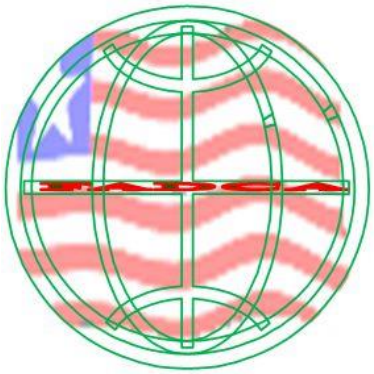

Review of the *Liberian Controlled Drug and Substances Act* and *Liberia Drug Enforcement Agency Act*

Introduction

Liberia's new *Controlled Drug and Substances Act* and the associated *Liberia Drug Enforcement Agency Act* illustrate the Liberian government's interest in adapting its legislation on drug control to place a strong emphasis on enforcement activities. According to the U.S. Bureau for International Narcotics and Law Enforcement Affairs, "Liberia is not a significant transit country for illicit narcotics, but the country's weak law-enforcement capacity, porous border controls, and proximity to major drug transit routes leave it vulnerable to becoming one. While Liberia is not a significant producer of illicit narcotics, local drug use, particularly marijuana, is common."[1] Accordingly, the U.S. supports law reform in Liberia, having pronounced that new laws can "create a stronger foundation for more effective law enforcement activities," and noting that under existing legislation "defendants can only be charged under public health laws."[2]

Liberia has ratified (or acceded to) the three main drug control international conventions which aim to control illicit drugs by reducing their supply, in particular through criminal sanctions.[3] While Liberia must uphold its obligations under these conventions, Liberia must also fulfill its obligation under other international treaties including the *International Covenant on Economic, Social and Cultural Rights*, the *International Covenant on Civil and Political Rights*, the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* and the *African Charter on Human and People's Rights* — all of which Liberia has ratified. When poorly developed and implemented, drug policies can lead to serious human rights violations such as police harassment, arbitrary detention, disproportionate sentencing and incarceration, ill-treatment, torture and discrimination. As described by the United Nations Office on Drug and Crime (UNODC), since "one of the stated aims of the international drug control conventions is to protect the health of individuals and society from the dangerous effects of

[1] United States Department of State, Bureau for International Narcotics and Law Enforcement Affairs, *International Narcotics Control Strategy Report. Volume I Drug and Chemical Control*, March 2013, at p. 229.
[2] Ibid.
[3] United Nations, *Single Convention on Narcotic Drugs*, 1961, as amended by the 1972 Protocol amending the *Single Convention on Narcotic Drugs*, 1961, 1972; United Nations, *Convention on Psychotropic Substances*, 1971; United Nations, *Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, 1988.

drug use,"[4] human rights laws are also relevant because they guarantee the right to life[5] and the right of "everyone to enjoy the highest attainable standard of physical and mental health."[6] Problematic drug laws can not only exacerbate the harms associated with drug dependence, but also lead to a wide range of other preventable health conditions, such as HIV and hepatitis C virus (HCV). Under human rights law, states have a binding legal obligation to take steps to realize the right to health, including steps "necessary for… prevention, treatment and control of epidemic, endemic… and other diseases" and "the creation of conditions which would assure to all medical services and medical attention in the event of sickness."[7]

Following the ratification of the international drug control conventions, countries have predominantly adopted a repressive approach to drug policy focusing on reducing supply through law-enforcement strategies, losing sight of one of the conventions' main objectives to promote the "health and welfare of mankind."[8] It is now increasingly recognized that repressive drug control laws and policies around the world have failed to fight crime or reduce drug use and drug-related harm, but have rather contributed to mounting human rights violations against people who use drugs and fueled the HIV and HCV epidemic by undermining access to harm reduction services and treatment for people who use drugs. It is in this context that international experts, including the Global Commission on Drug Policy[9] and the Global Commission on HIV and the Law[10] as well as the United Nations Special Rapporteur on the right to health[11] have urged States to end failed policies and adopt an approach to drug policy respectful of human rights and public health principles. In particular, the Global Commission on Drug Policy has called on States to prioritize community health and safety in designing drug policies by ending the criminalization and marginalization of people who use drugs, investing in evidence-based prevention, health and treatment for those in need (including harm reduction services), and focusing repressive actions on violent criminal organizations in ways that undermine their powers and reach while prioritizing the reduction of violence.[12]

Our review of the *Controlled Drug and Substances Act* and the associated *Liberia Drug Enforcement Agency Act* rely heavily on the recommendations of the Global Commission on Drug Policy, the

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[4] UNODC, *From coercion to cohesion: Treating drug dependence through health care, not punishment*. *Discussion paper based on a scientific workshop held in Vienna from 28 to 30 October 2009*, 2010, p. 1.
[5] Article 6 of the *International Covenant on Civil and Political Rights,* 1966.
[6] Article 12(1) of the *International Covenant on Economic, Social and Cultural Rights*, 1966 and article 16(1) of the *African Charter on Human and People's Rights,* 1981.
[7] Article 12 (2) of the *International Covenant on Economic, Social and Cultural,* 1966.
[8] Preamble to the 1961 *Single Convention on Narcotic Drugs*.
[9] Global Commission on Drug Policy, *War on drugs*. *Report of the Global Commission on Drug Policy,* 2011; *The War on drugs and HIV/AIDS. How criminalization of drug use fuels the global pandemic. Report of the Global Commission on Drug Policy,* 2012; *The Negative impact of the war on drugs on public health: the hidden hepatitis C epidemic. Report of the Global Commission on Drug Policy,* 2013.
[10] Global Commission on HIV and the Law, *Risks, Rights and Health*, July 2012.
[11] UN, General Assembly, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, A/65/255, August 6, 2010.
[12] Global Commission on Drug Policy, *War on drugs. Report of the Global Commission on Drug Policy*, 2011; *The War on drugs and HIV/AIDS. How criminalization of drug use fuels the global pandemic. Report of the Global Commission on Drug Policy,* 2012.

International Drug Policy Consortium's (IDPC) *Drug Policy Guide*, best practices and human rights principles described in the *International Guidelines on HIV/AIDS and Human Rights* as well as other UN agencies' documents supporting an approach to drug policy respectful of human rights and mindful of the need for targeted actions to combat organized crime.

Overall, our analysis suggests that the new legislation is a step in the wrong direction. Instead of adopting a right-based approach wherein drug use would be seen primarily as a public health issue and where law-enforcement initiatives would focus on high-level traffickers rather than small-scale dealers, the new laws broadly criminalize every aspect of drug-related activity. The criminalization of drug use and possession, the lack of distinction between small-scale dealers and high-level traffickers, as well as the absence of any provisions prohibiting human rights violations in the context of law enforcement activities are of particular concern. As such, the new legislation could have a catastrophic impact on people who use drugs and on public health. It also risks nurturing corruption, police abuses and violence and may ultimately lead to unnecessarily high rates of incarceration and overcrowded jails.

NB: Our analysis includes a comparison of the new legislation with some of the existing provisions of the Public Health Law. Unfortunately, we were not able to access a current version of the latter law. As a result, we relied on a dated (2006) excerpt of the legislation and cannot guarantee that this is the most up-to-date version of public health legislation in Liberia.

