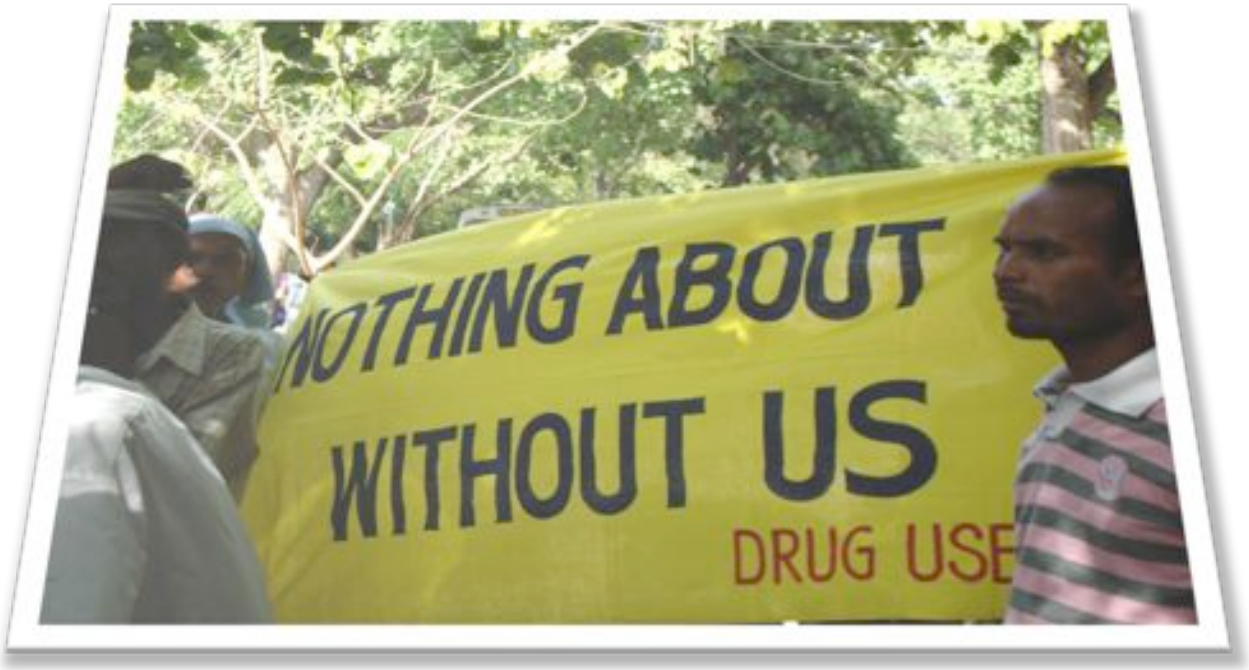
Lawyers Collective HIV / AIDS Unit

Response Beyond Borders

A Preview of Law and Policy in
South and South East Asia

Drugs, Treatment and Harm Reduction



Background Paper for Response beyond Borders

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United Nations Regional Task Force on Injecting Drug Use and HIV/AIDS for Asia and the Pacific

The Lawyers Collective HIV/AIDS Unit was established in 1998 in India to protect and promote the rights of people affected by HIV and those vulnerable to it, namely sex workers, LGBT persons and people who use drugs. The Unit uses litigation, research and advocacy to craft a just, rational and non-discriminatory response to HIV.
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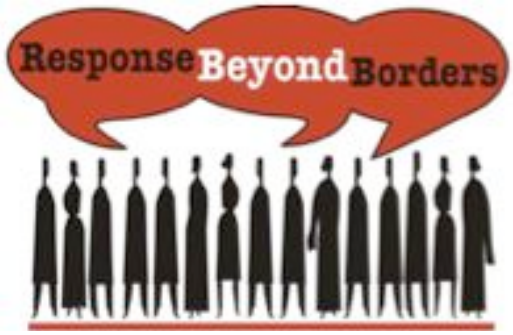

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"We thought we had to correct drug users, then we realised we had to correct the law."

Dr. Abdolreza Mesri,
H.E. Minister of Welfare,
Iranian Government

at the
South Asia Regional Workshop
Kathmandu, Nepal, 2009

Introduction

Unsafe injecting practices among people using drugs is a primary driver of HIV in many parts of Asia. As the fastest and most efficient route of transmission, injecting drug use with unsterile equipment is considered 'explosive' to the rapid spread of HIV. This impending threat is significant for a number of countries in South and South East Asia that report highest incidence of HIV infections among injecting drug users (IDUs).[1]

In response, a number of measures have been instituted to contain drug related transmission of HIV. These include provision of sterile needle syringes, Methadone and/or Buprenorphine based oral substitution and drug safety education – interventions underpinned by a strategy of harm reduction.[2]

Faced with years of suspicion and skepticism, the harm reduction strategy is now backed by definite evidence establishing its efficacy in preventing HIV and blood borne infections.[3] Specific interventions of oral substitution have also shown to reduce illicit use, drug related debility, death and crime while causing no negative effects.[4] As a result, harm reduction strategies have come to be formally endorsed by international agencies[5] and national governments as part of their response to prevent and control HIV. [6]

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[1] Monitoring the AIDS Pandemic (MAP), *Drug Injection and HIV/AIDS in Asia*, MAP Report 2005. Available at http://www.mapnetwork.org/docs/MAP_IDU%20Book%2024Jun05_en.pdf

[2] WHO, Policy and Programming Guide for HIV/AIDS Prevention and Care among Injecting Drug Users. 2005.

[3] Institute of Medicine, *Preventing HIV infection among injecting drug users in high risk countries*, Report Brief, September 2006. Available at http://www.iom.edu/Object.File/Master/37/074/11731_brief.pdf

[4] WHO/UNAIDS/UNODC "*Evidence for Action on HIV/AIDS and Injecting Drug Use: Reduction of HIV Transmission through Drug-Dependence Treatment*" Policy Brief (2004), available at www.wpro.who.int/health_topics/ harm_reduction/publications.htm

[5] World Health Organisation, HIV and Injecting Drug Use, *Biregional Strategy for Harm Reduction* 2005-2009.

[6] Madonna Devaney, Gary Reid, Simon Baldvin, *Situational analysis of illicit drug issues and responses in the Asia pacific region,* collaborative report by the Burnet Institute's Centre for Harm Reduction and Turning Point Alcohol and Drug Centre for the Australian National Council for Drugs(ANCD), 2006.

