International Drug Policy Consortium
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IDPC Briefing Paper

Policy responses to drug issues in Malaysia

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Introduction

The development of drug policies in Malaysia has historically relied on harsh punitive measures, including widespread arrest and incarceration of users, and the continuing use of the death penalty for trafficking offences. However, since 2005, the introduction of harm reduction services as well as the more recent initiation of a process to transform compulsory drug treatment centres into voluntary needs-based services for people who use drugs indicates that Malaysia's response to drug-related issues has become increasingly health focused. This paper provides an insight into Malaysian drug policies and the environment in which the national response to drugs has been developing in terms of harm reduction, prisons, drug treatment, law enforcement responses and civil society participation. An analysis of the situation concludes with recommendations for further drug policy development.

Background

Malaysia is not considered to be a producer of illicit drugs, but the country's proximity to the Golden Triangle has resulted in high levels of heroin, amphetamine-type stimulants and other illicit substance use.[1] In the first half of the 20th century, opium use was widespread among certain immigrant communities and growing awareness of the risks of drug use led the British colonial government to introduce the Dangerous Drug Ordinance and Poisons Ordinance in 1952.[2] The ultimate objective behind the deployment of the Ordinance was to eradicate drug use by force of law, thereby criminalising users, producers, distributors and traffickers. However, despite several revisions and amendments granting increasing power and discretion to law enforcement agencies, the number of drug users and drug-related crimes has continued to rise steadily throughout the second half of the 20th century.[3]

In 2004, published media reports indicated that between 400,000 and 500,000 people were supposedly using drugs in Malaysia[4] which correlated with the government drug control agencies' estimate of approximately 350,000. The Reference Group to the United Nations on HIV and Injecting Drug Use estimated between 170,000 and 240,000 injectors in 2008.[5]

Although law enforcement authorities continue to focus on arrest and incarceration, as well as corporal punishment and the death penalty, to prevent and deter drug use, the integration of harm reduction in health systems in Malaysia has had an important impact on the fundamental understanding of drug dependence issues.

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This has had the most impact in the public health sector, leading to important changes in custodial settings management (both in prisons and drug detention centres) as well as in civil society participation and engagement.

Malaysia's stakeholders have successfully rolled-out harm reduction services across the country after they started implementing them in 2005. National level commitments from public health officials as well as increasing interest from prison authorities, drug dependence experts and law enforcement representatives in conjunction with significant investments from international agencies, including the Global Fund, will provide fertile ground for an improved response to drug issues in Malaysia over the coming years. However, a number of important legal and policy obstacles remain to be addressed in order to further strengthen and sustain the Malaysian response.

Harm reduction

In 2003, the Malaysian government started a pilot substitution therapy programme with successful results[6] whilst in 2004 needle and syringe exchange programmes (NSPs) were piloted at three sites within Peninsular Malaysia. However, it was the Millennium Development Goals (MDGs) report published in May 2005[7] which truly triggered the integration of harm reduction in Malaysia's response to drugs and HIV/AIDS. Indeed, the report raised major concerns about Malaysia's achievement of Goal #6 of the eight time-bound country-specific targets,[8] "to combat HIV/AIDS, Malaria and other diseases", by stating that "the MDG target of halting and reversing the spread of HIV/AIDS by 2015 [was] extremely challenging". As a result, the Malaysian Ministry of Health officially started methadone maintenance treatment in 2005 and launched NSPs the following year. In 2008, a report written by the World Health Organisation (WHO)[9] reiterated that Malaysia had achieved all MDGs with the exception of Goal #6.[10]

Malaysia's response to drugs for the past six years has therefore been largely driven by the need to address a rapidly spreading HIV epidemic among people who inject drugs. Estimates indicate that there are 170,000 injecting drug users in Malaysia, 22% of whom are living with HIV.[11,12] At the beginning of 2010, over 10,700 people in Malaysia were enrolled in the 211 government-operated methadone service outlets as well as an additional 10,000 or so individuals accessing fee-based private opioid substitution therapy. Over 18,000 injecting drug users accessed sterile injecting equipment through the 240 service delivery sites.

