

Drug policy reform as a critical part of the HIV response. An information note for Global Fund applicants and grant recipients

Introduction

This short information note is designed to support those involved in the development of concept notes, applications and grants for the Global Fund to Fight AIDS, Tuberculosis and Malaria, and for the implementation of comprehensive and effective HIV responses more broadly. The target audience includes Country Coordinating Mechanisms, grant recipients, civil society representatives, advocates, and proposal writers. This document has been developed by the [International Drug Policy Consortium \(IDPC\)](#), the [International HIV/AIDS Alliance](#) and the [Open Society Foundations](#), and with input from colleagues at the Global Fund and other partners.

Why does drug policy matter?

The success of the global HIV response depends upon the provision of effective HIV and viral hepatitis prevention services to people who inject drugs. This key population accounts for approximately ten percent of global HIV infections,¹ and one-third of those outside of Sub-Saharan Africa.² In Eastern Europe and parts of Asia, for example, the HIV epidemic continues to be concentrated among people who inject drugs.³ Around the world, injecting drug use has been reported in 158 countries – and HIV transmission amongst this population has been reported in 120.⁴

The provision of harm reduction services⁵ – including a package of interventions endorsed

by the United Nations⁶ and the Global Fund⁷ – is an essential component of any national HIV or hepatitis responses. Yet the coverage of these proven services remains low globally⁸ and significant legal and policy barriers exist in the vast majority of countries. People who use drugs are systematically stigmatised, criminalised and denied access to proven health services – even where evidence-based harm reduction interventions are available.⁹

The current global drug control system is 100 years old, and has promoted the worldwide criminalisation of people who use drugs. The so-called “war on drugs” approach has been used to justify mass incarceration, extrajudicial detention, unlawful killings, corporal and capital punishment, torture and abuse, and the denial of health services on a wide scale. At the same time, it has failed to reduce global drug markets, drug availability or drug use. The initial goals of a drug-free world are no closer to being realised, and are now widely regarded as unachievable.

We cannot end AIDS, until we end the war on drugs

There are many ways in which the “war on drugs” approach drives HIV and hepatitis transmission among people who use drugs:¹⁰⁻¹¹

- People who are afraid of the police are reluctant to seek health and HIV prevention services. In Bangkok, a quarter

of respondents said they avoided services through fear of being put into compulsory drug detention.¹²

- It is estimated that 56% – 90% of people who inject drugs will be incarcerated at some stage during their life.¹³ Prisons and other closed settings are high-risk environments for HIV and often offer no harm reduction services.
- When police performance is judged by the number of arrests, people who use drugs are easy targets. Police may even target health facilities to capture these individuals, making it even harder for services to engage and retain those in need.
- In many settings, laws also prohibit or directly interfere with harm reduction services themselves – for example, forbidding the provision or possession of needles and syringes, or prohibiting the provision of opioid substitution therapy.
- Police ‘crackdowns’ have encouraged people to switch from smoking or inhaling drugs to injecting them, because of the need to avoid detection or to consume drugs more rapidly.
- Demonising people who use drugs just reinforces patterns of stigma, social marginalisation, poverty, abandonment by families and communities, and disempowerment – all things that undermine a person’s ability to protect themselves from HIV and to seek HIV services.
- Fuelled by the perception of people who use drugs as criminals, harm reduction services remain unavailable in too many settings.

Without interventions to address these issues, HIV programmes that target people who inject drugs cannot be expected to reach their full potential – and the end of HIV transmission remains unachievable. The links between HIV, hepatitis, overdose and drug policy have therefore been explicitly acknowledged by UNAIDS, the World Health Organisation (WHO), the UN Office on Drugs and Crime (UNODC), and by the Global Fund itself.

Current Global Fund guidance

The Global Fund is the leading international donor for harm reduction interventions for people who

inject drugs,¹⁴ and remains committed to this key population. The Fund explicitly supports evidence-based interventions that reflect the local epidemic and context, to ensure that its investments are directed towards areas where they can have the maximum impact and value for money, keeping in mind the principles of equity and human rights. Applicants must tailor and justify their proposed responses within the context of the epidemiological situation and the needs of the people at risk.

Through its most recent guidance to applicants and grant recipients,¹⁵ the Global Fund therefore promotes drug policy reform interventions within the New Funding Model – as demonstrated below:

Global Fund Strategic Investments Guidance – HIV Programmes¹⁶

- “Discrimination, stigmatization and criminalization of groups most affected by and vulnerable to HIV can drastically diminish the impact of HIV programs. They can block access to HIV prevention and treatment programs, thereby contributing to the transmission of HIV and can increase the impact of HIV”.
- “Applicants are encouraged to identify priority areas where measurable progress can be made to eliminate barriers to service access and ensure meaningful participation of people living with and affected by HIV. Barriers may include... [the] criminalization of KAPs [key affected populations]”.
- “Countries seeking new grants are expected to focus national responses toward key populations by... ensuring their active involvement, by removing legal barriers, and by ensuring programs adopt rights-based approaches”.