Despite evident benefits and increasing acceptance, harm reduction programs remain limited in scale and scope.[7] In its report taking stock of universal access, the WHO noted ***poor*** and ***inequitable*** access to HIV services among IDUs, especially anti-retrovirals (ARVs).[8] Of the many reasons for slow progress in implementing harm reduction, restrictions in law and policy appear to be a formidable challenge.[9]

Like everywhere else, the response to drug use in Asia is that of prohibition or 'zero tolerance of drugs'. Laws rest on proscriptions and penalties; drug use is criminalized and for any reprieve, drug users must give up drugs. Unrealistic as it were, conventional drug policy is uncompromising in its insistence on stopping the use of drugs. Such a stand is at odds with medical science, which views drug dependence as a chronic medical condition that can be managed but not cured.[10]

Criminalization of drug use has a direct bearing on programs with drug users, especially when they don't necessarily require abstinence. In 'tolerating' drug use, harm reduction programs come under the scrutiny of legislative and enforcement bodies, who are accustomed to accept nothing less than 'drug free'. Internationally too, much legal and political controversy has occurred over whether harm reduction is compatible with the drug control framework.[11]

In most Asian countries, specific harm reduction activities do not have complete sanction in law. Provision of sterile needles to IDUs may be seen as aiding and abetting unlawful consumption. Commodities for harm reduction, namely injection paraphernalia and opiates – Methadone and Buprenorphine, are subject to legal controls and therefore, not easily available. And most importantly, harm reduction programs are for drug users - people on the "wrong side of morality and *law*". Repeat arrests, conviction and incarceration of drug users interrupt contact, reach and supply of services particularly

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[7] International Harm Reduction Association, *Global State of Harm Reduction 2008*: *Mapping the response to drug-related HIV and hepatitis C epidemics*, May 2008. Available at http://www.ihra.net/uploads/downloads/Projects/GlobalStateofHR/GSHRFullReport.pdf

[8] WHO, UNAIDS, UNICEF, *Towards Universal Access: Scaling Up priority HIV/AIDS Interventions in the health sector*, Progress Report, April 2007.

[9] According to UNAIDS, "*lack of official support…., laws that prohibit key components of harm reduction and onerous regulatory schemes (eg. strict import limits on opiate maintenance medication) often make it difficult to implement harm reduction initiatives at all, much less bring such programmes to scale."* See UNAIDS, Report on the global AIDS epidemic, 2008, at page115. Available at http://data.unaids.org/pub/GlobalReport/2008/jc1510_2008_global_report_pp95_128_en.pdf

[10] Mclellan et al, *Drug Dependence, A chronic Medical Illness- Implications for Treatment, Insurance and Outcomes Evaluation*, JAMA, October 4, 2000, Vol. 284, No. 13 (1693).

[11] International Drug Policy Consortium, *The International Narcotics Control Board: Current Tensions and Options for Reform, February 2008,* Briefing Paper 7. Available at www.idpc.info

oral substitution, treatment for TB and HIV, resulting in sub-optimal and/or negative outcomes such as treatment resistance.

In many Asian countries, drug offenders comprise a significant proportion of prison inmates.[12] Absence of HIV prevention and care including condoms and sterile needles in jails fuels infection and ill-health.[13] As a harm reduction activist from India explains - "*At any given point, 10% of our clients (IDUs) are in jail. With high rates of HIV, HBV, HCV & TB, we're filling up prisons with the sick & exposing prisoners to sickness..."*[14] For further discussion on drugs, prison and custodial settings see, "The Situation & Experience Of Drug Users in Custodial Settings of Asia: A Snapshot."

In addition to criminalization, another grisly feature of the response to drug use in Asia, is forced and unscientific methods to "treat" drug dependence. In many countries, particularly in South East Asia, people who use drugs can be forced into "treatment" or "rehabilitation" without consent.[15] Such detention is often, without due process of law and leads to imprisonment, if not complied with.

Drug treatment is also carried out against sound medical and human rights practice. Scientific protocols for delivery of drug dependence treatment are virtually non-existent. In some countries, extreme forms of torture including deaths have been reported from centres purporting to "de-addict" people dependent on drugs.[16] While the human rights implications of such practices are obvious[17], their effects on incidence of drug use and dependence are not fully known.

Throughout Asia, harm reduction programs, thus, operate in contradictory legal and policy environments that infringe human rights and civil liberties of people who use drugs.[18] While health/HIV agencies work with IDUs to inculcate safer practices through peer

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[12] Indonesia is estimated to have 28,000 drug users in prison. Vietnam ..Sri Lanka, over 45% prisoners are reported to be serving a sentence for a drug offence.
[13] UNIDC, Regional Centre for East Asia and the Pacific, *HIV/AIDS and Custodial Settings in South East Asia, An exploratory review into the issues of HIV/AIDS and custodian settings in Cambodia, China, Lao PDR, Myanmar, Thailand and Vietnam*, Thailand, November 2006.
[14] Luke Samson, SHARAN, Asian Consultation on Drug Use, Poverty & HIV, Goa, January 2008
[15] *Harm Reduction and Human Rights The Global Response to Drug-Related HIV Epidemics* 2009. International Harm Reduction Association.
[16] "Rehab centre inmates were abused, find Police", Bangalore, 13 November 2008, The Times of India. s
[17] Csete J and R Pearshouse (2007). *Dependent on Rights: Assessing Treatment of Drug Dependence from a Human Rights Perspective*, Toronto: Canadian HIV/AIDS Legal Network.
[18] International Harm Reduction Association, *Harm Reduction and Human Rights The Global Response to Drug-Related HIV Epidemics,* 2009.

education, out reach, and most importantly, needle syringe and oral substitution, the drug sector predominantly employs punitive measures that impinge on rights of drug users.

To be effective, harm reduction programs require, among other things, law and policy that is conducive to the health, rights and dignity of persons using drugs. Advocacy for harm reduction must therefore rest on an understanding of existing law and policy in countries as well as the potential for reform.

"People need to be humanised before they can advocate. As of now, drug users are dehumanised."

Mr. Luke Samson
RBB Workshop, Kathmandu Nepal

Objective

It is in this context that this background paper was commissioned for ***Response beyond Borders – the first Asian Consultation on Prevention of HIV related Drug Use***, 28-31 January 2008, Goa, India.

The paper is meant to provide a ***preview*** of **law and policy on drug use and HIV in South and South East Asia**, as it relates to interventions with people who use drugs. Besides cataloguing provisions relevant to people who use drugs and the availability of services for them, the paper flags concerns vis-à-vis health and rights of people using drugs that require further research and analysis. At the Consultation, the paper is expected to facilitate policy debate and advocacy with Parliamentarians.