Regional context: Drug consumption and trafficking in West Africa

A recent study of people who use drugs (and other marginalized communities at increased risk of HIV) in Liberia concluded that an estimated 2303 people use drugs, and 457 people inject drugs. As is the case in the region, the study confirmed that cannabis is the drug most frequently used in Liberia.[13] Although people who inject drugs have been identified as one of the "most at risk" populations in Liberia's UNAIDS *2012 Country Progress Report*, there is no information about HIV among people who use drugs in Liberia or programs to reduce the risks of HIV and other infections associated with drug use.[14]

While available data concerning drug trafficking or drug consumption in West Africa is limited, there are growing concerns that West Africa has become an important transit route for drug trafficking,

[13] S.-P. Tegang and J. K. Tegli, *Technical Report Size Estimation of Sex Workers, Men who have Sex with Men, and Drug Users in Liberia,* December 2011, p. 17, available at http://nac.gov.lr/doc/Lib_SE%20MARP_report_211211.pdf.

[14] However, legislation on HIV and AIDS adopted in 2008 provides for the development and implementations of strategies, policies and programs to promote and protect the health of vulnerable groups, including people who use drugs: *An Act to amend the public health law, title 33, Liberian Code of Laws Revised (1976) to create a new chapter 18 providing for the "Control of the Human Immunodeficiency Virus (HIV) and the Acquired Immunodeficiency Syndrome*," 2008, section 18.10, available at http://legislature.gov.lr/sites/default/files/Public%20Health.pdf.

particularly of cocaine, and that drug use is increasing in the region.[15] UNODC has also reported indications of emerging manufacture of amphetamine-type stimulants in West Africa.[16] In the West African region, and as in many other regions, the predominant approach to drug trafficking is based on reducing the drug supply through law-enforcement efforts.[17] Many West African countries have attempted to respond to drug trafficking in the region with interventions that are driven by law enforcement and by adopting often draconian laws that deal with drug consumption and trafficking. Policies with regard to people who use drugs have been primarily centered on punitive measures with limited — and in many cases non-existent — treatment and harm reductions programs for people who use drugs.[18] As described in a recent paper developed for the West Africa Commission on Drugs, "limited focus has been placed on the health and developmental aspects of the spillover effects of drug trafficking, which over time could constitute a greater security threat to West Africa than currently acknowledged."[19]

Evidence of growing drug trafficking in the region, fears associated with terrorism, perceptions of States' lack of "required technical and financial means to respond effectively" to illicit cultivation, manufacture and drug use and the absence of strong justice systems has drawn increased attention to the issue of drug consumption and trafficking in West Africa from external actors such as the UNODC and the United States.[20] Over the last decade, several initiatives have been undertaken to respond to the concerns associated with drug trafficking in the region. But the international response has again "focused predominantly on controlling narcotics flows and strengthening law enforcement, and less on public health or governance issues, despite the longer-term security implications that neglect of the latter might give rise to."[21]

At the regional level, however, action plans have included health and human rights considerations. In 2008, the Economic Community of West African States (ECOWAS) adopted *a Political Declaration* and formulated a *Regional Action Plan to Address the Growing Problem of Illicit Drug Trafficking, Organized Crimes, and Drug Abuse in West Africa*.[22] This plan mandates the strengthening of national legal frameworks "in order to provide sufficient deterrence against illicit drug trafficking." It also calls for actions to "face and deal with the emerging threats of increased drug abuse and associated health and

[15] UNODC, *World Drug Report*, 2013, p. 10; K. Aning and J. Pokoo, *Drug trafficking and threats to national and regional security in West Africa,* background paper prepared for the West Africa Commission on the Impact of Drug Trafficking on Security, Governance and Development in West Africa (WADC), 2013.
[16] UNODC, *Transnational Organized Crime in West Africa: A Threat Assessment*, 2013; UNODC, *World Drug Report,* 2013.
[17] K. Aning and J. Pokoo, supra.
[18] Ibid. J. B. Asare and I. Obot, *Treatment policy for substance dependence in West Africa*, background paper prepared for the WACD.
[19] K. Aning and J. Pokoo, supra, p. 3.
[20] UNODC, *World Drug Report,* 2013, p. 23; J. Csete and C. Sanchez, *Telling the story of drugs in West Africa: the newest front in losing war?* Global Drug Policy Observatory, 2013.
[21] C. Kavanagh and S.R Walker, *International and Regional Responses to Drug Trafficking in West Africa: A Preliminary Overview,* background paper prepared for the WADC, 2013, p. 9.
[22] *ECOWAS Policy and Strategy to address the impact of drug trafficking on governance, security and development in West Africa*, presentation by the Commissioner for Human Development and Gender, Dr Adrienne DIOP, available at www.wacommissionondrugs.org.

security problems," including drug use prevention and treatment programs as well as HIV prevention programs.[23] In 2013, the African Union adopted a Drug Strategies and Actions Plan which calls for the implementation of "comprehensive, accessible, evidence-informed, ethical and human rights based drug use prevention, dependence, treatment and aftercare services" as one the key priorities.[24] In an effort to strengthen its response to illicit drug trafficking, drug use and organized crime, Liberia has also signed the West Africa Coast Initiative in 2010 which establishes a Transitional Crime Unit.[25]

Moreover, in 2013 the West Africa Commission on Drugs (WACD) was established to respond to the need for a renewed concerted effort to deal with trafficking and drug dependence in West Africa. The regionally-led group has three objectives: 1) to mobilize public awareness and political commitment on drug-related issues in the region; 2) to develop evidence-based policy recommendations; and 3) to promote local and regional capacities and ownership.[26] It is expected that the WACD will release its report in June 2014, which can provide useful guidance for West African countries such as Liberia that are in the midst of reviewing and developing national drug policies and legislation.

Analysis

1. Drug prevention and control: greater emphasis on repression

Currently, Liberia's legal provisions on the control of narcotic drugs are set out in the *Public Health Law*. With the new *Controlled Drug and Substances Act,* several of these provisions will be repealed and replaced by new legal provisions to be included in Liberia's *Penal Law*. A new sub-section specifically dedicated to drug and substance control will be added to Chapter 14 of the *Penal Law* entitled "Offenses involving danger to the person." (To the best of our understanding, the Penal Law does not currently feature any provision related to drug control.)