Global Fund Information Note on Harm Reduction¹⁷

- “Interventions should be supported by an enabling legal and policy framework, including measures to increase access to justice and health services for people who inject drugs, and to minimize law enforcement and other structural impediments”.

- “Countries are strongly encouraged to include interventions and activities that improve the legal and policy environment, to ensure that Global Fund-supported services are accessible to people who inject drugs”.

The Global Fund “strongly recommends” interventions such as reform of laws and policies related to drug use

- “Even where [harm reduction] interventions... are implemented, the lack of a supportive social, policy and human rights environment often creates access barriers. Therefore, the Global Fund strongly recommends including interventions to ensure access to other Global Fund-supported interventions, such as... reform of laws, policies and practices related to injecting drug use”.

Global Fund Information Note on Human Rights for HIV, TB, Malaria and HSS Grants¹⁸

- “Where... key populations are criminalized, lack of respect for human rights fuel the spread of HIV by adding to the risk environment and further marginalising people living and affected by the disease... When their human rights are not respected and protected, people are less likely to access available prevention, testing, treatment, care and support services”.
- “Applicants are strongly encouraged to develop specific interventions to address legal and human rights barriers”, especially where people who use drugs are criminalised.

Guidance from the United Nations

Drug policy reform is an example of a ‘critical enabler’ – an intervention which “make programme access possible and success more likely” according to the UNAIDS Investment Framework.¹⁹ UNAIDS have also elaborated seven “Key programmes to reduce stigma and discrimination and increase access to justice in national HIV responses” – including stigma and discrimination reduction, legal services and legal literacy, and the monitoring and reforming of laws

and policies “so they support, and not hinder, access to HIV and health services”. This latter category includes activities such as advocacy and lobbying for law reform.²⁰

The key UN agencies have all endorsed the decriminalisation of people who use drugs, to facilitate the HIV response

In July 2014, WHO launched its ‘Consolidated Guidelines on HIV Prevention, Diagnosis, Treatment and Care for Key Populations’ – and made its strongest call to date for the decriminalisation of drug use.²¹ The Guidelines propose a package of essential interventions that must be delivered, including “Supportive legislation, policy and financial commitment, including decriminalisation of behaviours of key populations”. The Guidance further recommends that “Laws, policies and practices should be reviewed and, where necessary, revised by policymakers and government leaders, with meaningful engagement of stakeholders from key population groups”.

“The majority of national drug control policies focus on supply reduction and law enforcement against any drug use, and people who use drugs are often collateral victims of those interventions”

UNAIDS, 2014

Similarly, ‘The Gap Report’ released by UNAIDS in July 2014 cites “Criminalization and punitive laws” as the primary risk factor for people who inject drugs.²² UNAIDS state that “The criminalization strategy adopted by national drug control systems hinders the HIV response, as fear of arrest impedes people’s access to and the uptake of HIV services”. The report cites “Transform punitive laws that criminalize the use of drugs” as the number one recommendation – explicitly calling for:

- An end to the criminalisation of people who use drugs
- Continued movement towards a humane and supportive approach to people who use drugs
- The end of arbitrary detention, so-called

compulsory treatment, torture and other forms of ill-treatment.

The recently revised 'WHO, UNODC and UNAIDS Technical Guide for Countries to Set Targets for Universal Access to HIV Prevention, Treatment and Care for Injecting Drug Users' also acknowledges that people who inject drugs are "commonly marginalized, criminalized and subjected to stigma, discrimination and, due to the illegality of drug use, often face legal sanctions or limited access to essential services".²³ The Guide recommends a number of "strategies to create a more supportive environment", including "reviewing, and revising where necessary, laws, legal policies and practices".

Finally, UNODC has recently clarified that the decriminalisation of people who use drugs is permitted within international drug conventions.²⁴ UNODC acknowledges that "Imprisonment of people for drug use increases their vulnerability to drug-use disorders and numerous health conditions, including HIV" and – crucially – that "A public health response to the drug problem should consider alternatives to criminalization and incarceration".²⁵ Another report from UNODC reiterates to countries that "Under the [drug] Conventions, de-penalisation of possession, purchase or cultivation of controlled drugs for personal use is possible... a more effective alternative to punishment can be social protection and detoxification services, health care, treatment of dependence and reintegration into society".²⁶

How to incorporate drug policy interventions in Global Fund proposals

According to Global Fund policy, applicants from middle income countries must focus on underserved and most-at-risk populations, as well as the highest impact interventions. Of course, low income countries are also strongly encouraged to target resources to those at highest risk as well.