The implementation of opioid substitution therapy services in Malaysia remains the responsibility of medical professionals. Opioid substitution therapy service providers must be registered with the Ministry of Health and certified by the Addiction Medicine Association of Malaysia and the Federation of Private Medical Practitioners' Association, Malaysia, as stipulated in the *National policy on drug substitution therapy*[13] and the Ministry of Health's *National methadone maintenance therapy guidelines.*[14] In 2009, Malaysia counted 631 registered and accredited medical officers dispensing methadone maintenance in the country.[15]

Needle and syringe programmes in Malaysia have largely been the responsibility of civil society groups. Implementing partners follow the *Needle and syringe exchange programme standard operating policy and guideline*,[16] including a detailed section on how to collaborate with law enforcement. Although the official policy text encourages an exchange of sterile versus used injecting equipment on a one-to-one basis,[17] in practice, needle and syringe programme clients are provided with one kit (four needles, four syringes, 16 cotton balls and 16 alcohol swabs) per person per visit. To facilitate oversight and harmonise reporting, the Ministry of Health has produced the *Needle and syringe exchange programme pilot project monitoring and evaluation manual.*[18]

There has been a decline of HIV transmission across Malaysia over the past decade – from 7,000 new cases recorded in 2002 to just over 3,000 cases in 2009.[19] Still, 55.2% of HIV transmission cases in Malaysia occur through injecting drug use, while 30% of cases are reported to occur via sexual transmission.[20] Between the reporting of Malaysia's first HIV case in 1986 and 2007, a little over 70% of cumulative HIV cases were attributed to injecting drug use.[21] In 2006, after the introduction of harm reduction services , the percentage of notified HIV cases by risk factor among injecting drug users (IDUs) has decreased by 12.4% which suggests that the government's harm reduction strategy has been successful.

Harm reduction measures benefit from considerable financial support from the Malaysian government. In 2009, the Malaysian government committed RM 15 million [USD 4.5 million] for methadone services and RM six million [USD 1.8 million] for needle and syringe distribution. This ensured that their target of reaching 15,000 IDUs by 2010 was met[22] although this still constitutes less than 10% of the total estimated number of 170,000 IDUs[23] in Malaysia.

The government's financial commitment has also enabled innovative service delivery to promote low-threshold access. For example, the Ar-Rahman Mosque has been operating a methadone maintenance therapy service since April 2009, the first mosque in the world to offer harm reduction services.

Efforts by the Ministry of Health have led to the deployment of an effective and sustainable national harm reduction programme through the implementation of the *National strategic plan on HIV/AIDS 2006–2010*,[24] and the *National strategic plan on HIV/AIDS 2011–2015*.

The Ministry of Health's efforts rely heavily on several in-country partners, most importantly the Malaysian AIDS Council (MAC), a civil society umbrella organisation that acts as a national coordination committee for all civil society efforts in the context of the response to HIV/AIDS. The Ministry of Health also relies on academics and research institutions as well as other government agencies such as the National Anti-Drugs Agency (*AADK* in Bahasa Malaysia), the Malaysian Prison Department, and the Royal Malaysian Police Force (RMP) for implementing harm reduction services.

Malaysian authorities and civil society groups involved in the response to drugs and HIV are keen to scale up and strengthen harm reduction interventions. Recent agreements with the Global Fund for Round 10 are likely to contribute significantly to the expansion and scale-up of harm reduction services across the country. This would enable Malaysia to significantly reduce the prevalence of HIV which, according to reports published in late 2009, was rapidly spreading to the non-injecting community.[25]

Prisons

Drug-related crimes, under The *Dangerous Drugs Act* (1952),[26] are punishable by fines, imprisonment, corporal punishment and the death penalty[27,28] depending on quantities, previous offenses, and perceived intent to distribute. Malaysian authorities have traditionally applied the law to prosecute drug use and trafficking through a repressive strategy based on the principle of deterrence.

Malaysia's 31 prisons currently hold 36,040 people. At least 16 other detention centres are in place, including drug treatment centres, illegal immigrants' depots and juvenile institutions.[29] In 2007, close to 40% of the prison population were incarcerated on drug-related charges, representing over 16,000 individuals.[30,31]

In early 2010, a small number of inmates across 12 prisons in Malaysia were accessing opioid substitution therapy under the leadership of the Ministry of Home Affairs and in collaboration

with the Ministry of Health, while 15 prisons were providing antiretroviral treatment to incarcerated people living with HIV. The Ministry of Home Affairs has repeatedly requested assistance to further develop capacity and implement health services to address drug use and HIV transmission in prisons. Despite great success in piloting opioid substitution therapy and other health services in prison settings, work is not yet standardised or coordinated through policy instruments, and further efforts are currently constrained by human and financial resources, where capacity and funds are in short supply.

