

Report of IDPC/MAC Seminar

Options for the management of drug using offenders

The International Drugs Policy Consortium (IDPC, www.idpc.net) and the Malaysian AIDS Council (MAC, www.mac.org.my) organised a joint seminar on drug policy in Kuala Lumpur, Malaysia, on Thursday, 9 December 2010. This seminar was run in conjunction with the 'Lancet Series Symposium: HIV in People who use Drugs' which took place on Friday 10 and Saturday 11 December 2010, organised by the Centre of Excellence for Research in AIDS (CERiA), University of Malaya. The objective of the IDPC/MAC seminar was to engage high level officials in considering alternative options for managing drug using offenders.

Session 1. Describing the Problem

Professor Mahmood Nazar, Deputy Director General of the National Anti-Drugs Agency (NADA) and Datuk Mohammed Zaman Khan, President of MAC presented the current drug situation in Malaysia. Traditionally, the drug of choice in Malaysia has been marijuana and opiate-based drugs such as heroin and morphine. In recent years, these have been replaced with amphetamine-type stimulants (ATS), and the number of drug users has been increasing. In the past decade, the government identified more than 35,000 dependent drug users. In 1983, drugs were declared to be the number one enemy, leading to the adoption of the Drug Dependents Act (Treatment and Rehabilitation) 1983. The 1983 law introduced a two-year mandatory treatment and rehabilitation for anyone considered to be a drug dependent (and an additional two-year rehabilitation supervision order). In 2000, Malaysia signed a declaration 'to achieve a drug free society by 2015'.¹ This resulted in a zero tolerance, punitive approach including the use of the death penalty for drug trafficking. However, due to the rapid spread of HIV among intravenous drug users (IDUs), harm reduction measures were introduced in 2005. In the field of drug treatment, the NADA also introduced a policy favouring community based treatment rather than the traditional compulsory treatment centres, and is now in the process of developing a network of 'Cure & Care Centres' to treat drug users in their own communities.

The current national drug policy is based on supply, demand and harm reduction, which is achieved through drug law enforcement, primarily the Dangerous Drugs Act 1952. The three main agencies responsible for implementing the national drug policy are the NADA, the Royal Malaysian Police (RMP) and the Royal Malaysian Customs (RMC). NADA's budget in 2008 of RM 80,000,000² was increased in 2009 to RM 130,000,000 and now has 6,000 personnel. Similarly, the RMP increased its narcotics section to 4,373 personnel with a budget of RM 258,000,000. However the problems remain unabated and more drugs are flooding the market, drug related crime is increasing, more people are using drugs, and there continues to be increasing social and health drug-related problems. Alternative solutions to the drug problem could include decriminalisation, amending the drug laws to allow possession of prescribed drugs for those on opiate substitution therapy (OST) or for a small amount of drugs to be permitted for individuals trying to access needle and syringe exchange programmes (NSPs). However, these would need to be evidence based. The importance of educating the public was also highlighted.

Professor Alex Wodak, Director of the Alcohol and Drug Service at St Vincent's Hospital, Melbourne, Australia, shared the Australian experience of harm minimisation, officially adopted in April 1985, harm minimisation being defined as 'supply reduction + demand reduction + harm reduction'. Australia's drug policy is often referred to as a 'balanced approach'. However, 75% of the \$3.5 billion was spent by the government in 2002-3 on law enforcement and only 23% on health and social interventions. Despite the significant amount of resources invested in law enforcement, 80-90% of drug users in 2009 reported that illicit drugs were still 'very easy' to obtain. Public perception still remains divided as the concept of harm minimisation is widely misunderstood. This is despite strong evidence that NSPs and OSTs are successful, safe and cost effective

¹ The Association of Southeast Asian Nations (ASEAN) (2003) Bangkok Political Declaration in Pursuit of A Drug-Free ASEAN 2015 Bangkok, Thailand, 11-13 October 2000. <http://www.aseansec.org/1638.htm> (last checked 25th January 2011)

² USD 1.00 = RM 3.00

with a total of \$A27 saved for every £A1 spent on harm reduction. Nevertheless, concern about HIV among IDUs began after the adoption of harm minimisation, making the acceptance of pragmatic HIV control strategies easier and facilitating a good partnership between health and law enforcement. It is now entrenched within the drug policy and has endured for 25 years.