The country section summarizes specific legal and policy provisions that affect people using drugs in **15 Asian countries**. Laws on narcotic and psychotropic substances (drug legislations) were examined for – (i) **drug use related offences** - namely, consumption and possession, (ii) **treatment for drug dependence** and, (iii) **harm reduction** that is, provisions that could potentially apply to needle syringe and drug substitution. Description of HIV laws and policies is confined to sections on drug related HIV and harm reduction. The section surveys the degree of criminalization of people using drugs, nature of medical and social interventions (clubbed together as "treatment") provided in law and, legal acceptance of harm reduction measures. This triangulated analysis aims to summarily describe the legal framework that people who use drugs and those who deliver health and harm reduction services to them are faced with. The section merely provides a preview and is *not* meant to be a commentary on national law and policy, which would require the legislation or policy instrument to be examined as a whole.

Based on the country findings, the paper then discusses broader implications and challenges for health, harm reduction and human rights in Asia. With scant human rights literature[19] and evolving jurisprudence on rights of people using drugs,[20] the paper concludes by posing more questions than answers…

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[19] Commentaries on international human rights law and drug use are relatively recent. See, *Human Rights, Health and Harm Reduction: State's Amnesia and Parallel Universes*, Paul Hunt, UN Special Rapporteur on the right to the highest attainable standard of health, 2008. International Harm Reduction Association. See also, *Recalibrating the Regime: The need for a human rights based approach to international drug policy*, The Beckley Foundation Drug Policy Programme.

[20] See *PHS Community Services Society v. Attorney General of Canada,* 2008 BCSC 661 which is one of the few reported cases which discusses access to harm reduction, specifically, a supervised injection facility, in

Method and Limitations

The paper is based on a *2-week desk research* of law and policy related to drug use and HIV in ***15 countries*** in South and South East Asia. While data for South Asia was taken from an earlier review by the Lawyers Collective HIV/AIDS Unit,[21] legislation and policy documents (*English versions*) for South East Asian countries were accessed from the internet, and therefore, may not be fully accurate and/or updated. Findings and analysis presented in the country section are *provisional*; subject to correction and substantiation.

A preliminary draft was circulated at the first Asian Consultation on Prevention of HIV related Drug Use, 28-31 January 2008, Goa, India and later at the South East Asia Regional Workshop, 8-9 October 2008, Phnom Penh, Cambodia. Inputs received from these meetings have been incorporated in the final draft.

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the context of the rights under the Canadian Charter of Rights and Freedoms. The decision is pending appeal.

[21] UNODC, Lawyers Collective HIV/AIDS Unit, *Legal and Policy concerns related to IDU harm reduction in SAARC countries*, 2007

Country Analysis

Bangladesh

Drug use related offences: The principal instrument for drug control is the **Narcotics Control Act, 1990** which penalizes, drug possession and use. Punishment depends on the nature and quantity of the drug. Drugs are classified into A, B and C class. Penalty is severest for A class drugs which include opium, morphine and methadone and least stringent for those in class C. Scientific and medical use is permitted under a license. For medical prescription of class A and class B drugs, physicians require prior approval from the Department of Narcotics Control.

Treatment: According to Amendments introduced in 2000, an *'addict'*- defined as someone dependent on or habituated to drugs, being prosecuted for illicit consumption can opt to undergo treatment. At the same time, the law authorizes the Director General of the Department of Narcotics Control to direct *'addict'* into treatment. Non compliance can lead to issuance of notice and subsequently, a Court order to visit a physician or treatment facility. Use of physical force is not ruled out. It is mandatory for family members and physicians to report persons using drugs to the Director General, who is required to maintain a district wise list of 'addicts'.

Harm Reduction: Possession of paraphernalia is not an offence but distribution of sterile needles may amount to abetment of illicit use, punishable with three to fifteen years imprisonment and fine.

The framework for AIDS Control is set out in the **National Policy on HIV and STD related issues, 1997** and the **National Strategic Plan for HIV/AIDS 2004 -2010,** which emphasize cohesion between measures for prevention of HIV and prevention of drug use. Provision of sterile needles, oral substitution and recovery from drug dependence are designated as strategies to 'reduce' and 'eliminate' harms associated with drug use.

Bhutan

Drug use related offences: Bhutan employs two sets of legislation against drug use – the **Bhutan Penal Code, Section 500** and the **Narcotic and Psychotropic Substances and Substance Abuse Act, 2005**. Use and possession are punishable, except if supported by a prescription from a registered medical practitioner. Possession attracts greater penalty if the quantity seized is such as to convince the Court that the drug was intended for sale.

Treatment: Under the Narcotics law, drug dependent persons and can avail treatment, which is statutorily defined to mean medical treatment, therapy, rehabilitation and reintegration for overcoming dependence and abstaining from future use. A person who 'volunteers' and 'successfully' completes treatment before being arrested or charged under the Penal Code, will not be prosecuted. A Court may direct a person using drugs to treatment on its own or on recommendation of a panel, depending on the charges against such person. Non - compliance with 'treatment orders' results in punishment. Subject to conditions, 'successful' treatment may result in dropping of criminal charges.

Harm Reduction: Provision of sterile needles and syringes may be hit by the section penalizing 'solicitation to unlawfully use drugs.' Methadone and Buprenorphine are listed in different schedules and cannot be dispensed without a license.

Cambodia

Drug use related offences: The **Law on Drug Control, 1997** outlaws consumption and use, except with medical prescription. Purchasing and storing a drug for personal consumption is also punishable. Prosecution may drop charges of personal consumption, if the quantity is very small and use is customary. Court may also release such "offender" with a warning. People injecting pharmaceutical drugs may be prosecuted for bringing "pleasing medical prescription" to obtain supply drugs resulting in serious danger.

Treatment: Treatment is restricted to detoxification and can be delivered at the instance of the drug user or under directions from the prosecution or Court. Those volunteering for treatment are immune from prosecution; non completion results in punishment whereas completion may lead the Trial Court to suspend the sentence. Drug users may be held in treatment facilities on orders of a Civil Court, acting on a complaint by spouse/parents/ relatives or the prosecution.

Harm reduction: Provision of injection equipment, information on safe drug use may be hit by provisions on 'intentional facilitation' and 'inciting' unlawful consumption. Methadone and Buprenorphine are differentially classified – making availability access complex. The **Law on Prevention and Control of HIV/AIDS, 2002** makes no explicit mention of harm reduction or programs for people using drugs. The **National Strategic Plan for a Comprehensive and Multisectoral Response to HIV/AIDS 2006 - 2010** includes drug use prevention, education, treatment and rehabilitation as well as provision of harm reduction materials like sterile needle- syringes for people injecting drugs. .