Drug treatment

The *Drug Dependants (Treatment and Rehabilitation) Act (1983)* provides the opportunity to divert those arrested for drug-related crimes to integrate a two-year mandatory treatment programme at a narcotic addiction rehabilitation centre (*PUSPEN* in Bahasa Malaysia) or be given a two-year supervision order in the community. The centres come under the supervision of the Ministry of Home Affairs, initially operated by its Justice Department but currently managed by the *AADK*. There are currently 28 *PUSPENs* operating in parallel with the prison system under the guidance of the *AADK*, with an additional 66 privately operated rehabilitation centres. The *PUSPENs* have been criticised over the years for providing little medical care to the patients and resorting to corporal punishment verging on physical abuse. The relapse rate among the patients released from the centres has been reported range between 70% and 90%.[32]

Since the introduction of harm reduction programmes in 2005, there has been a decrease in the numbers of people sent to the mandatory rehabilitation centres. In 2003 and 2004, there was an average of 10,000 drug users in the centres, whilst in 2007 this had decreased to 7,100[33] and to 6,900 by the end of 2009. There has also been a significant shift in drug policy in which other government departments and agencies, such as the Ministry of Health, the Cabinet Committee of AIDS, the National Advisory Committee on AIDS and the Technical Committee on AIDS, were given responsibility for drug dependence treatment,[34] in recognition that drug use is a health issue.

In 2010, the *AADK* also established new priority objectives, chief among them has been to replace the *PUSPENs* with Malaysia Cure and Care Clinics.[35] In the past, according to the Drug Dependents (Treatment & Rehabilitation) Act 1983, admission to a *PUSPEN* was through arrest and a court order.[36] Today, "drug addicts and their families can come to the cure and care clinics any time, without having to go through legal procedures".[37] Services accessible at cure and care clinics are confidential, voluntary, free of charge and free of legal implications. In addition, such services will remain accessible without conditions of completion or universal achievements – in essence, all clients are able to set their own objectives, and their progress and success is measured against those.

The main difference with the system of mandatory rehabilitation centres is that these clinics now operate on a voluntarily basis. In addition, the cure and care model acknowledges that "there is no one approach that can solve drug addiction … [and] … drug users are a unique group that need treatment and rehabilitation through various concepts and the approach is to be individualised".[38] This implies that the clinics, supported by the Ministry of Home Affairs and the *AADK*, will strive to provide a comprehensive range of prevention, treatment, rehabilitation and support services to meet the health and social care of people who use drugs in Malaysia. As seen in the implementation of harm reduction services in prisons, it is clear that scale-up of care and cure centres is feasible and that such a process is likely to occur through health systems integration approaches.

The first cure and care clinic opened in July 2010 and the planned expansion of the clinics across the network of rehabilitation centres and beyond indicates an important change in approach, values and strategies. Firstly, the fact that this change emanates from the Ministry of Home Affairs and the *AADK* is a landmark position where law enforcement and drug control agencies have initiated changes in their *modus operendi* with little external influence, to accommodate the needs of people who use drugs. Secondly, the programmatic implications of this change indicate that the integration of health systems is a viable and effective strategy to scale up comprehensive and mutually supportive interventions to address HIV prevention, treatment, care and support. Indeed, the appreciation of the imperative for the client to be able to choose health interventions based on each individual's needs has rarely been integrated or articulated in South East Asia.

The *AADK* intends to increase the number of cure and care centres to 93 by the end of 2011 across the country. Future plans include the possibility of including access to sterile injecting equipment. Ten cure and care clinics are already operating in Malaysia with plans to significantly and rapidly expand the transformation of the majority of *PUSPEN*s. Two *PUSPEN*s have already been closed in 2010 and will be converted into national training venues for cure and care clinic staff. Although some of the old rehabilitation centres will survive the transformation, they will essentially cater to the needs of those referred through legal mechanisms.