Although the existing *Public Health Law* already focuses on prohibition, the creation of a new sub-chapter of the *Penal Law* dealing specifically with drug control is illustrative of a problematic shift in the *approach* to drug control from a "public health" issue to a "criminal" issue contrary to the

[23] *ECOWAS Regional Action Plan against Illicit Drug Trafficking, Abuse and Organized Crimes (2008-2011)* at http://www.unodc.org/westandcentralafrica/en/ecowasresponseactionplan.html

[24] *AU Plan of Action on Drug Control (2013-2017)* adopted at the African Union summit in January 2013 and available at http://sa.au.int/en/sites/default/files/AUPA%20on%20DC%20(2013-2017)%20-%20English.pdf

[25] UNODC, UNOWA/DPA, DPKO and INTERPOL set up the West Africa Coast Initiative (WACI) to work in synergy to support the implementation of the "ECOWAS Regional Action Plan to Address the Growing Problem of Illicit Drug Trafficking, Organized Crime, and Drug Abuse in West Africa". WACI is a joint program that entails a comprehensive set of activities targeting capacity building, at both national and regional level, in the areas of law enforcement, forensics, border management, anti-money laundering and the strengthening of criminal justice institutions, contributing to peace building initiatives and security sector reforms. See http://unowa.unmissions.org/Default.aspx?tabid=841

[26] Information on the WACD can be found at www.wacommissionondrugs.org

recommendations of the Global Commission on Drugs.[27] Notably, the *Controlled Drug and Substances Act* does not include any reference to public health or human rights. Its sole purpose is to criminalize a broad range of conduct in relation to controlled drugs and substances, including possession and use.

The emphasis on criminalization rather than public health is also reflected in the structure of Liberia's Drug Enforcement Agency (LDEA) and related entities, pursuant to the *Liberia Drug Enforcement Act*:

- While not uncommon in other countries, the LDEA is a semi-autonomous agency under the sole supervisory authority of the Ministry of Justice.

- The LDEA, which is "responsible for the efficient and effective law enforcement of all the provisions on any controlled drugs and substances," is also the Secretariat and implementing arm of the Controlled Drugs and Substances Board. In principle, the Board's functions are broader than law enforcement as it is mandated to "formulate, develop and establish a comprehensive, integrated, unified and balanced national drug use prevention and control strategy."[28] As Secretariat, the LDEA is likely to press the Board to focus on enforcement and punitive approaches rather than public health. We further note that the Director General of the LDEA is also one of the eight members of the Board.

- The composition of the Controlled Drugs and Substances Board requires co-operation between different government bodies, which is a positive step.[29] Unfortunately, its composition does not allow for the strong engagement of health stakeholders.[30] The Ministry of Health and Social Welfare represents only one of eight members of the Board, which also includes the Ministry of Justice, the Ministry of the Interior and the Director General of the LDEA.[31] We note that section 18.10 of Liberia's 2008 HIV legislation stipulates that the Director of [the National Health authority or of the National AIDS Commission, as appropriate] should, in consultation with the relevant ministries and stakeholder, develop and implement strategies, policies and programs to promote and protect the health of vulnerable groups, including people who use drugs. It is not clear whether either of these authorities is a member of the Controlled Drugs and Substance Board.

- Representatives of groups most affected by drug policies, such as people who use drugs, should be included in the design of national drug policies in order to create better informed policy and help avoid negative impacts on affected communities.[32] However, the composition of the

[27] Global Commission on Drug Policy, *War on drugs*. *Report of the Global Commission on Drug Policy,* 2011. See for instance, principle 2.
[28] Section 22.111.
[29] IDPC, *Drug Policy Guide*, 2012, p. 4.
[30] Global Commission on Drug Policy, *War on drugs*. *Report of the Global Commission on Drug Policy,* 2011. See for instance, principle 4.
[31] Other members include the Minister of Foreign Affairs, the Minister of Youth and Sports, the Director of pharmaceutical services and one representative of civil society appointed by the President.
[32] IDPC, *Drug Policy Guide*, 2012, p. 14.

Controlled Drugs and Substance Board, as per the *Liberia Drug Enforcement Act*, does not provide for strong civil society engagement. The Board only includes one member of civil society to be appointed by the President, without any guarantee that this member represents people who use drugs.

- The Board of Trustees of the Drug Abuse Prevention and Control Fund, which is mandated to prevent "drug abuse," provide treatment and services for "drug dependent people," prosecute drug offenses and contribute to the fight against illicit trafficking," is heavily dominated by law-enforcement representatives. The Minister of Health and Social Welfare and the Chief Pharmacist are the only representatives of the health sector. This is particularly concerning given that section 22.116 of the *Liberia Drug Enforcement Act* concerning the use of the Fund does not provide any guidance in terms of allocation of the Fund to health services versus law enforcement initiatives, posing a risk that few resources will be invested in health. (However, we note that two additional members of the Board are to be nominated by the President, so there may an opportunity for the President to re-balance the composition of the Board of Trustees.)

2. Scheduling of drugs solely based on international anti-drugs conventions

As recommended by the IDPC, new or revised drug laws should "provide a structured and scientific approach to assess the seriousness with which different substances will be treated, and a simple process for adding, moving or removing particular substances."[33] The International Narcotics Control Board (INCB), among others, has also recommended that efforts to limit the use of narcotic drugs or psychotropic substances to medical and scientific purposes (as provided by international anti-drug conventions) do not adversely affect their availability for such purposes.[34] National laws that are unduly restrictive pose a significant barrier to the availability of narcotic drugs for medical purposes.[35] For example, strict regulations around methadone, buprenorphine and morphine (for the purposes of palliative care and treatment) have contributed to a situation where these essential medicines are unavailable to many of those in need.[36] For that reason, the INCB recommends that governments:

> [D]etermine whether their national narcotics laws contain elements of the 1961 [*Single Convention on Narcotic Drugs*] Convention as amended by the 1972 Protocol [amending the *Single Convention on Narcotic Drugs*, 1961] that take into account the fact that the medical use of narcotic drugs continues to be indispensable for the relief of pain and suffering and the fact that adequate provision must be made to ensure the availability of narcotic drugs for such

[33] Ibid, p. 27.
[34] International Narcotics Control Board (INCB), *Report of the International Narcotics Control Board on the availability of internationally controlled drugs: ensuring adequate access for medical and scientific purposes for 2010*, New York, 2011, at para. 131.
[35] Ibid., at para. 97.
[36] World Health Organisation (WHO), Access to Controlled Medications Programme, *Improving access to medications controlled under international drug conventions,* 2008.

> purposes and to ensure that administrative responsibility has been established and that personnel are available for the implementation of those laws.[37]

The INCB also recommends that governments:

> [D]etermine whether there are undue restrictions in national narcotics laws, regulations or administrative policies that impede the prescribing or dispensing of, or needed medical treatment of patients with, narcotic drugs or psychotropic substances, or their availability and distribution for such purposes, and, should this be the case, make the necessary adjustments.[38]

Furthermore, the classification of controlled drugs should not open the door to unjustified, harmful and disproportionate use of the criminal law with regard to drug-related conduct. Schedules attached to the international anti-drug conventions have been criticized for being based on little scientific evidence and for insufficiently differentiating between drugs, thus precluding more targeted and balanced policy interventions.[39] For example, it has been observed that "considering such diverse substances as coca, cocaine, cannabis, opium and heroin in the same schedule, has hampered the development of more targeted and effective responses that take account of their completely different properties and the reasons people use them."[40] Concerned with such anomalies, the Global Commission on Drug Policy has called on national authorities and the United Nations to review the scheduling of different substances.[41] Recognizing the need to rationally distinguish between drugs based on their potential harm, some countries (e.g., the Netherlands, United Kingdom and Cyprus) have chosen to designate cannabis as a different category of less harmful substance, diverging from the international drug convention system. Other countries have laws providing for more lenient prosecution or sentencing based on the drug in question.[42] More recently, Uruguay, and the U.S. states of Colorado and Washington have moved to legalize and regulate cannabis.