India

Drug use related offences: The principal legislation against drug use in India is the **Narcotic Drugs and Psychotropic Substances Act, 1985,** under which persons using drugs get arrested and prosecuted on charges of consumption and/or possession of small quantity - offences punishable with imprisonment for six months to one year, depending on the drug and quantity found.

Treatment: An 'addict' convicted for convicted for consumption and/or possession of small quantity of drugs may be diverted into treatment by a Court, if s/he fulfills stipulated conditions. Those 'successfully' completing treatment may be released on an 'undertaking' not to commit drug related offences for three years. Another alternative is for the person using drugs to opt for treatment and seek immunity from prosecution.

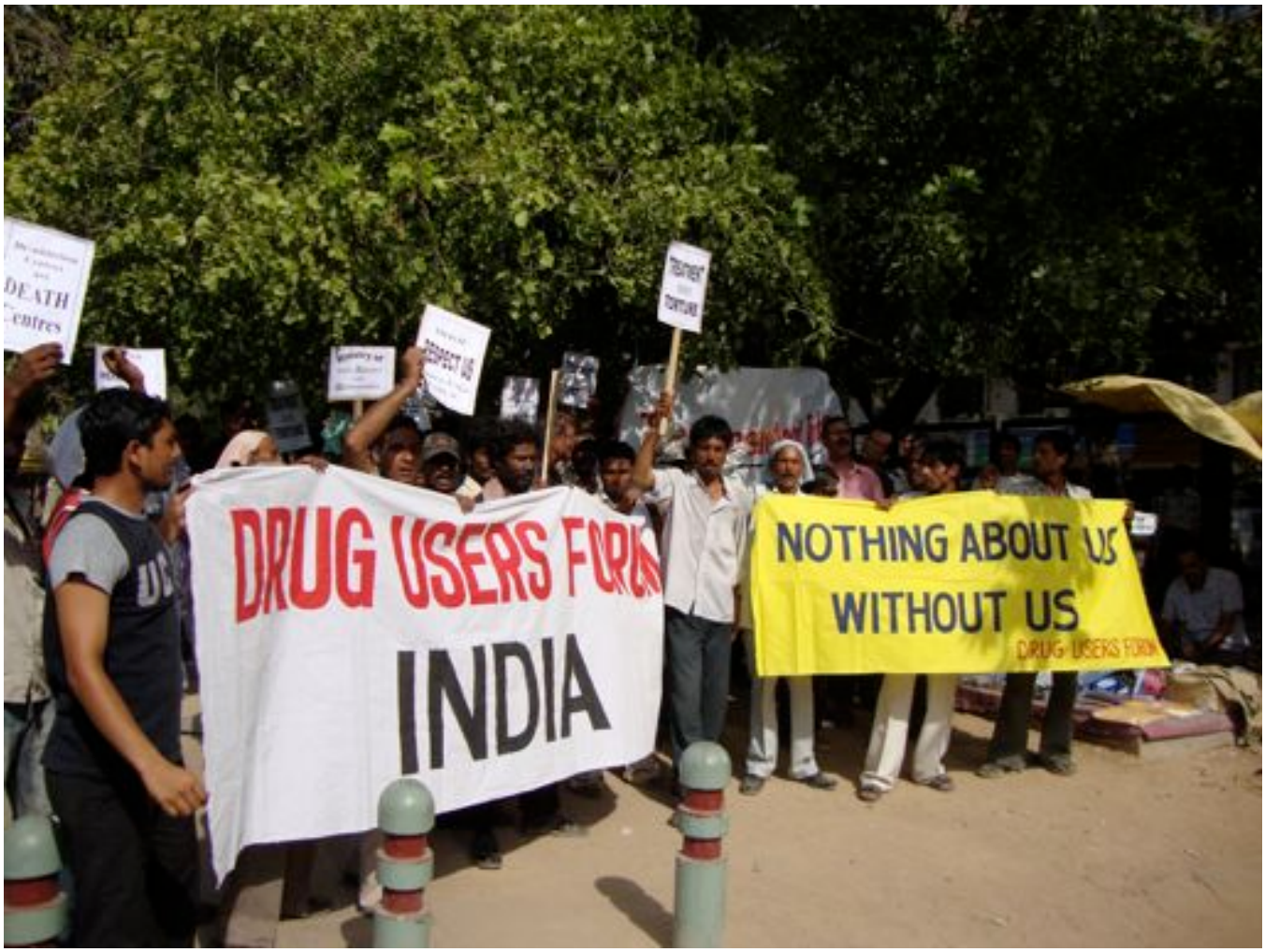
The Government is entrusted with the task of establishing and/or licensing centres for treatment of drug dependence. Drugs otherwise prohibited, may be supplied for medical reasons including detoxification. It is unclear whether opiate substitution is seen as medical use or detoxification.

Harm reduction: Possession of injecting equipment is not illegal. Provision of sterile injection to a drug user may amount to aiding and abetting the offence of unlawful consumption of drugs.

The **National AIDS Prevention and Control Policy, 2002** endorses harm minimization as a strategy for HIV prevention among IDUs while simultaneously encouraging convergence between harm reduction and drug 'de-addiction' programs. Harm reduction interventions are guided by the **Strategy and Implementation Plan of the National AIDS Control Programme Phase III, 2007-2012** and **Operational Guidelines for Targeted Interventions under NACPIII, 2007** which advise agencies needle exchange to obtain 'legal permission' from 'appropriate authority'.

Oral substitution is administered in accordance with the **Standard Operating Procedure for Oral Substitution Therapy with Buprenorphine, 2008** and **Practice Guidelines on Substitution Therapy with Buprenorphine for Opiod Injecting Drug Users**, 2008 developed by the Department of AIDS Control. Only 'accredited' agencies can provide oral substitution to a limited number of 'eligible' IDUs (20% at a point in time) for six or nine months under direct observation of medical personnel.

The Indian Government is presently reviewing a **bill** prohibiting HIV related discrimination and providing prevention, treatment and impact mitigation. The bill proposes immunity to providers and recipients of risk reduction services including needle syringe and oral substitution through a non-*obstante* clause, overriding civil and criminal law in force. It also proposes to protect confidentiality of client records at needle syringe sites and substitution clinics, which may otherwise be confiscated by enforcement.