Many of the documents cited above provide specific guidance on what interventions can be incorporated into Global Fund country dialogues, concept notes and proposals. For example, the

Global Fund's 'HIV Modular Template' includes an entire cross-cutting module on "removing legal barriers to access".²⁷ Below is a sample of interventions that, together, can tackle the issues of drug policy and HIV, while fitting the Global Fund's requirements for evidence-based, effective and cost-effective approaches:

1. **Legal environment assessments:** To respond effectively to HIV, it is vital to "know your epidemic" through appropriate surveillance and epidemiological research. Legal environment assessments can quickly and cheaply identify laws and policies that impede access to health services, and highlight key areas for reform and advocacy. It is recommended by the Global Fund that this assessment be concluded in the first six months of the grant, and that based on the assessment, specific budgeted activities be added to the budget and work plan.²⁸
2. **Legal review and reform:** Wherever possible, proposals should include commitments from government partners to review and reform existing drug policies—through parliamentary commissions, expert committees, public consultations, or any other relevant policy making processes that exist in the country. This includes policies that criminalise people who use drugs, as well as policies that prohibit or hinder health services (such as laws against the provision of needles and syringes or opioid substitution therapy).
3. **Legal rights and legal services:** As policy reform can be a long-term process, it is important to educate people who use drugs about their legal and human rights within existing laws²⁹. This can be through 'know your rights' campaigns to improve awareness, and/or through supporting access to legal services and community paralegals who are integrated into peer outreach services³⁰.
4. **Sensitisation training:** Again, the damage caused by existing drug policies can be successfully mitigated by engaging law enforcement personnel, policy makers, police officials, judges and legal experts, and health workers in training and communication to tackle the stigmatisation of people who use drugs. Sensitisation can focus on legal

rights, HIV prevention, harm reduction and the harmful effects of drug laws. If laws exist against needle and syringe provision, this sensitisation can aim for the police to formally agree not to target or pursue harm reduction services (in lieu of, or until, legal reform is achieved).

5. **Advocacy for drug policy reform:** A range of communication and engagement approaches can be used to raise awareness and open channels of discussion with key policy makers. These include expert seminars and workshops, press conferences and media engagement, academic reviews, and capacity-building trainings on drug law reform. Activities should also focus on building the capacity of local civil society organisations to meaningfully engage in drug policy discussions.³¹⁻³²
6. **Monitoring of rights violations:** Mechanisms should be established, implemented and promoted for community-based organisations to systematically monitor and document cases of violations of the legal and human rights of people who use drugs³³⁻³⁴. These may be informed by existing national, regional and international human rights mechanisms. Such cases can then be used as evidence for advocacy purposes, or for formal challenges and strategic litigation to force changes in policy and practice.
7. **Support drug user networking:** The voice of the community is central to efforts to improve and reform drug laws – in the spirit of ‘nothing about us, without us’.³⁵ Proposals should seek to foster and support leadership and mobilisation so that people who inject drugs can support their peers and be active in the HIV response. This requires resources for capacity strengthening, support and tolerance, and meaningful engagement in policy making processes.³⁶⁻³⁷

Further information and support

Applicants are advised to make use of the full range of information notes and guidance provided by the Global Fund,³⁸ as well as other resources listed at the end of this document.

In addition, the Global Fund has created a new **Community, Rights and Gender Technical Assistance Program** – which focuses on the protection and promotion of human rights, and seeks to ensure that key populations, communities and civil society have the capacity to engage in Global Fund processes.³⁹ A number of organisations from around the world have been pre-selected to provide bespoke technical assistance to domestic stakeholders, including national civil society networks and networks of people who use drugs.

Furthermore, there are numerous international and regional drug policy organisations that can offer guidance and expertise – including the International Drug Policy Consortium (IDPC). IDPC is a global network of more than 120 civil society organisations – with the collective vision that national and international drug policies are grounded in the principles of human rights and human security, social inclusion, public health, development and civil society engagement. The IDPC website – www.idpc.net – has a number of resources to assist in this process, such as the comprehensive Drug Policy Guide⁴⁰ and the Drug Policy Advocacy Training Toolkit.⁴¹ For further information, please contact Jamie Bridge, IDPC’s Senior Policy and Operations Manager: jbridge@idpc.net.

Endnotes

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About this briefing paper

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About IDPC

The International Drug Policy Consortium is a global network of non-government organisations 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 briefing papers, disseminates the reports of its member organisations, and offers expert advice to policy makers and officials around the world.

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