resulted in [1 in 100 adults being HIV positive](#).

The human rights abuses faced by those who use drugs can be seen globally, from the extra judicial killings in the Philippines, with an estimated [death toll of as high as 27,000](#), to coerced treatment, which in practice can just be [another form of incarceration](#), and is often [found to be ineffective](#). In parts of the world, people who use drugs face the death penalty for drug offenses, in a [failed attempt to deter drug use](#), with [over 4000 people being executed globally for drug offenses between 2008 and 2018](#).

Section 3 - What does a smart drug policy look like for governments?

Invest in harm reduction and treatment services – Such services are cost-effective and offer [“good value for money”](#). It is estimated that for [every \\$1\(USD\) invested in drug treatment there is a \\$4 to \\$7\(USD\) in social return](#). Harm reduction and treatment services should include the provision of sterile needles and other paraphernalia to reduce blood borne viruses and protect the health of people who inject drugs; wide availability of naloxone (an anti-overdose medication); the establishment of overdose prevention sites (primarily for people who are street homeless and are injecting in public spaces); providing opiate substitute medication such as methadone and buprenorphine (this is the [only treatment modality that is associated with reducing overdose fatalities](#)); heroin assisted treatment; and residential rehabilitation facilities. A public health approach requires the investment in and provision of specialist services for those with specific cultural and identity-informed needs. Generally, health services need to be accessible for people of a variety of different needs, rather than a ‘one size fits all’ model.

Decriminalize use, possession and other low level personal use activities – [29 countries and 49 jurisdictions have ended criminal sanctions for possession](#) of either all drugs or for cannabis only (the majority have taken this approach to all scheduled drugs). Many of these countries have replaced criminal sanctions with civil sanctions and a third of countries have no punishment at all. When possession of drugs is no longer treated as a criminal offense, and where there is investment in harm reduction and treatment, it can have a profound and positive effect on [health, social and economic outcomes](#). The [Czech Republic](#) and [Portugal](#) have both ended criminal sanctions for possession of all drugs, invested in harm reduction and treatment, and have some of lowest rates of drug related deaths in Europe. Ending the criminalization of people who use drugs can also reduce the prison population – in Portugal the percentage of [people imprisoned for drug related offenses fell by 23%](#)



between 1999 and 2008, Portugal decriminalized drug possession in 2001. Considering the scale of imprisonment for drug possession and use globally this could have a significant impact on the number of people imprisoned globally. The United Nations supports the decriminalization of drug possession offenses; evidence also demonstrates that ending criminal sanctions for drug possession offenses can [reduce re-offending rates](#) and [reduce the burden on law enforcement](#).

Alternatives to punishment for other drug related offenses – in the first instance the [35 countries and territories that still retain the death penalty](#) for drug offenses should immediately end the use of such barbaric and unlawful practices. The use of the death penalty is in contravention of international human rights.

Outside of possession offenses, the vast majority of those criminalized for drug related offenses are involved in low level non-violent offenses including: supply without profit ('social supply'); supply motivated by the person's own use, economic desperation or coercion; cultivation of cannabis for personal use or for medical purposes; cultivation of crops by indigenous populations. The line between a person who uses drugs and those who supply is often contrived, as the reality is most people who use drugs will share, supply or produce them. Diversion schemes for those engaged in such low level activities have been emerging in local policing contexts. For example, the [Law Enforcement Assisted Diversion \(LEAD\)](#) programs in US States has diverted those caught supplying small quantities of drugs. In Seattle where the first program was launched those who were diverted were less likely to reoffend and had a higher likelihood of securing housing and employment. Similar schemes operated in a number of English police forces and have experienced very similar outcomes to the LEAD program in Seattle. Such schemes tend to put people in contact with workers who can help to identify and address the underlying reasons for their criminal activities or sign post them to services that can assist, for example, drug treatment services.

Proportional sentencing - Beyond diverting people out of the criminal justice system – which arguably has better outcomes than continued criminalization – proportionate sentencing should also be implemented for drug offenses. In many countries, [drug offenses are sentenced more harshly than violent offenses](#) including rape. Consideration of the defendant's role in the drugs market, the presence or not of violence and the scale of the operation should all be central to determining the sentence. Where it is a low-level activity and there is no evidence of violence, alternatives to punishment should be considered. The non-violent nature of most transactions within the drugs market should mean that people are not incarcerated, or at the very minimum are not serving long sentences that are comparable to violent crimes. Mandatory minimums for drug offenses should also be abolished, in recognition that this can lead to people who are the very bottom of the drugs market, who are often vulnerable and/or dependent on drugs, serving extremely long, disproportionate sentences.

Legal regulation of scheduled drugs - The illegal market largely exists because scheduled drugs are not available legally. Uruguay, many US States and Canada have regulated the production, supply and possession of cannabis for recreational use. [Early evidence from these markets](#) shows that: use of the drug does not increase amongst adolescents; arrests fall dramatically; taxes derived from the market can be spent on other important societal functions such as education and drug treatment; and job



opportunities are created. However, many of these markets have actively excluded people with previous convictions for cannabis related offenses, limiting their opportunity to participate in the new legal markets and effectively continuing the marginalization and economic exclusion of groups in society who have been over policed and over incarcerated. A number of States in the US have addressed this by developing [‘social equity’ programs](#) which seek to repair the damage of the War on Drugs for communities that have been most egregiously impacted. These programs have core components, including expungement of criminal records for previous cannabis offenses; priority licensing for communities most damaged by prohibition; and financial and technical assistance to navigate the new legal frameworks supporting people to set up their own businesses in the cannabis market.

One emerging problem with cannabis regulation is the failure of states to implement decriminalization of activities alongside the regulatory framework. Canada, for example, has a range of criminal activities outside the regulated model, including possession of illicit cannabis. This will inevitably result in the continued criminalization of many of the same people who had been criminalized under the previous model of prohibition.

Monitoring – Any policy reforms must be monitored for their impact on a variety of outcomes. This is so that those who are most egregiously impacted under current models of prohibition and punitive measures are the primary benefactors of legislative and sociocultural change. Reforms should alleviate the harms for those most impacted; in practice this is not always the outcome. For example, following changes to policing practices in the UK regarding the racial disparity of stop and search (stop and frisk), the number of arrests from stop and search fell much more sharply for white than black people. Arrests from drug searches halved for white people between 2010/11 and 2016/17, [but have been maintained for black people.](#)