Indonesia

Drug use related offences: The legal framework for drug control is contained in the **Law on Narcotics, 1997** and the **Law on Psychotropic Substances, 1997** which penalise possession and personal consumption without medical supervision of narcotic and psychotropic drugs respectively. An additional charge against persons using psychotropic substances is that of 'receiving'. Underage users reported to authorities by parents are exempt from punishment.

Treatment: The legislations provide for mandatory reporting and treatment of 'addicts', failing which "addict" and/or family can be punished. Further, the Court can direct 'addicts' – both convicted as well as acquitted to undergo treatment. For convicted persons, time spent in treatment is included in computing the period of sentence. For persons dependent on psychotropic drugs, treatment is mandatory even at the undertrial stage. Treatment envisaged is by way of 'medical' and 'social rehabilitation'. Medical rehabilitation is to 'free' a person from dependency, thus ruling out drug substitution. It can be provided at facilities recognized by the Minister of Health. Social rehabilitation is defined to mean physical and mental recovery and return to social functions and can be performed through religious and traditional methods.

Harm Reduction: Any publicity on drugs is prohibited unless it warns of dangers of 'abuse'. There is no specific provision on drug paraphernalia. The law allows a physician to administer medicines containing narcotics to patients through injection only.

Indonesia has not enacted specific legislation for HIV and AIDS. The framework for AIDS Control is set out in the **Sentani Commitment to combat HIV/AIDS in Indonesia 2004.** Regulation No.02/per/menko/kesra/1/2007 Indonesia (*Text unavailable*) commits to reduction of harms of injecting drug use. It does not, however, list out measures to do so.

Lao PDR

Drug use related offences: Proscriptions against drugs are contained in the **Penal Law**, **1990.** According to Article 135**,** consumption of heroin and amphetamines as also possession (< 2gms of heroin) and (<3gms of amphetamines) is a 'major offence' leading to imprisonment and fine. Alternately, the Court may subject such offender to 're-education without deprivation of liberty' that is, penalty at the work place and require remittance of a certain percentage of wages to the State. Consumption of opium results in imprisonment and fine. Being 'addicted' to smoking marijuana attracts a penalty of re-education without deprivation of liberty.

Treatment: Under Article 50, a Court may instruct alcohol and/or drug dependent offenders, not subjected to imprisonment, to undergo medical treatment in asylums or other centres. Drug dependent prison inmates must be sent to treatment while serving the sentence. Treatment is not an alternative to punishment but runs concurrently with the sentence, although time spent in treatment is included in calculating the sentence term.

Harm Reduction: Supplying sterile injections to those injecting heroin may attract penalty for participation in an offence or being an accomplice to the offence, under Articles 16 and 39 of the Penal Law. The status of Methadone and Buprenorphine substitution is unclear as these are not mentioned in the exhaustive list of prohibited drugs, namely - precursors, heroin, amphetamines, marijuana and opium (and not its derivatives).

The framework for AIDS Control is set out in the **National HIV/AIDS/STI Policy, 2001** revised in 2005 and is supported **by National Strategic and Action Plan for HIV/AIDS/STI 2006-2010**. Both the documents acknowledge injection as the increasing mode for using drugs, particularly among sex workers and, announce the introduction of harm reduction services in collaboration with drug use prevention and rehabilitation. Importantly, the documents express the Government of Laos's willingness to review law and policy to support harm reduction.

Malaysia

Drug use related offences: Drug control measures are contained in the **Dangerous Drugs Act, 1952** and the **Poisons Act, 1952**.. Consumption and 'self administration' of prohibited drugs is unlawful. Repeated conviction for consumption (more than twice) results in enhanced penalty. The law permits forcible testing to detect illicit consumption. Unauthorized possession is punishable. Possession in excess of statutorily specified amounts creates a presumption of trafficking, which carries stringent penalty including death.

Treatment: Under the **Drug Dependent (Treatment and Rehabilitation) Act, 1983**, any person suspected of being dependent on drugs can be intercepted, compulsorily examined to ascertain use and detained in a treatment and rehabilitation centre for two years. Placement under supervision for an additional two years is allowed along with severe restrictions on liberty. People who use drugs can also enroll in treatment and rehabilitation 'voluntarily' or at the instance of parents, if they are under 18 years. For those convicted for consumption, detention in treatment is in addition to a prison sentence, with the exception of juveniles who may be exempted from a jail term. It is mandatory for all physicians to report patients treated for drug dependence.

Harm Reduction: Possession of equipment for consuming opium and cannabis is unlawful. Carrying injecting equipment with traces of drugs creates a presumption of possession of illicit substances. Provision of sterile needle syringe may be construed as abetment of consumption or constitute the offence of administering drugs to another person. Prescription and supply of Methadone and Buprenorphine are subject to statutory regulations. {*Information on policy directives on harm reduction was not available*}.

Maldives

Drug use related offences: The **Law on Narcotics, 1977** classifies drugs as medical or illegal. Use and possession of medical drugs without prescription or in quantity exceeding the dose prescribed is punishable. Altering or misusing a medical prescription also attracts penalty. Use and possession of illegal drugs is unlawful. Possession of less than one gram of an illegal drug is considered possession for personal use, anything more than one gram is presumed to be for sale, punishable with imprisonment for life. Use of any substance for intoxication is an offence, even when the substance itself is not prohibited.

Treatment: In sentencing a drug user for unlawful possession or use, the Court is mandated to consult a multi-disciplinary Committee, which may recommend treatment in lieu of imprisonment. While in treatment, the sentence is suspended, to a maximum of three years. If treatment is completed 'successfully', the remainder sentence need not be carried out. Those who fail treatment are required to serve the full sentence term.

Harm Reduction: Any activity including, writing, publishing, drawing a poster or delivering a talk that creates an interest in others to use drugs is punishable. Programs imparting information and services for safe injecting may be hit by the provision. As far as substitution programs are concerned, Methadone is a medical drug while Buprenorphine is categorized as illegal substance.

The framework for HIV and AIDS control is set out in the **National Strategic Plan on HIV/AIDS 2007-2011**, which takes note of the risk of drug related HIV on account of increasing injecting drug use. It acknowledges the 'right to health' of persons using drugs, though they may contravene law and be denuded of liberty. It furthers commits to provision of prevention education, voluntary counselling and testing and needle-syringe programs for drug users; the latter being restricted to IDUs in the community and not those in prison. Interventions for drug users are entrusted to the National Narcotics Control Bureau, Department of Prison and Rehabilitation and the Police.