Another objective of the *AADK* is to scale up community justice structures, including community supervision. Upon arrest, drugs users undergo a urine test administered by law enforcement officers. A positive test will require a confirmation test conducted by public health officials, generally at a hospital. When the second test is positive, the suspect is sent to court. If this represents a first offence, users will be referred to community supervision, i.e., they will be placed under the care of an *AADK* officer in community settings for two years. At present, approximately 53,000 people are under community supervision, out of which less than 5% are young people and less than 3% are women and girls. During the two years, those under community supervision undergo monthly urine tests. With one or two positive urine tests, the officers will intensify interventions, including counseling, peer support, etc. Upon a third positive urine test, the user will be sent to compulsory drug treatment most often, to a MMT service, or in rare cases to prison. If the user has been arrested for drug-related charges before, the court will usually rule for placing the user in the custody of the compulsory drug treatment centre officers. However, if the user displays violent tendencies or aggressive behaviors while in the centre, he/she may be diverted to prison.

If properly implemented, community supervision structure may be able to contribute to a significant decrease in the national prison population and in the numbers of drug users sent to mandatory treatment. The AADK and other government agencies are therefore promoting community supervision over mandatory drug treatment and rehabilitation. The National Strategic Plan on HIV/AIDS 2006-2010 also encourages the implementation of "programmes of diversion from the criminal justice system (to drug treatment and community justice programmes rather than prisons)"[39] in order to reduce the HIV vulnerability among people who use drugs. By the end of 2009, approximately 50,000 drug users were enrolled in community supervision programmes. If the right to confidentiality of the patient is respected by the AADK (in accordance with the guidelines on confidentiality for all medical patients), the system of community supervision may also decrease the level of stigma associated with drug use and dependence.

There is therefore a clear interest from Malaysian authorities to develop effective and sustainable diversion mechanisms as well as a treatment

environment for people who use drugs that recognises that health service options have more value than uniform compulsory treatment. Although the Ministry of Home Affairs and its related agencies and partners report a 15% reduction on the national crime index and a 37% reduction in street crime compared to 2008, those involved in law enforcement and drug control have acknowledged that their success will always be limited when addressing drug-related crime.[40]

Law enforcement

The integration of harm reduction into national health strategies and the subsequent rapid scale-up has required endorsement from both high-level health and law enforcement officials in Malaysia. The leadership at the *AADK* and the RMP supports the provision of HIV prevention measures as a priority in order to reduce the impact of negative consequences associated with drug use.

However, despite high-level support for harm reduction, law enforcement agencies continue to target needle and syringe programmes and opioid substitution therapy access points and target people who use drugs as well as outreach workers or simply raid health service delivery outlets to meet arrest quotas. In addition, commodities such as condoms and used syringes and needles can be presented in court as evidence of a crime. According to civil society groups as well as government officials, the frequency of such law enforcement interventions seems to have been decreasing.[41]

Civil society

A number of civil society organisations work on drug use in Malaysia, the most important of which is MAC. MAC was established in 1992 as an umbrella of NGOs working on HIV/AIDS issues. Initially consisting of 18 NGOs, it has grown to 44 partner organisations.[42] The aim of setting up MAC was to maximise the community response to HIV/AIDS, ensuring an efficient use of limited resources. MAC is currently responsible for implementing the NSPs which are funded by the Ministry of Health. In that respect, MAC is a channel for Ministry of Health funding for civil society, placing them in a strategic position with oversight responsibility in a broad range of activities across MalaysiMAC therefore enjoys a privileged relationship with the Ministry of Health and other government agencies. However, that privileged access to government officials has also restricted their capacity to advocate for changes in policy and practice given their almost complete dependence on funding from the Ministry of Health. In addition, MAC's proximity to government agencies and its supervisory role over other NGOs leaves little space for interventions and efforts that fall outside their scope of operations. Yet for almost two-decades, MAC has successfully and effectively operated in this environment in close partnership with both government and civil society organisations, alongside a diverse and increasingly empowered group of NGOs.

At present, MAC is a principal recipient for Global Fund Round 10 support. Round 10 funds are largely earmarked towards the scale-up of needle and syringe distribution programmes across the country. MAC is also the national partner organisation for the *Community for Action in Harm Reduction* project,[43] which includes drug policy advocacy components.

MAC is currently exploring the establishment of a partnership with a national network of lawyers to facilitate access to legal aid services for people who are accused of drug-related crimes. People who use drugs have traditionally been reluctant to call upon lawyers to assist them since their involvement has often resulted in longer prison sentences. The potential partnership is therefore intended to sensitise both lawyers to drug-related issues as well as people who use drugs to be more aware of their fundamental and

legal rights. Unfortunately, few organisations are interested in engaging on legal aid issues given the stigma associated with drug crimes, despite the important role lawyers have played in protecting individuals' human rights.[44]

This loose legal aid network is in place across Malaysia to provide legal aid to disenfranchised individuals facing legal proceedings, not only people who use drugs. In fact, the network's engagement in cases involving drug use has been timid, though recently on the rise. The emergence of interest from the legal aid network to engage in drug-related legal matters is a rare opportunity to increase advice to people who use drugs on the options for diversion to treatment in the context of legal and policy reform.