Conversely, Liberia's new *Controlled Drug and Substances Act* classifies controlled drugs and substances in a manner virtually identical to the one described in the three main international anti-drug conventions and there is no provision providing for the possibility of reclassifying controlled drugs and substances based on public health, medical or scientific purpose.[43] Cannabis, heroin, cocaine, methadone and morphine are all included in the same category of Schedule I, which attracts more severe penalties in cases of unauthorized use, possession, sale or dispensation (for example) without

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[37] INCB, *Report of the International Narcotics Control Board on the availability of internationally controlled drugs: ensuring adequate access for medical and scientific purposes for 2010*, New York, 2011, p. 53.
[38] Ibid., p. 53.
[39] Global Commission on Drug Policy, *War on drugs*. *Report of the Global Commission on Drug Policy,* 2011, p. 11; M. Jelsma, *Legislative innovation in drug policy. Latin American initiative on drugs and democracy*, Transnational Institute, 2009, p. 14.
[40] Ibid., p. 14.
[41] Global Commission on Drug Policy, *War on drugs*. *Report of the Global Commission on Drug Policy,* 2011. See for instance, recommendation 3.
[42] M. Jelsma, supra, p. 15
[43] The law provides that the classification of drugs "may be amended from time to time by the Ministry of Health and Social Welfare." According to section 14.119, the Minister shall review the schedules and tables "as updated and published by the United Nations Commission on Narcotic Drugs."

any distinction based on the dangerousness and/or quantity of the substance. This poses serious ramifications in light of the fact that cannabis is the illicit substance most widely used in Liberia.

Moreover, while the law refers to the possibility of obtaining a license from the Minister of Health and Welfare for possession, administration, sale or dispensation of controlled drugs or substances, it remains silent on the procedure in place to obtain such license and does not refer to any other specific regulations or legislation that may address that gap, such as the *Public Health Law* which contains provisions on sales by pharmacists, dispensing in hospitals and professional use of narcotic drugs but does not differentiate between drugs based on international conventions classification.[44] This uncertainty is concerning as there may be a real risk that it poses barriers to dispensing morphine, methadone and buprenorphine, all of which are essential medicines that address priority health care needs as identified by the World Health Organization (WHO).[45] Contrary to the recommendations of the INCB, there are also no provisions recognizing the necessity for some controlled drugs to be available for medical or scientific purposes. In fact, there is no recognition of the potential medical and scientific use of narcotic drugs in the *Controlled Drug and Substances Act*.[46]

Finally, the law does not provide clear exemptions to criminal prosecution for the medical use of methadone or buprenorphine for drug treatment. Again, the law only refers to the possibility of obtaining a license from the Ministry or, with regard to the use of these controlled drugs, to circumstances where it is "permitted by the law" without describing how a license can be obtained or referring to the applicable regulations or legislation.

3. Criminalization of people who use drugs

The criminalization of activities related to drug use (which includes, for example, the criminalization of drug use, the criminalization of possession for personal use, the criminalization of the purchase or sale of drugs to support drug dependency) is very problematic from both a human rights and public health perspective. As a result of repressive policies and legislation that treat people who use drugs as criminals rather than patients, people who use drugs suffer serious human rights violations including disproportionate sentences leading to incarceration for minor drug-related offenses (including offenses directly related to dependence), police harassment, arbitrary detention, torture and discrimination in access to care and other services.[47] These violations have in turn serious consequences for society as a whole, with high and costly incarceration rates, and displacement of resources that could be better used for targeted law enforcement initiatives as well as public health and socioeconomic programs. The criminalization of drug use also has catastrophic public health consequences because it prevents people

[44] Section 41.53 of the *Public Health* Law addresses permit applications to sell, administer or dispense narcotic drugs. However, it refers to permits required under the "chapter" of that particular law.
[45] WHO, *Access to Controlled Medications Programme. Improving access to medications controlled under international drug conventions*, 2008.
[46] The preliminary version of the *Revision of parts of the Model Law related to availability and accessibility to controlled drugs for medical purposes* by UNODC (2013) suggests inserting provisions describing Schedules I, II, III and IV in a way which recognizes that drugs and substances, including in Schedule 1, have or may have medical use and that it is or may be permissible to use these drugs for medical or scientific reasons. See p. 6-10.
[47] R. Jürgens et al., "People who use drugs, HIV, and Human Rights," *The Lancet*, 376 (2010).

who use drugs from accessing greatly needed harm reduction services or treatment for fear of arrest and conviction.[48] Moreover, for various reasons (including the absence of community-based harm reduction and treatment measures), prisons are a high risk environment for the transmission of HIV and other blood-borne infections. Harm reduction and treatment services have been proven to prevent death by overdose, combat drug dependence and prevent the transmission of communicable diseases such as HIV and HCV.[49] In contrast, there is no evidence that heavy-handed use of the criminal law has any deterrent effect on people who use drugs.

It is in this context that the Global Commission on Drug Policy, the Global Commission on HIV and the Law and UN agencies such as UNAIDS are calling on national governments to "halt the practice of arresting and imprisoning people who use drugs but do no harm to others" and to "replace ineffective measures focused on the criminalization and punishment of people who use drugs with evidence-based and rights-affirming interventions proven to meaningfully reduce the negative individual and community consequences of drug use."[50]

The international anti-drug conventions do not require the criminalization of drug use, and the criminalization of possession for personal use is subject to "constitutional principles and the basic concept of legal system" including human rights.[51] The Conventions also provide flexibility for minor offences related to personal consumption. For instance, according to section 3 of the 1988 *Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, "in appropriate cases of a minor nature, the Parties may provide*, as alternatives to conviction or punishment*, measures such as education, rehabilitation or social reintegration, as well as, when the offender is a drug abuser, treatment and aftercare" [emphasis added].[52] Therefore, some degree of depenalization or decriminalization of the possession, purchase or cultivation of controlled drugs for personal use is possible under the Conventions.[53]

As indicated by UNODC:

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[48] See for instance, UN, General Assembly, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, A/65/255, August 6, 2010, at paras 19 and 21.

[49] See for instance, WHO, *Effectiveness of sterile needle and syringe programming in reducing HIV/AIDS among injecting drug users* (Geneva, 2004), p. 28.

[50] Global Commission on Drug Policy, *The War on drugs and HIV/AIDS. How criminalization of drug use fuels the global pandemic. Report of the Global Commission on Drug Policy,* 2012, Recommendations 3 and 4; The Global Commission on HIV and the Law, *Risks, Rights and Health*, 2012, Recommendation 3.1.4: "Decriminalize the possession of drugs for personal use, in recognition that the net impact of such sanctions is often harmful to society." See also, for instance, UNAIDS, *We can remove punitive laws, policies, practices, stigma and discrimination that block effective responses to HIV. Joint Action for Results UNAIDS Outcome Framework: Business Case 2009–2011*, 2010.

[51] *Drug control, crime prevention and criminal justice: A Human Rights perspective*, Note by the UNODC Executive Director for the Commission on Narcotic Drugs (CND), E/CN.7/2010/CRP.6–E/CN.15/2010/CRP.1, March 2010, at para. 20.