Myanmar

Drug Use and related offences: The principal instrument for drug control is the **Narcotics Drugs and Psychotropic Substances Law, 1993.** Unlike other Asian laws, this statute does not contain a specific offence for consumption. A drug user is defined as a person who uses a narcotic drug or psychotropic substance without permission as prescribed under the law. The permission in question is granted by the Ministry of Health under the direction of a registered medical practitioner, in accordance with Rules issued by the Health Ministry.

Possession of narcotic drugs is illegal. Possession is presumed to be intended for a commercial purpose if the quantity exceeds the amount specified in the Act.

Treatment: It is mandatory for a drug user to register with a government identified facility for medical treatment, which is administered according to rules of the Ministry of Health *(Text of Rules not available).* Non-compliance with treatment results in imprisonment for a term of three to five years. Persons undergoing treatment for drug dependence may receive some form of assistance for 'rehabilitation'.

Harm reduction: Inciting another person(s) by any means to cause "abuse" of a narcotic or psychotropic drug is punishable. Distribution of sterile needles and syringes to IDUs may be viewed as provocation. Absence of restrictive definitions of treatment may enable Ministry of Health to authorize oral substitution.

The **Myanmar National Strategic Plan on HIV and AIDS 2006-2010** accords highest priority to prevention among populations at higher risk of HIV, including drug users. The plan views education on safer injecting, supply of clean needles and Methadone substitution as a part of traditional drug demand reduction. It commits to the provision of Methadone in custodial settings and anti-retroviral treatment for HIV positive drug users. The Ministry of Home Affairs is tasked with delivering services for people who use drugs.

Nepal

Drug use and related offences: The **Narcotic Drugs (Control) Act, 2033 (1976**) prohibits the consumption and possession of narcotics except under medical advice. Penalty for using cannabis is lesser than opium and other drugs. Persons using drugs may face arrest for "becoming addicted" to the drug. A person consuming or in possession of small quantity of cannabis or medical opium and not intending to sell the drug may be exempted from punishment. Such waiver may be granted by the Narcotics Officer or the Court to first time offenders along with a warning and an oath not to repeat the offence.

Treatment: A person undergoing treatment for drug dependence at government recognized centers is immune from prosecution. Courts are authorized to divert drug users facing prosecution to treatment and waive off punishment on submission of medical reports. Legal proceedings are suspended till such time that the person remains in treatment. Registered NGOs may set up treatment facilities and be recognized by the government as such. Such centers may also receive a proportion of the amount collected as fines for drug offences.

Harm reduction: Distribution of sterile needles to IDUs may be construed as aiding and abetting consumption of drugs. Oral substitution may be permissible if recommended by a recognized medical practitioner.

The **National HIV/AIDS Strategy 2002-06** *a*cknowledges the need for 'treating' persons who inject drugs. It also advocates needle exchange programs and drug substitution along with awareness on harm reduction, counseling, primary health care and legal support for persons using drugs. *(No information available on changes in the strategy after 2006)*

Nepal is considering an **HIV and AIDS (Prevention, Control and Treatment) Bill, 2061**. Drafted in 2004, the bill promotes education for prevention and control of HIV, especially for high risk behaviour, i.e., activities likely to cause transmission of HIV. Injecting drug use does not find explicit mention in this Bill. Sterilized needles, are included under "health support and protective materials", easy access to which is to be ensured by the government.

Pakistan

Drug use and related offences: Drug control is enforced through the **Prohibition (Enforcement of *Hadd*) Order, 1979** and **Control of Narcotic Substances Act, 1997.** Consumption of intoxicants including alcohol and narcotic drugs is forbidden under the *Hadd* order. At the same time, an 'addict' may be supplied prohibited drugs where such supply is necessary to prevent death or debility. People who use drugs may also face prosecution for possession of a prohibited substance (less than 100 gms punishable with two years of imprisonment and fine).

Treatment: Drug users are required to register with the provincial government and carry registration cards. Federal and provincial governments are jointly responsible for treatment, care and follow up.

Harm Reduction: Supplying of injecting equipment to an IDU may be punishable as abetment of an offence under the *Hadd* order. Oral substitution may also be in contravention of the law, unless permitted within the exception of supply for medical treatment.

Pakistan is considering the **HIV & AIDS Prevention and Treatment Act, 2007.**[22] The **National HIV and AIDS Policy, 2007** is reportedly submitted to the Ministry of Health for review before presentation to the Federal Cabinet.[23] The **National HIV and AIDS Strategic Framework, 2007-2011** earmarks strategies for prevention of drug related HIV including needle exchange programmes and referral to drug treatment services and encourages co-ordination between drug demand reduction and HIV prevention programs.

[22] National AIDS Control Program, Ministry of Health, Government of Pakistan, UNGASS PAKISTAN REPORT, Progress Report on the Declaration of Commitment on HIV/AIDS for the United Nations General Assembly Special Session on HIV/AIDS, 2007 at page 13
[23] Ibid at page 14

Philippines

Drug use related offences: The principal statute for drug control in Philippines is the **Comprehensive Dangerous Drugs Act of 2002.** Consumption of drugs is illegal and results in confinement in 'rehabilitation' for at least six months. A second conviction results in imprisonment for six to twelve yrs.

Use of drugs is an aggravating circumstance in the commission of any criminal offence. Possession of as little as 500 grams of marijuana and ten grams of opium is punishable with life imprisonment to death. Carrying drugs of any quantity in an assembly or in the company of two or more persons attracts separate penalties. If a drug user is charged with consumption and possession, then penalties for the latter offence prevail. Conviction for a drug related offence results in suspension of civil rights including the right to franchise.

Treatment: Treatment and rehabilitation entail detention at a centre for six months to one year or in some cases, placement under the care of a certified physician as prescribed by law. Enrolment in medical care may be at the instance of the user, his/her family or mandated compulsorily by the Dangerous Drugs Board. Voluntary submission and discharge may result in waiver of penalty but failure to complete treatment a second time leads to prosecution for illicit drug use. Mandatory drug testing is imposed on distinct classes of persons including students and military recruits.

Harm Reduction: Possession of drug paraphernalia including injecting equipment is unlawful and constitutes *prima facie* evidence of illicit use. Delivery of paraphernalia to inject prohibited drugs is also an offence. Giving sterile needles to a drug user may additionally be seen as assisting another person to use drugs within the meaning of 'administration'.