Ann Fordham then introduced the IDPC Drug Policy Guide³. Policies need to be re-evaluated because the scale of the drug market has not been reduced, the number of HIV infections among people who inject drugs has exploded and there is a huge pressure on judicial and penitentiary systems. Policy objectives are shifting with drug use being seen increasingly as a health issue, and drug laws are being reformed. With this Guide, IDPC seeks to encourage the facilitation of engagement with policy makers, provides expert policy advice and takes a pragmatic approach between supply and demand. Open and constructive relationships with civil society should be built ensuring:

- ✓ Compliance with fundamental rights and freedom
- ✓ A focus on reducing drug-related harms
- ✓ The inclusion of marginalised groups and the reduction of stigma and discrimination

Session 2. Procedures for diversion

There are a range of mechanisms and procedures that can be used to divert drug users into community based treatments or lesser punishments as an alternative to incarceration. Some of these options would require a change in the law, while others would only involve a change in the working practices of police, prosecutors or judges. Mike Trace, Chair of IDPC explained the following options:

1. Decriminalisation – people arrested for drug-related offences are transferred from the criminal justice system (CJS) to the health system. For example, in the United Kingdom, police give warnings and the arrested drug user is referred to treatment services.
2. Depenalisation – the severity of punishments applied to drug users in the CJS are reduced. Examples of best practice include the United States where ‘drug courts’ divert offenders into treatment programmes, and Australia which, in some states, replaces court proceedings with fixed penalty notices.

The costs and benefits of using different diversion mechanisms include: more efficient use of police, court and prison resources, better treatment results and a long term beneficial impact on levels of crime and drug use.

A short video interview with João Goulão, the Portuguese National Drugs Coordinator and Chair of the Institute of Drugs and Drug Addiction was presented. The drug situation in the late 1990s in Portugal was very problematic, with approximately 1% of its population being dependent on heroin. Drug users started to be seen as patients rather than criminals. In 2001, Portugal decriminalised the possession of illegal drugs, and introduced a range of social and health services directed at drug users. Police refer arrested drug users to a ‘dissuasion committee’ consisting of 3 people made up of lawyers, social workers and medical professionals. They are supported by a technical team who evaluate the circumstances surrounding the person that may have caused them to use drugs, and determine whether they are a casual or problematic user. Dependent drug users are encouraged into treatment and, if they agree, the process is suspended for 6 months. Further penalties (e.g. community service, bans on attending designated places) can be given if relapse occurs within this time; otherwise the process ends. Police can now refocus their limited resources on more serious offences such as trafficking and the public is no longer concerned about the drug problem.

The Honourable Datuk Su Geok Yiam, a High Court Judge and Jamil bin Aripin from the Narcotic Unit, Prosecution Division, Attorney General Chamber’s, recommended possible diversion initiatives within the Malaysian criminal justice system. A significant amount of money is spent on repeat offenders, suggesting a need for review. Diversion initiatives could be introduced at three different stages: arrest and investigation; prosecution and in court. There is provision within the current laws for the police, prosecutors and judges to exercise discretion. For example, first time offenders could be released on a good behaviour bond⁴, given a probation order, an offender’s compulsory attendance order (compulsory work)⁵ or offered treatment and rehabilitation. Diverting drug users from being incarcerated would reduce prison overcrowding and the

³ The International Drugs Policy Consortium (IDPC) (2010) *Drug Policy Guide, Edition 1, March 2010* <http://www.idpc.net/publications/idpc-drug-policy-guide-version-1> (last checked 25th January 2011).

⁴ Criminal Procedure Code (2006) *Laws of Malaysia Reprint Act 593 Criminal Procedure Code Incorporating all amendments up to 1 January 2006* The Commissioner of Law Revision: Malaysia. (A good behaviour bond order can be made under section 173A).

⁵ Offenders Compulsory Attendance Act (1954) *Laws of Malaysia Reprint Act 461 Incorporating all amendments up to 1 January 2006* The Commissioner of Law Revision: Malaysia

backlog of cases in court. It would also assist drug users to reintegrate into society and free them from the stigma of a criminal record. Incarceration could be reserved for more serious and persistent offenders. A policy or guideline would encourage those working in the CJS to exercise discretion and assist them with dealing with drug users.