[52] See also article 36(1) (b) of the 1961 *Single Convention on Narcotic Drugs.*

[53] IDPC, *Policy Guide*, 2012, p. 19.

> In the context of drug laws and sentencing, the drug-control conventions generally require parties to establish a wide range of drug-related activities as criminal offences under their domestic law. Nonetheless, they permit parties to respond to them proportionally, including through alternatives to conviction or punishment for offences of a minor nature. Serious offences, such as trafficking in illicit drugs, must be dealt with more severely and extensively than offences such as possession of drugs for personal use. In this respect, it is clear that the use of non-custodial measures and treatment programs for offences involving possession for personal use of drugs offer a more proportionate response and the more effective administration of justice. Moreover, the criminal justice response should not be considered proportionate if it results in the denial of another individual human right. Where imprisonment for possession/use offences precludes access to appropriate drug-dependence treatment, for example, this may constitute a denial of the right to the highest attainable standard of health or even the right to freedom from cruel, inhuman or degrading treatment, rendering the criminal justice response de facto disproportionate.[54]

To date, about 30 countries or states have moved towards some form of decriminalization of drug possession, including Portugal, Mexico and the Czech Republic.[55] Evidence from Portugal, which coupled the decriminalization of drug possession with a comprehensive public health approach, is very encouraging, demonstrating as it does a "significant reduction in drug-related health problems (including HIV infections and drug-related deaths), improved attendance at programs treating drug dependence, reduced prison and criminal justice overload, a decrease in drug-related crime, an increase in law-enforcement actions focused on large-scale drug trafficking with a consequent improvement in public safety, and no significant increase in the prevalence of drug use."[56] Furthermore, the INCB has concluded that Portugal's drug law reform is consistent with international drug control treaties.[57]

Unfortunately, the new *Controlled Drug and Substances Act* takes a more repressive approach to drug use and raises serious concerns with regard to the potential impact of the new law on people who use drugs. In particular, we would like to draw attention to the following problematic provisions (*NB this is not an exhaustive list*):

- **Section 14.109 of the *Controlled Drug and Substances Act* criminalizes the consumption or use of controlled drugs or substances, except as permitted or authorized by the law**

Pursuant to this section, the type of charge and the associated penalty will depend on the classification of the drug. Under the *Controlled Drug and Substances Act*, people who use "Schedule 1" drugs, such as cannabis, heroin or cocaine, can be charged with a first degree misdemeanor which carries a maximum penalty of one year imprisonment and/or 1000 dollars fine.[58] According to section 50.10 of Liberia's

[54] *Drug control, crime prevention and criminal justice: A Human Rights perspective*, Note by the UNODC Executive Director for the Commission on Narcotic Drugs (CND), E/CN.7/2010/CRP.6–E/CN.15/2010/CRP.1, March 2010, at para. 23.
[55] A. Rosmarin and N. Eastwood, *A quiet revolution: drug decriminalisation policies in practice across the globe* (London: Release) (2012).
[56] IDPC, *Drug Policy Guide*, 2012, p. 25.
[57] INCB, *Report of the International Narcotics Control Board for 2004*, New York, 2005, at para. 538.
[58] Sections 50.7 and 50.9 of the *Penal Law*. The Penal Law was communicated by Open Society Initiative for West Africa.

Penal Law, a court could sentence an individual to pay a fine only, if having regard to the nature and circumstances of the offense and the history and character of the defendant, it is of the opinion that the fine alone will suffice for the protection of the public. However, a court could also impose a sentence of imprisonment, which is arguably disproportionate and inconsistent with the international recommendations outlined above.

The *Controlled Drug and Substances Act* also outlines aggravating circumstances that warrant harsher penalties, including when "the offense is committed in a penal institution or in an educational institution or social service institution or their immediate vicinity or other places to which school children resort for educational, sports or social activities" or when a person has a prior conviction for "similar offenses, whether committed abroad or in Liberia." On the basis of such broad criteria, a court could add up to 20 further years to a sentence.[59]

Importantly, section 14.109(2)(c) of the *Controlled Drug and Substances Act* provides that "as an alternative to conviction or punishment, a court may order [a person who consumes or uses controlled drugs or substances] undergoes measures of treatment, education, after-care or rehabilitation." This is a positive step in conformity with the flexibilities offered by international anti-drug conventions. However, it will not prevent unnecessary and harmful prosecutions of people who use drugs because such measure must be decided in court. It is unclear whether any measures will actually be in place in Liberia to provide such alternatives to conviction or punishment or whether judges will receive adequate training to make sound decisions about such alternatives. In addition, the law does not provide any guarantee that drug treatment, as an alternative to punishment, will remain voluntary, evidence-based and respectful of human rights.

As UNODC has emphasized:

> (…) Where treatment is offered as an alternative to imprisonment or penal measures for drug possession/use, although this involves a degree of coercion, the patient is entitled to reject treatment and to choose the penal measure instead (…) Treatment for drug dependence (whether voluntary or compulsory) must be evidence-based, according to established principles of medicine. Detention and/or isolation for the purposes of "forced detoxification" are unlikely to be effective. Rather, drug-dependence treatment should involve comprehensive pharmacological and psychosocial interventions. Under no circumstances should anyone subject to compulsory treatment be given experimental forms of treatment, or punitive interventions under the guise of drug-dependence treatment.[60]

A combined reading of the *Controlled Drug and Substances Act* with the existing *Public Health Law* would provide for a medical examination to inform a court decision about alternative treatment and for the delay of proceedings if an accused was going through withdrawal. However, neither law guarantees that treatment would remain voluntary or be evidence-based. Moreover, a person who has been

[59] Section 14.116 and section 50.6 of the *Penal Law.*

[60] *Drug control, crime prevention and criminal justice: A Human Rights perspective*, Note by the UNODC Executive Director for the Commission on Narcotic Drugs (CND), E/CN.7/2010/CRP.6–E/CN.15/2010/CRP.1, March 2010, at paras 45-46.

diagnosed as "a narcotic addict" in the context of a criminal proceeding but has been acquitted could still be "civilly committed" for treatment under the *Public Health Law*.[61] As a result, there are insufficient guarantees against forced and inappropriate treatment or rehabilitation measures which could lead to serious abuses against people who use drugs.

The current *Public Health Law* does not criminalize the use of drugs, but unauthorized possession (whether for sale or not) is prohibited.

- **Section 14.107 of the *Controlled Drug and Substances Act* criminalizes the unlicensed possession or purchase of controlled drugs or substances**

Under this section, the type of charge and the associated penalty depends on the classification of the drug and, in relation to a precursor or essential chemical listed in the law's Table I and Table II or drugs or substances listed in Schedules II, III and IV, on whether it is used *for the purpose of trafficking* (see below for commentary about the definition of trafficking in the legislation).