The **Philippine AIDS Prevention and Control Act of 1998** supplemented by Rules and Regulations seeks to eradicate conditions that aggravate HIV transmission including 'drug abuse' with a qualifier that such efforts do not aim to 'undermine other prevention activities' by driving communities underground. The Act supports HIV prevention through provision of information but does not include specific tools or services.

The strategy for AIDS control is set out in the **Fourth AIDS medium term plan for 2005 to 2010** which acknowledges risky injecting practices among a small segment of drug using population.

The document makes note of 'unclear' results of initial harm reduction measures among populations at high risk. It commits to reaching IDUs with STI and HIV prevention education, skills and services by exploring policy options for needle syringe exchange. There is no mention of oral substitution though.

"If Asian and the Pacific governments, civil society, health care providers and other stakeholders are serious about halting the HIV/HCV epidemic, purposeful attention and action must be given to ensure evidence-based and non-oppressive approaches to address the needs and high vulnerability of the IDU population in Asia and the pacific. Policies on drug control need to be harmonized with HIV and HCV prevention, treatment, care and support efforts and standards of services for harm reduction would also be required in order to have an enabling environment for sustainable service delivery."

Excerpt from the ANPUD (INPUD-AP) Goa Declaration
The First Asian Consultation on HIV related to Drug Use
Goa, India, 2008

Sri Lanka

Drug Use Related Offences: The **Poison, Opium and Dangerous Drugs Act** prohibits consumption of heroin, cocaine, morphine or opium is prohibited except if prescribed in accordance with a protocol. Possession of drugs is unlawful unless under a license.

Treatment: Provisions diverting people using drugs into treatment do not exist although a legislative proposal to this effect was mooted some years ago. Application of the **Community Based Corrections Act, 1999** to drug offenders could not be **c**onfirmed.

Harm Reduction:Possession of injection paraphernalia without medical prescription is unlawful. Dispensing sterile needles to drug users may be construed as abetting illegal acts of possession or administering or delivering dangerous drugs without a license. Medical practitioners are allowed to administer, prescribe or supply dangerous drugs to a patient for treatment for three days. Whether such treatment includes opiate substitution is an open question. A **National AIDS Policy** was drafted in 2005. The document emphasizes prevention and elimination of drug use but does not mention harm reduction.

Thailand

Drug Use Related Offences: The framework for drug control is laid down in the **Narcotics Control Act, 1979** and the **Psychotropic Substances Act, 1975**. Proscriptions against consumption of drugs vary according to their classification in law. Consumption of heroin and marijuana is prohibited whereas Opium may be used on prescription for medical purpose. Any person can be forcibly tested for drug use, on reasonable suspicion of such use.

Possession is unlawful and penalty depends on the nature and quantity of drug found. Exceptions include patients (for medical use certified by doctor), physicians and pharmacists (holding a license).

Treatment: According to the **Narcotic Addict Rehabilitation Act, 2002,** a person using narcotic drugs is exempt from charges of consumption or consumption along with possession and sale, if s/he applies for and completes treatment at a certified medical establishment before the discovery of the offences. Narcotic users convicted for consumption the third time can be forcibly detained in a medical establishment. Persons dependent on psychotropic drugs can also be ordered to undergo treatment. Non-completion or unauthorized exit ("escape") attracts punishment. Under the special law on rehabilitation, the decision to prosecute or commit a drug dependent person to 'rehabilitation' is made by an authorized committee. Rehabilitation is carried out in custodial settings where users' civil rights and liberty are suspended.

Harm Reduction: Services of needle syringe and safer drug use may be seen as 'instigating' another person to consume prohibited drugs. Oral substitution may be seen in contravention of law, unless recognized as 'treatment' and provided at medical establishments notified by government. Directions for AIDS Control are contained in the **Tenth National Plan for the Prevention and Alleviation of HIV/AIDS 2007-2012.** *{Text unavailable}*

Vietnam

Drug Use related offences: The Law on Narcotic Drugs (Prevention and Suppression), 2001 is the principal statute for drug control. *Text of this law was unavailable.*

Treatment: Drug users reportedly sent to 06 compulsory rehabilitation centres.

Harm Reduction: The Law on HIV/AIDS Prevention and Control 2006 encourages use of condoms, clean syringes and needles, treatment for *opiod* dependence with substitution. It entrusts implementation of harm reduction to government agencies and mandates harmonization of HIV prevention with prevention of drug use, while prioritizing harm reduction. It prohibits any person from "taking advantage of HIV prevention and control activities to make profit or *commit illegal acts*."

Besides, the National Strategy for HIV prevention and control in Vietnam till 2010 with a vision to 2020 encourages study and application of international experience of harm reduction. It seeks to ensure that law enables people at risk of HIV to access prevention services and maintain safe behaviours and, to amend law, if necessary. The strategy aims to create a 'legal corridor' for harm reduction interventions and garner consensus towards it. The document simultaneously advocates integration of prevention of drug use into HIV interventions.

Discussion

Criminalization of people using drugs

Criminalization of drug use is universal; penalties for consumption are either standard or vary according to the nature of drug. Exceptionally, under Cambodian law, charges may be dropped if the quantity is very small and use is customary. Most countries allow consumption of prohibited drugs for medical purposes. Where defined, medical purpose refers to alleviation of medical conditions unrelated to drug dependence. Some countries such as Malaysia, Philippines and Thailand allow mandatory drug testing. Possession is illegal unless supported by a medical prescription. Punishment for unlawful possession depends on the substance and quantity found. Penalty may also be linked to intent (with intention) to sell attracting stringent measures. Some laws distinguish between and specify small from commercial quantity, which indicates what the drug was meant for. Under Malaysian law, possession of more than the specified amount creates a presumption that the drug was meant to be trafficked. Similarly, in Maldives, possession of less than one gram of an illegal drug is considered possession for personal use, anything greater is presumed to be for sale, punishable with imprisonment for life.

Issues to explore:

- How are charges of consumption and possession applied? Individually and/or in conjunction?
- Are drug dependent persons able to avail exemptions for medical use?
- What is the impact of arrest and incarceration on drug users' health, especially access to harm reduction services?
- What are the implications of mandatory testing on civil rights of drug users?
- Have graded penalties according to substance and quantity proven less burdensome for drug users?

Treatment for drug dependence

Almost all laws provide some form of treatment either within penal or civil institutions or both. Treatment is available to 'addicts' – which under some laws exclude occasional users or those without manifest signs of dependence. Where defined, treatment is given a restrictive meaning, usually to be 'free from drugs'.