The laws for drug offences should be reviewed if harm reduction measures are to be effective as there is no provision within the law to refer drug users to health or social services or offer them the option of methadone maintenance treatment (MMT) or NSPs. Changes in the law could empower police to caution first time offenders arrested in possession of small amounts of drugs instead of charging them. Alternatively, drugs such as cannabis could be decriminalised. However, the CJS would need the



assurance that this would not put other members of society in danger. There is currently a lack of evidence provided as to how effective harm reduction measures are and what the circumstances surrounding the accused are. Public interest is paramount when a prosecutor decides whether to prosecute or not and when a judge considers someone's sentence. Drug related crimes such as bag snatching have caused society to be fearful, resulting in further pressure on the CJS to punish those responsible. Therefore public support is essential for diversion initiatives to be effective and evidence based research would assist the CJS in making the right decisions when prosecuting or sentencing.

Session 3. Diversion to what? Principles for effective drug dependence treatment

Efforts to rehabilitate drug users can be undermined by poorly resourced, badly designed, or low quality drug treatment systems. Mike Trace presented key findings on what effective systems need:

1. Identification and assessment – Ensuring that treatment is offered to the people who need it, and that access is prioritised for the most severely dependent.
2. A broad menu of services – Providing a range of interconnected treatment services, as the nature of each individual's problems will differ.
3. A system based on self-determination – Working with the individual's own motivation to change their behaviour.
4. A focus on re-integration – Focusing on helping users to reintegrate into their own communities, and becoming productive members of society.

Effective treatment can save lives, improve health, overcome dependence, reduce crime and facilitate successful social re-integration.

Kasia Malinowska-Sempruch, Director of the Open Society Institute Global Drug Policy Programme, considered the role of OST and why it should be part of national drug dependent treatment systems. Evidence shows that OST programmes lower crime rates, HIV incidence and mortality rates in addition to facilitating better social integration. They are also cost effective, costing \$1,750 for a person in MMT for the duration of 6 months compared with incarceration at a cost of \$20,000. In conjunction with safe injection programmes and anti-retroviral treatment (ART), the incidence of HIV infection in IDUs can be reduced by more than 50%⁶. Research has shown that MMT effectively reduces the risky behaviour of IDUs, is more attractive than residential drug-free treatment and has the highest retention rates. There has been a paradigm shift in many countries where resources are being shifted from law enforcement to treatment such as in France and Germany where the HIV epidemic was successfully avoided among IDUs by introducing and rapidly scaling

⁶ Degenhardt, L., Mathers, B., Vickerman, P., Rhodes, T., Latkin, C. & Hickman, M. (2010) *Prevention of HIV infection for people who inject drugs: why individual, structural, and combination approaches are needed* The Lancet: HIV in people who use drugs, July 2010

up OST. Current available tools and strategies can largely control HIV epidemics but a massive scale-up of combination, treatment and care is needed.

Dr Sha'ari Ngadiman, the Deputy Director of Disease Control from the Ministry of Health shared the Malaysian experience of developing treatment and harm reduction services. The first case of HIV was in 1986. The number of HIV cases reported up until December 2009 was 87,710, of which there have been 13,394 deaths and 15,317 cases that have developed into AIDS. 'Reducing HIV vulnerability among IDUs and their Partners' was one of the six main strategies included in the National Strategic Plan on HIV/AIDS 2006-2010⁷. In 2005, MMT and NSPs were implemented with a target of reaching 40,000 IDUs by 2010 – which was achieved. A pilot project was also carried out in 2008 in which MMT was provided in Pengkalan Chepa Prisons. Lessons learnt have been that strong leadership is needed to successfully implement interventions, partnerships are important when scaling-up programmes, good surveillance data is necessary in drafting policy, monitoring and evaluation is essential, and there needs to be a workable strategic plan and targets set when implementing prevention, treatment care and support for HIV/AIDS.

Session 4. Recommendations and the way forward

The seminar concluded that the zero tolerance approach of penalising drug users has not been effective and that further work should be undertaken to assess the feasibility of reforming the Malaysian laws and criminal justice proceedings, so that diversion to effective community based treatment is put at the centre of Malaysian strategy. NADA, police and prison management should also develop training initiatives to promote this way of working among their staff.



From left to right, Datuk Mohammed Zaman Khan (President of the Malaysian AIDS Council), Professor Alex Wodak (Director of the Alcohol and Drug Service at St Vincent's Hospital in Australia), Dr. Sha'ari Ngadiman (Deputy Director of Disease Control, Malaysian Ministry of Health), Mike Trace (Chair of IDPC), Kasia Malinowska-Sempruch (Director of the Open Society Institute Global Drug Policy Programme), and Ann Fordham (Coordinator of IDPC).

⁷ Available at: http://idpc.net/sites/default/files/misc/NationalStrategicPlanAids_FINAL.pdf