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THE SUR FILE ON DRUGS AND HUMAN RIGHTS

# ASIA: ADVOCATING FOR HUMANE AND EFFECTIVE DRUG POLICIES

Gloria Lai

• *The International Drug Policy Consortium calls for greater civil society engagement in drug policy in the run up to UNGASS 2016.* •

## ABSTRACT

*In many parts of the world, governments have begun to openly question the effectiveness of repressive drug control policies. However in Asia, drug policy debate is seriously limited. Both the use and supply of controlled drugs are regarded as a threat to state security that must be eradicated, justifying the implementation of severely punitive drug policies. There is little public support for challenging these harsh policies. The author argues that civil society must advocate for, and help facilitate, a more open and rational dialogue with governments to encourage them to engage in an honest assessment of the current approach. This dialogue is urgently needed in the lead up to the UN General Assembly Special Session on the world drug problem in April 2016.*

## KEYWORDS

Drug Policy | Human rights | Harm reduction | Drugs | Public health | Advocacy | Development | Asia | Southeast Asia

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Many countries outside Asia are experimenting with alternative drug policy approaches. This includes, for example, the decriminalisation of drug use, wide-ranging harm reduction interventions, alternatives to incarceration and criminal sanctions for minor drug offences, and legally regulated cannabis markets. However, Asia as a region seems unable to move away from a repressive and punitive approach to drugs. Both the use and supply of controlled drugs are often regarded as a threat to state security that must be eradicated, as demonstrated by regional and national drug strategies that aim for “drug-free” societies.<sup>1</sup> The use of any controlled drug is considered a moral failing that cannot be tolerated.

As a result, there is little public support for challenging the implementation or effectiveness of harsh drug policies. This is despite the inadequacy of existing approaches, which have not only failed to prevent rapidly expanding drug markets and drug-related harm but also have led to human rights violations ranging from the compulsory detention of people who use drugs to mandatory death penalty sentences.<sup>2</sup> In addition, many governments in the region do not permit space for critical civil society engagement on the topic of drug policy, due partly to the framing of drugs as a threat to state security and to the general repression of civil society activism in some countries. In China, for example, the activities of non-government organisations are closely monitored and their staff subject to random interrogations by public security forces if they engage in activities deemed threatening to the state.<sup>3</sup>

Nevertheless, after injecting drug use and associated HIV prevalence rates began increasing in the 1990s, international funding for HIV prevention, treatment and care helped to facilitate the establishment of harm reduction programmes in the region which enabled, to a limited extent, civil society organisations and networks of people who use drugs to gain a role as expert providers of essential health and harm reduction services.<sup>4</sup> In response, many Asian governments introduced some level of policy reform to approach drug use as a health issue rather than a crime, often featuring the seemingly well-meaning yet inaccurate and stigmatising slogan “drug users are patients, not criminals.”<sup>5</sup> However, the prevailing drug policy frameworks and fundamental objectives of eradicating drug markets have not changed. Drugs continue to be regarded as a social evil that must be eliminated, and people who use drugs continue to be the target of punitive drug policies, even though the region’s expanding drug markets show the failure of governments to achieve the drug policy objectives they have set for themselves.

In Asia, all countries imprison people for using drugs and many countries carry out police raids to arrest users, as well as subjecting them to human rights abuses ranging from forced urine testing, compulsory registration with security agencies, torture and multiple forms of arbitrary detention.<sup>6</sup> It has become clear that the region needs not only civil society to advocate for the scaling up of harm reduction and drug treatment service provision, but also drug policies that are not based on criminalisation and punishment but upon principles of health, harm reduction and human rights. In the lead up to the UN General Assembly Special Session on the world drug problem, to be held in New York between 19 – 21 April 2016, the need for such civil society engagement is urgent in order to ensure that member states participate in open and honest dialogue about drug policies that are working, and those that are not.

## The International Drug Policy Consortium in Asia

As a global network of over 130 civil society organisations, with a secretariat based in Bangkok and London, the International Drug Policy Consortium (IDPC) advocates for national and international drug policies that are grounded in the principles of human rights, human security, social inclusion, public health, development and civil society engagement. A key mission of the IDPC is to promote evidence-based drug policies that are focused on reducing the harmful consequences rather than solely aiming at reducing the scale of drug use and markets.

As with other regions of the world, IDPC seeks to stimulate open and objective dialogue on drug policy in Asia by publishing and disseminating relevant research and policy analysis, and organising forums to offer space for such dialogue. Open and meaningful drug policy dialogue relies also on the equal participation of policymakers and civil society, including experts and people most affected by drug policies, especially people who use drugs. IDPC therefore works to increase civil society capacity by ensuring effective communications on drug policy developments and advocacy opportunities throughout the network, and by conducting workshops on drug policy advocacy in countries including Thailand, Indonesia, India, Malaysia and Myanmar.