If a person possesses or purchases drugs classified as Schedule I, or possesses or purchases a precursor or essential chemical listed in Table I and II *for the purpose of trafficking*, the *Controlled Drug and Substances Act* stipulates a first-degree felony, which carries a maximum penalty of ten years imprisonment.[62] This is severe in light of penalties for other criminal offense under Liberia law, such as murder, which is also a first-degree felony[63] or rape, which is a second-degree felony and carries a maximum penalty of ten years imprisonment.[64]

Charges and penalties for drug possession and purchase are also particularly severe given that section 14.107 does not distinguish between criminal penalties for possession/purchase for personal use and possession *for the purpose of selling or trafficking* — an interpretation that is reinforced by the fact that the offense of possessing or purchasing is not subject to any threshold quantity of drugs and that the grading of the offense itself depends on whether the drug is used for trafficking (except for drugs in Schedule I). Moreover, possession for the purpose of selling is already addressed by section 14.103, which prohibits unlicensed selling (the definition of "sell[ing]" includes "hav[ing] in possession for sale"). Therefore, section 14.107 can be applied to prosecute the unauthorized possession and purchase of controlled drugs *for personal use*. Furthermore, the provision allowing for alternatives to conviction or punishment for drug use has not been included in this section on possession, even if this section applies to possession for personal use. In practice, this means people who use drugs could be sent to jail for possessing or purchasing small quantities of drugs for personal use, thus failing to distinguish between serious crimes and minor infractions. Relying solely on the discretion of judges and police officers could potentially lead to disproportionate sentences and unjustified incarceration.

[61] Section 41.36 of the *Public Health Law*.
[62] Section 50.5 of the *Penal Law*.
[63] Section 14.1 of the *Penal Law*. However, a person can be sentenced to death or life imprisonment for murder, which is not the case, based on our understanding of the law, for drug possession or purchase.
[64] Section 14.70 of the *Penal Law*. This is the case when there are no aggravating circumstances.

Whether legislation should clearly define personal use or minor infractions that do not warrant criminal penalty (especially imprisonment) by establishing threshold quantities is subject to debate. Some have argued that legally defined thresholds do not offer sufficient flexibility for the most humane result, while other have contended that such benefit depends on the robustness and integrity of institutions.[65] In countries without a strong formal legal tradition and where members of the police force and the judiciary are relatively newly trained (as in Liberia), the absence of any indicative threshold could prove problematic and result in excessive prosecutions and detention of people who use drugs and people who have engaged in minor drug deals, police abuse and harassment. If the Liberian government was to choose to adopt a threshold system, the amount defined should ensure that personal possession or purchase is not criminalized. In addition, these thresholds should merely be indicative (rather than prescriptive) in order to leave room for judicial discretion in circumstances that warrant it.[66]

Under section 41.24 of the *Public Health Law* (to be repealed), unauthorized possession of narcotic drugs is a misdemeanor in the second degree.

Authorized possession clearly includes possession in the regular course of business (authorized physicians, for instance) and through prescription or professional dispensation.

The penalty for unauthorized possession is much less severe that in the new proposed legislation: imprisonment of no more than thirty days (misdemeanor in the second degree). It does not vary depending on the type of drug, and as with the *Controlled Drug and Substances Act*, the *Public Health Law* does not provide for a threshold quantity.

- **Section 14.103 of the *Controlled Drug and Substances Act* criminalizes "giving away" or "administering" controlled drugs or substances without a license**

The *Controlled Drug and Substances Act* defines "administer" to mean "any act of introducing any controlled substances into the body of a person with or without the knowledge of that person, by way of injection, inhalation, ingestion or others means." Against the backdrop of such a broadly-worded definition, criminalizing those who "give away" or administer controlled drugs or substances without a license could be used against people who use drugs who share drugs and/or inject drugs together. Under this section, charges and penalties faced by people who use drugs are severe and arguably disproportionate. For example, giving cannabis to a friend for personal use is a first-degree felony.

In the way the text is currently framed, the *Controlled Drug and Substances Act* seem to make it possible for different offenses (e.g., use, possession, giving away drugs) to be applied to a single act, potentially resulting in a person being charged with multiple counts. This could lead to a more severe and excessive sentence, especially given the flexibility outlined in section 14.116 of the Act, whereby "the involvement

[65] See TNI-EMCDDA (European Monitoring Center for Drugs and Drugs Addictions) Expert Seminar on threshold quantities, Lisbon – 20 January 2011. Report available at http://dl.dropboxusercontent.com/u/64663568/library/thresholds-expert-seminar.pdf.

[66] A. Rosmarin and N. Eastwood, *A quiet revolution: drug decriminalisation policies in practice across the globe* (London: Release) (2012), p. 36-37.

of the defendant in other illegal activities facilitated by commission of the offense" constitutes an aggravating circumstance that could lead to a longer sentence (up to 20 further years).[67]

4. Overly broad and unclear definition of trafficking

As described by the IDPC, "when creating or revising drug laws, governments should clearly determine which aspects of the drug market are most harmful to society (high-level drug traffickers, rather than drug users, small-scale dealers and couriers) and target their laws accordingly."[68] Unfortunately, as already illustrated in the preceding section, the new *Controlled Drug and Substances Act* does not draw a clear line between high-level traffickers, people who use drugs and low-level dealers. This is reflected in the provisions related to unlicensed selling and trafficking.

Section 14.103 criminalizes selling, offering for sale, or acting as a broker in the sale or offer for sale of controlled drugs and substances without a license (in addition to trading, administering, dispensing, delivering, giving away, distributing, dispatching in transit or transporting). In section 14.100, *selling* is defined broadly to include "offer to sell, expose for sale, barter or exchange, delivery of possession in the expectation of future receipt of money or other value, and to have in possession for sale, or any act of giving away any drug or controlled precursor and essential chemical whether for money or any other consideration." This definition could apply to circumstances that may not result in an exchange of drugs for consideration.

Section 14.111 specifically prohibits illicit trafficking. However, *trafficking* is also defined in section 14.100 very broadly and includes conduct already captured by the prohibition on selling and other drug-related activities, as described in section 14.103. As per section 14.100, trafficking is "a) to sell, administer, give, provide, transfer, transport, send or deliver the substance by any means; or b) to sell an authorization to obtain the substance; or to offer to do anything mentioned in a) and b)." Because it is so broadly worded, the definition of trafficking may encompass unintended situations. For instance, *offering* cannabis without an expectation of payment could be captured by the definition of trafficking under section 14.100. This ambiguity is all the more concerning because the *Controlled Drug and Substances Act* consistently makes clear distinctions in the gradation of the offense between conduct that relates to "trafficking" and conduct that does not (including, in section 14.103). As a result, minor offenses will likely result in disproportionate punishment.

This approach is contrary to the recommendations of the Global Commission on Drugs, which calls on states to consider the decriminalization of those at the bottom of the drug selling-chain who are neither

[67] Subject to section 50.6 of the *Penal Law*.
[68] IDPC, *Drug Policy Guide*, 2012, p. 27.