Malaysia's drug policy environment

An analysis of the rapid evolution of the policy landscape indicates that Malaysia's response to drugs, initially fell under a punitive drug policy approach, but is increasingly focusing on issues that fall under a health policy strategy, driven by HIV-related issues. Beyond improving the practice and promoting the discourse of harm reduction, Malaysia is taking significant steps to address issues of diversion, drug treatment, custodial settings, law enforcement action and policy and community justice.

Motivation to review law enforcement procedures and processes in relation to drugs from key agencies, including the RMP, the *AADK*, the Ministry of Health, and legal aid advisors, points to a growing need and desire to adapt to emerging realities with evidence-based solutions.

Though high-level champions are moving the drug policy reform agenda forward with important evidence-based changes across Malaysia, the realities on the ground are quite different. The majority of civil society groups, channelling their work through the Malaysian AIDS Council, have only a weak understanding of, and capacity to, influence the legal and policy instruments that delineate their operational spaces combined with little interest in the matter, preferring to invest in more direct activities that show immediate results such as needle and syringe distribution.

Compared with neighbouring nations, Malaysia's progress in drug policy reform is encouraging. Despite the limitations in Malaysia's current response to drug-related issues, which have been described in this paper, it is progressive compared to other governments in the region. A large number of Asian governments have remained largely opposed to harm reduction policies, at best turning a blind eye to service delivery or at worst interfering with health services and pursuing aggressive drug control strategies that have led to the detention and incarceration of drug users in overcrowded prisons and compulsory treatment centres.

Conclusions and recommendations

In recent years, there have been some very encouraging developments in the policy environment and programme implementation in the field of harm reduction and drug policy in Malaysia. The increasing coverage of effective harm reduction and HIV prevention programmes, along with the progressive move from mandatory treatment and rehabilitation to voluntary and community-based 'cure and care' models for drug dependence treatment, are both positive developments. However, important legal and policy obstacles still exist that can hamper such positive health and social programmes.

Malaysian policy makers remain rightly concerned about the level of crime and anti-social behaviour associated with drug markets and drug use, but there needs to be a revision of strategy and tactics to tackle this phenomenon – focusing on treatment and rehabilitation for petty

and non-violent offenders, treatment in prison for those drug dependent people guilty of more serious crimes, and a new focus on the organised crime groups that control trafficking routes.

International evidence[45] has demonstrated that the use of widespread arrest and imprisonment of drug users, along with ever-increasing punishments, to deter drug use and dealing are not an effective way to control the drug problem. The continued use of the death penalty for trafficking offences undermines Malaysia's claim to have a proportionate and balanced approach to the social and health problems caused by drug markets.

On the basis of our assessment of the current situation, and our work with colleagues in Malaysia, the International Drug Policy Consortium recommends the following:

- Continuing the national roll out of the agreed range of public health and harm reduction services;
- Continuing the transformation of compulsory drug treatment centres into 'cure and care' centres, under a national drug dependence treatment and rehabilitation strategy;
- Modernizing the 1952 drug law, and the law enforcement and criminal justice procedures for dealing with drug offenders;
- Repealing the use of the death penalty, and corporal punishments, for drug offences, and reserving the harshest punishments only for those who play controlling roles in drug trafficking organisations;
- Initiating a review of diversion and sentencing guidelines and mechanisms, in partnership with legal aid advisors;
- Rolling out training for law enforcement officers, court officials, and prison professionals on the new balanced approach to drug users;
- Increasing the capacity of civil society groups to promote and engage in drug policy reform and deliver services at the national and local level;
- Sharing and disseminating the successes achieved in Malaysia across the Asian region and beyond to encourage good practice.

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The International Drug Policy Consortium is a global network of non-government organisations and professional networks that specialise in issues related to illegal drug production and use. The Consortium aims to promote objective and open debate on the effectiveness, direction and content of drug policies at national and international level, and supports evidence-based policies that are effective in reducing drug-related harm. It produces occasional briefing papers, disseminates the reports of its member organisations about particular drug-related matters, and offers expert consultancy services to policy makers and officials around the world.

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