Several countries including Bangladesh, Malaysia, Myanmar and Pakistan mandate reporting of 'addicts' to authorities by physicians, family or the user her/himself. Users can be forced into 'treatment' under law in Bangladesh, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar and Thailand. Some statutes also authorize users' detention in treatment and/or rehabilitation centres. Successful completion means 'coming out' and 'remaining clean' for years together. Where offered as an alternative to imprisonment, relapse can result in enhanced sentencing.

Issues to explore:

- What policy mechanisms can be applied to give treatment a 'real' meaning?
- Are there differences in drug users' experience of treatment in civil facilities as opposed to treatment routed in the criminal justice system?
- Do prosecution/ Courts invoke treatment provisions?
- What evidence is needed to reform/reject mandatory reporting and forced treatment?
- Can treatment be offered with safeguards against loss of civil rights and liberty?

Harm reduction

Needle syringe provision

Barring Sri Lanka, no other country explicitly penalizes possession of injection equipment. Yet, providing, distributing and dispensing clean needles to drug users with knowledge and intent that such needle will be used to inject illicit drugs, may attract penalty in nearly all jurisdictions for inciting, aiding or abetting an offence. Even where instructed by HIV policy or law, needle syringe programs may attract penal liability, unless specifically exempted by statute.

Oral substitution

Narcotic drugs and psychotropic substances are statutorily classified on some basis or the other. Some countries follow schedule under International Drug Conventions; others do so on the basis of severity of 'danger' and/or medical/therapeutic value. Methadone and Buprenorphine – common agents used for opiod substitution are differently classified in the Asian region.

To illustrate, Cambodian law categories Methadone as a drug which "causes *serious* danger but which is useful for medicine" and Buprenorphine as one which "causes *danger* but is useful for medicine". In Maldives, however, Methadone is a medical drug but Buprenorphine is illegal. Classification translates into complex regulations affecting

availability and access for users. [24] In South Asia, many governments have committed themselves to introducing Methadone and/or Buprenorphine substitution in the harm reduction programs, but roll out is trapped in onerous approval and regulatory procedure. The recent guidance on procurement of controlled substances developed jointly by U.N agencies is a significant step in facilitating substitution therapy.[25] At the same time, countries must invoke domestic mechanisms including statutory and policy procedures for sustained access to Methadone and Buprenorphine.

Most governments in South and South East Asia have endorsed harm reduction in HIV policy and programs. Some countries such as Cambodia, Philippines and Vietnam have introduced legislation on HIV; others are in the process of doing so. However, none of these laws, barring the pending legislation in India, specifically address the conflict between policies and practice of harm reduction and penal law provisions on narcotics. It is possible, without changing drug laws, to protect harm reduction measures.

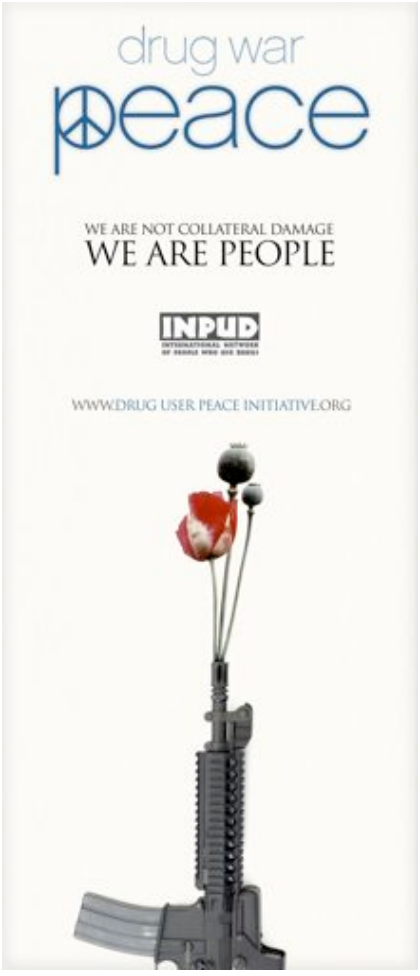
Issues to explore:

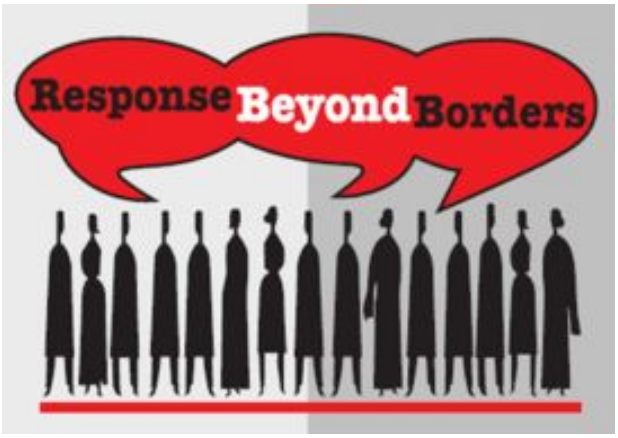
- Does carrying needles increase risk of identification and arrest for drug users?
- Does shaky legal ground for needle syringe programs affect coverage?
- How can international and national regulations for Buprenorphine and Methadone procurement be simplified and made operational?
- How can policy commitments on HIV and harm reduction provide impetus to drug law reform?

[24] Centre for Strategic and International Studies, Task Force on HIV/AIDS, *Combating the twin epidemics of HIV/AIDS and Addiction, Opportunities for Progress and Gaps in Scale*, October 2007.
[25] UNODC/WHO/UNAIDS, *A Step by step algorithm for the procurement of controlled substances for drug substitution treatment,* August 2007. Available at http://www.unodc.un.or.th/drugsandhiv/publications/2007/Step-by-Step.pdf.

Research for Reform must be Ongoing ….

HIV and attendant health concerns have given momentum to advocacy and policy reform in many areas including drug use. Some typologies for legislative change are already available. It is hoped that international drug policy and its domestic equivalent – narcotic legislations will be subject to rigourous debate and analysis, especially in the run up to United Nations General Assembly Special Session on Illicit Drugs 2008-09. Matters that affect the health and lives of drug users must be placed high on legal research and reform agendas.





The Asian Consortium on Drug Use, HIV, AIDS and Poverty is a voluntary network of prominent NGOs, INGOs and service providers working together on collective issues of HIV prevention, access to health, food, harm minimization and mainstreaming towards poverty alleviation among drug using populations in Asia.

The consortium's main objective is to advocate and engage through consultation major players in Asia from the policy and law, donor, corporate, government and civil society sectors to review the existing gaps and present viable and effective solutions to prevent HIV among drug using populations and to provide quality care to those infected.