Developing constructive relationships with civil society representatives, policymakers and key international institutions working on global drug policy issues, including the United Nations Office on Drugs and Crime (UNODC) and World Health Organisation (WHO), is a critical and constant task for IDPC. This helps to ensure the equal participation of all stakeholders in ongoing, evidence-based drug policy dialogue. The challenges to achieving this goal in Asia are significant, ranging from lack of capacity and engagement amongst civil society actors to lack of transparency, accountability and opportunity for civil society input in drug policymaking processes.

The work of the IDPC in Asia can be exemplified by its actions following the Indonesian President’s announcement in December 2014 that all the 64 people on death row for drug offences would be executed. IDPC worked alongside local and international advocates representing people who use drugs, non-government organisations providing legal, health and harm reduction services, and academics to call for a halt to the executions through multiple advocacy strategies aiming to sway policymakers and public opinion. Joint activities included a protest at the entrance to the annual meeting of the global drug policymaking body, the UN Commission on Narcotic Drugs (CND), in Vienna, Austria, as well as at the UN headquarters in New York during another CND meeting; discussions with the Indonesian

delegation and open dialogues at CND to discuss better drug policy alternatives; sending letters to the Indonesian President and heads of the two UN institutions with primary responsibility for drug control issues (the UNODC and the International Narcotics Control Board); challenging the accuracy of data the President had cited in declaring a state of emergency in relation to drugs; and liaising with several media outlets to broadcast these messages.<sup>7</sup> It is horrific and disappointing that the Indonesian Government nevertheless proceeded to execute eight people convicted of drug trafficking offences on April 28, 2015, following the execution of six people also convicted of drug offences in January 2015.<sup>8</sup> Although some regional countries, such as Vietnam,<sup>9</sup> Malaysia<sup>10</sup> and Singapore,<sup>11</sup> have taken steps toward abolishing or reducing use of the death penalty, the executions in Indonesia indicate the general trend across Asia in favour of punitive drug policies.

## ASEAN and the dangers of “drug-free” mantras

In Southeast Asia, it is not only the regional body—the Association of Southeast Asian Nations (ASEAN)—that adopts a vision of becoming drug-free in its drug strategy, but also some of its member states including Indonesia and Myanmar.<sup>12</sup> ASEAN ministers committed to achieving a drug-free region by 2015 in 1998,<sup>13</sup> after the previous UN General Assembly Special Session on Drugs in the same year adopted a political declaration stating that member states would aim to “eliminate or significantly reduce” illicit crop cultivation and “promote a society free of drug abuse.”<sup>14</sup> The UN Commission on Narcotic Drugs also adopted the slogan “A drug-free world, we can do it!” for its ten-year drug strategy in 1998.<sup>15</sup> The UN body responsible for assisting member states in implementing the international drug control treaties, UNODC, has now shifted its objectives towards stabilising or containing drug markets.<sup>16</sup> Although Asia is clearly not on track towards becoming drug-free by the end of 2015, there is no indication of an intention to shift away from that rhetoric as ASEAN officials begin to contemplate a new regional drug strategy after 2015.

The 2013 IDPC advocacy note on the ASEAN drug strategy<sup>17</sup> posits that setting the goal of becoming drug-free is not merely futile and unachievable, but in framing drugs and any activity relating to it as a “social evil” to be eliminated, such rhetoric helps to justify policies that inflict an extensive range of harms. Setting such policy goals has also led to the unbalanced investment of resources in criminal justice interventions – based on the mistaken belief that punitive measures will deter drug-related activities. This is not supported by any evidence and is at the expense of ensuring adequate provision of evidence-based, cost-effective health and social programmes to manage the harms associated with drug use and markets.<sup>18</sup> As a result, over the past few decades, Asia has seen large-scale human rights abuses committed in the name of the war on drugs including abusive practices by police against people who use drugs. This was demonstrated in the most grotesque manner when an estimated 2,800 people were killed by police in 2003 when Thailand’s prime minister at the time sought to eliminate drugs from the country within four months. Many people were killed in extra-judicial executions by police and other law enforcement agencies for suspected involvement in drug-related activities. Another estimated 7,000 people were injured in human rights violations, including intimidation of human rights defenders and violence by police.<sup>19</sup> In addition, most countries in the region impose punitive and stigmatising measures in response to drug use, including compulsory registration with security agencies, criminal conviction, imprisonment, and denial or inadequate provision of life-saving health measures such as needle and syringe programmes. Furthermore, governments tend to impose disproportionate sentences and penalties for drug-related activities, including lengthy imprisonment sentences for low-level, non-violent offences, and continued use of the death penalty.<sup>20</sup>