"gangsters" nor "organized criminals."[69] As the Commission has observed, filling prisons with non-violent minor offenders is costly and has no impact on the scale or profitability of the drug market.[70]

Under section 41.23 of the *Public Health Law* (to be repealed), the unlawful sale of a narcotic drug is defined as "[selling] a narcotic drug without the written prescription of a physician, dentist or veterinarian, except as otherwise provided by the provision of this chapter," and possession with the intent for sale is a felony in the first degree. The penalty for this offence is similar to the penalty provided in the *Controlled Drug and Substances Act* for trafficking in Schedule I drugs or substances (e.g., cannabis, cocaine, heroin) and for Table I and II precursor and essential chemicals. Under the *Public Health Law*, the penalty is more severe than under the *Controlled Drug and Substances Act* with regard to other drugs defined as "narcotic drugs."

As with the *Controlled Drug and Substances Act*, the *Public Health Law* does not seem to draw a distinction based on the quantity of drugs that would differentiate small-scale from serious or organized sales and trafficking.

The *Public Health Law* stipulates that a person convicted of unlawful sale or possession for sale shall not be eligible for probation or a suspended sentence. This provision has not been included in the *Controlled Drug and Substances Act*.

5. Barriers to harm reduction services

Harm reduction services, such as the distribution of sterile needles and syringes to people who use drugs or the provision of opioid substitution treatment, are key to prevent harm related to drug use, such as the transmission of HIV or HCV. These programs have been widely endorsed by UNAIDS, WHO and UNODC[71] and are consistent with international anti-drug conventions.[72]

Unfortunately, the new *Controlled Drug and Substances Act* will erect barriers to people's access to harm reduction services (and thus increase the likelihood of unsterile equipment use and HIV or HCV transmission) by criminalizing people who use drugs (see above) as well as the possession, distribution and transport of harm reduction equipment, contrary to *International Guidelines on HIV and Human Rights*.[73] Section 14.106 provides that "a person commits an offense if the person delivers, possesses or

[69] Global Commission on Drug Policy, War on drugs. Report of the Global Commission on Drug Policy, 2011, recommendation 7.
[70] Ibid.
[71] WHO, UNODC, UNAIDS *Technical guide for countries to set targets for universal access to HIV prevention, treatment and care for injecting drug users*, 2009.
[72] International Narcotics Control Board, *Flexibility of Treaty Provisions as Regards Harm Reduction Approaches* (Decision 74/10), E/INCB/2002/W.13/SS.5, 30 September 2002, at para. 27.
[73] UN, General Assembly, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/65/255, August 6, 2010, at para. 21; UNAIDS and Office of the United Nations High Commissioner for Human Rights, *International Guidelines on HIV/AIDS and Human Rights*, 2006 Consolidated Version ,2006, Guidelines 4 21(d).

manufactures equipment, or transports or distributes any instrument, apparatus and *other paraphernalia* for controlled drugs and substances knowing… that it will be used to … contain any controlled drug or substance without a license issued by the Minister" [emphasis added]. As paraphernalia is not defined in the law, there is a risk that it will be interpreted to include harm reduction equipment such as sterile needles and syringes. Although section 14.106 could implicitly permit a person to possess or distribute such equipment pursuant to a license issued by the Minister, it is unclear under what circumstances this exception would apply. As noted above, there is nothing in the law that outlines how an individual or an organization could obtain a license.

Correspondingly, section 14.112 prohibits the unlawful maintenance of a place for the purpose of "unlicensed selling, administering, delivering, storing or distributing of controlled drugs or substances." This provision could potentially be used against organizations or programs that offer supervised consumption or injecting services. As with section 14.106, it is regrettable that the provision is silent on the procedure to be followed to obtain a license that would authorize such a service.

In 2010, UNODC declared that "[m]ember States should consider the repeal of laws criminalizing the possession, distribution and dispensing of needles and syringes, in favor of the authorization or legalization and promotion of needle and syringe exchange programs."[74] By criminalizing the possession, transportation and distribution of "paraphernalia" as well as potential sites for supervised drug consumption, the *Controlled Drug and Substances Act* takes a regressive approach to harm reduction, with serious potential repercussions on human rights and public health.

(NB. See section 2 on Scheduling for a discussion on access to opioid substitution treatment.)

The existing *Public Health Law* does not include provisions criminalizing the possession, delivery, distribution or transport of paraphernalia.

Section 41.27 (to be repealed) of the *Public Health Law* does criminalize "opening or maintaining [a] place for the purpose of unlawful selling, giving away, or using [of] narcotic drugs" as well as permitting the opening or maintenance of such a place, both of which are first-degree felonies. This provision is even broader than section 14.112 of the *Controlled Drug and Substances Act* as it includes "maintaining [a] place where drugs are used" (versus a place where drugs are sold, administered, delivered, stored or distributed).

The penalties under both laws are similar, although the *Public Health Law* imposes a more severe penalty if the offence involves "narcotic drugs" other than those contained in Schedule I (e.g., cannabis, cocaine, heroin), or in Tables I and II to be used *for the purpose of trafficking.*

6. Other human rights-related concerns

[74] *Drug control, crime prevention and criminal justice: A Human Rights perspective*, Note by the UNODC Executive Director for the Commission on Narcotic Drugs (CND), E/CN.7/2010/CRP.6–E/CN.15/2010/CRP.1, March 2010, at para. 18.

- **Absence of protections against abusive policing**

In many countries, the vulnerability of people who use drugs to aggressive policing, abusive search, extortion and arbitrary detention has been well-documented. Because they are socially, economically and legally marginalized, people who use drugs are easy targets for police officers.[75] Among other impacts, abusive policing prevents people who use drugs from accessing health care services, including treatment programs and harm reduction programs for fear of arrest or other punishment.[76] Therefore, it is important that drug legislation includes provisions that protect people who use drugs and service providers (e.g. at harm reduction programs) against abusive policing. Such provisions should, for example, prohibit police from targeting needle and syringe services for the purpose of harassing, detaining and arresting people who use drugs.[77] They should also establish a functioning mechanism for police oversight and for people who have suffered abusive police practices to make complaints and seek redress if such mechanisms do not already exist.

However, neither the new *Controlled Drug and Substances Act* nor the associated *Liberia Drug Enforcement Agency Act* contains any provision to that effect. The *Liberia Drug Enforcement Agency Act* is silent on the LDEA's responsibility to uphold human rights and respect due process in the implementation of law-enforcement initiatives.[78] As noted above, there is no mention of human rights in any of the draft laws.

- **Risk of forced testing and forced treatment**

Furthermore, we note with concern section 22.104 of the *Liberia Drug Enforcement Agency Act* which authorizes the LDEA to "perform drug testing and maintain required records which can be used for estimates and statistical purposes." As observed by the UNODC, "testing for drugs shall be subject to full informed consent" although "[i]nternational human rights law does (…) allow some exceptions in narrowly defined circumstances."[79]

Unfortunately, there is no corresponding provision in the law restricting drug testing to narrowly defined circumstances, nor there is any provision protecting individuals against unjustified and abusive drug testing or offering any guarantee that maintained records will not be used against them. This is of grave concern because not only does Liberian law subject people who use drugs to the risk of criminal

[75] Global Commission on HIV and the Law, *Risks, Rights and Health*, July 2012, p. 31.
[76] Canadian HIV/AIDS Legal Network, International Harm Reduction Association, Open Society Foundations Public Health Program, Human Rights Watch, *Human Rights and Drug Control Policy*, 2010 available at http://www.aidslaw.ca/publications/publicationsdocEN.php?ref=1133; See also UN, General Assembly, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/65/255, August 6, 2010, at paras 21, 24 and 27
[77] Canadian HIV/AIDS Legal Network, Legislating on Health and Human Rights: Model Law on Drug Use and HIV/AIDS Module 3: Sterile syringe programs, 2006.
[78] See the *Drug control, crime prevention and criminal justice: A Human Rights perspective*, Note by the UNODC Executive Director for the Commission on Narcotic Drugs (CND), E/CN.7/2010/CRP.6–E/CN.15/2010/CRP.1, March 2010, at paras. 36-37.
[79] Ibid. at paras. 43-44.

prosecution, but also civil commitment. For example, Liberia's *Public Health Law* authorizes the registration of people who use drugs and allows any person to seek an order committing someone believed to be addicted to drugs for medical or psychiatric treatment[80] contrary to the recommendations of the Global Commission on HIV and the Law.[81] By strengthening the power of the LDEA to perform drug testing without any restriction, there is a risk that the new *Liberia Drug Enforcement Agency Act* will result in increased coerced drug testing and forced treatment of people who use drugs.

- **Risks of impunity and corruption**

Drug trafficking can lead to corruption at all levels of government and the judiciary. In Liberia, it was recently embodied by the Deputy Director for Operations of the Drug Enforcement Agency, who was dismissed for his involvement in drug trafficking.[82] The need to combat drug-related corruption of officials, including within police forces, is articulated in the ECOWAS *Regional plan to address the growing problem of illicit drug trafficking, organized crimes and drug abuse in West Africa*.[83] Unfortunately, the *Controlled Drug and Substances Act* only risks exacerbating corruption by severely punishing minor drug-related offenses[84] while section 22.105 of the *Liberia Drug Enforcement Agency Act* tolerates impunity by providing that "[a]n employee of LDEA shall not, in his/her personal capacity, be liable in civil or criminal proceedings in respect of any act or omission done in good faith in the performance of his/her functions under this subchapter."

We note, however, that section 22.113 of the *Liberia Drug Enforcement Agency Act* obliges the Director General of the LDEA to report annually to the President and the National Legislature, with "a detailed account of the programs and projects undertaken, statistics on crimes related to controlled drugs or substances … recommended remedial legislation, if needed, and such other relevant facts as it may deem proper." This reporting requirement could provide an opportunity for the legislature to monitor the activity of the LDEA.

- **Increased risk of violence**

Experience from other regions of the world, such as Latin America, has shown that increased intensity of law enforcement interventions can escalate drug-related violence. As observed by the Global

[80] See, section 41.31 and 41.56 of the Public Health Law.
[81] Global Commission on HIV and the Law, *Risks, Rights and Health*, July 2012. Recommendation 3.1.2 to"[a]bolish national registries of drug users… and forced treatment for people who use drugs."
[82] "Liberia: Deputy DEA Director Dismissed," *All Africa,* August 6, 2013, available at http://allafrica.com/stories/201308120990.html.
[83] ECOWAS Regional Action Plan against Illicit Drug Trafficking, Abuse and Organized Crimes (2008-2011), at http://www.unodc.org/westandcentralafrica/en/ecowasresponseactionplan.html
[84] See for instance, *Drug control, crime prevention and criminal justice: A Human Rights perspective*, Note by the UNODC Executive Director for the Commission on Narcotic Drugs (CND), E/CN.7/2010/CRP.6–E/CN.15/2010/CRP.1, March 2010, at para 24: "Proportionality and strict due process in drug laws are also important weapons in the fight against corruption. Where severe sentences for less serious offences such as personal possession can be passed on a summary or administrative basis, the door may be opened to acts of corruption by individual law enforcement officers, border police or criminal justice officials."

Commission on Drugs, "[l]aw enforcement agencies and drug trafficking organizations can become embroiled in a kind of 'arm race', in which greater enforcement efforts lead to a similar increase in the strength and violence of traffickers."[85] By shifting the emphasis from public health to law enforcement, the new laws could fuel drug-related violence in Liberia unless care is taken to avoid the militarization of drug control. Thus, it is important that the law reform process in Liberia be informed by the lessons of the past to avoid the replication of harmful and ineffective policies that have been applied and failed in other regions of the world.[86]

Recommendations

We recommend that OSIWA and its allies oppose the adoption of the *Controlled Drug and Substances Act* and the associated *Liberia Drug Enforcement Agency Act*. Both laws contain problematic provisions that do not respect human rights norms or best practices. While the *Liberia Drug Enforcement Agency Act* could be improved with some amendments, the philosophical underpinnings of and approach behind the new *Controlled Drug and Substance Act* is highly problematic.

OSIWA and its allies should call on the Liberian government to suspend the legislative review process until the report of the West Africa Commission on Drugs is released. New drug legislation in Liberia would benefit from the work of the Commission, which is composed of a group of distinguished West Africans. We believe that the upcoming report will provide useful and relevant guidance for law reform and drug policies in West Africa.

OSIWA and its allies should call on the government to integrate the legislative review process in a broader initiative to rethink drug policy in Liberia. Members of civil society, including representatives of people who use drugs, as well as service providers, should be meaningfully involved in this initiative. More specifically, OSIWA and its allies should call for:

- drug use to be primarily considered as a public health issue;
- the development of drug policies that are entrenched in human rights and that focus on people's health and safety rather than law enforcement;
- the end to the criminalization of activities related to drug use. A clear line should also be drawn between small-scale dealers and high-level traffickers, with law-enforcement initiatives and resources focusing on the latter;
- access to voluntary and evidence-based treatment for people who use drugs and need treatment, as well as the implementation of harm reduction programs, including in prison;
- the meaningful consultation of people who use drugs, service providers (including in the field of harm reduction), and health-care stakeholders (including in the field of HIV) in developing drug policies and law; and

[85] Global Commission on Drug Policy, *War on drugs. Report of the Global Commission on Drug Policy*, 2011, p. -15.
[86] J. Csete and C. Sanchez, *Telling the story of drugs in West Africa: the newest front in losing war?*, Global Drug Policy Observatory, 2013.

- the harmonization of drug laws in Liberia to ensure the congruency of all laws related to drugs.

If Liberia were to adopt a new drug law, OSIWA and its allies should remain mindful of the problematic provisions and omissions identified in the current drafts of the *Controlled Drug and Substances Act* and the *Liberia Drug Enforcement Agency Act*, specifically regarding:

- the scheduling of drugs and other substances solely based on international anti-drug conventions;
- the absence of clear exemptions to criminal prosecutions for the medical use of methadone or buprenorphine for drug treatment and, more generally, the absence of recognition that some drugs must be available for medical and scientific purposes;
- the criminalization of drug use;
- the criminalization of the possession, purchase or sale of a drug without any distinction based on its quantity or potential harm, or consideration of its associated personal use;
- the potential criminalization of harm reduction services, such as needle and syringe programs, through broad paraphernalia provisions;
- the broad definition of trafficking, which will likely result in disproportionate and unjustified punishment;
- the absence of protection against forced drug testing or drug treatment; and
- the absence of protection against abusive drug policing.