It is also in the pursuit of unrealistic drug-free goals that countries in the region either imprison or detain people in so-called rehabilitation centres to stop them from using drugs. As of 2012, over 200,000 people were held in over 1,000 compulsory centres for drug users (CCDU) in China and most countries in Southeast Asia: Cambodia, Lao PDR, Indonesia, Malaysia, Myanmar, Thailand, the Philippines and Vietnam.<sup>21</sup> In recent years condemnation, by the UN<sup>22</sup> and civil society advocates, of the torture and other abuses inflicted upon people detained in CCDU along with denial of essential healthcare services, has led to more open discussion amongst countries about the need to transition from CCDU to voluntary services for people who use drugs.<sup>23</sup> Vietnam has even taken concrete steps to gradually reduce the number of CCDU facilities.<sup>24</sup>

After decades of increasing rates of drug use and dependence, there remain scarcely any humane, effective, evidence-based drug treatment services to speak of in the region. At a time when more countries in the region are beginning to acknowledge the failure and damaging consequences of CCDU, it is critical for policymakers to develop an accurate understanding about drugs and the nature of drug use (for example, the majority of people who use drugs do not become dependent and do not require treatment).<sup>25</sup> It is urgently necessary for the region's policymakers to shift away from punitive approaches towards drugs, and to invest instead in building capacity to deliver humane and effective drug treatment and harm reduction services.

## Barely tangible shifts in the region toward addressing the harms of drug use and markets

Some countries in Asia have acknowledged and sought to address certain negative consequences resulting from their drug policies. Three examples can be mentioned. Malaysia established voluntary harm reduction and treatment services in 2010 to start replacing compulsory detention centres for people who use drugs.<sup>26</sup> As the first country amongst those operating compulsory detention centres to seemingly transition away from the punitive practice, Malaysia was lauded as a role model by international agencies such as UNAIDS.<sup>27</sup> Thailand, in seeking to eradicate opium crop cultivation, implemented an alternative development programme that is widely regarded as the most successful in the world, for not only reducing cultivation levels but also improving the livelihoods for farmers in its project areas.<sup>28</sup> Finally, Myanmar conducted a relatively open and inclusive consultation on proposed revisions to its drug law in February 2015, which involved international agencies, experts, representatives of people who use drugs and civil society organisations. The proposed revisions included ensuring the provision of evidence-based drug dependence treatment rather than imprisonment for people who use drugs, and reduced penalties to establish more proportionate sentencing for drug offences.<sup>29</sup>

These countries and many others in Asia claim to approach drug use as a health rather than criminal justice issue, implementing some harm reduction services aimed at reducing HIV and other health risks amongst people who inject drugs—with the notable exceptions of Japan, South Korea and Singapore. However, criminalisation and punishment remain the key policy responses in Asia to people who use drugs.<sup>30</sup> Cambodia for example, explicitly supports harm reduction in its drug policy and implements programmes offering HIV prevention, treatment and care services for people who use drugs. At the same time, Cambodia has established the Village/Commune Safety policy. This requires the elimination of production, dealing and use of drugs in all villages and communes, enforced by police arrests and detention of people who use drugs in CCDU. As a result, Cambodia's zero tolerance law enforcement approach to drugs seriously inhibits the ability of its harm reduction policy to advance the health and rights of people who use drugs.<sup>31</sup> Even in India, which has not systematically established CCDU and supports harm reduction programmes, drug consumption is a crime that may result in one year of imprisonment.<sup>32</sup>

## Towards UNGASS 2016: calling on civil society reformers worldwide

In Asia, the underlying premise that the illicit supply and use of drugs must be met with a zero-tolerance drug policy approach needs to be seriously challenged. The UN General Assembly Special Session on the world drug problem (UNGASS), to be held in New York in April 2016, offers an important opportunity to do so. Advocates concerned with advancing the principles of human rights, rule of law, health, and development should use this moment to promote a meaningful review of drug control policies across the region. In order to encourage governments to consider humane and effective approaches to drugs, civil society organisations should seek to increase their expertise on drug policy, promote evidence-based recommendations for reform, and build alliances to amplify their capacity to influence policymakers. Civil society advocates should also pursue opportunities to constructively raise drug policy issues and discuss recommendations with policymakers as part of an open, objective dialogue. Such dialogue is urgently needed in the lead up to the UNGASS to ensure that it will deliver an honest assessment of drug policies implemented worldwide, and that Asia is not left behind in taking part in this key UN debate.<sup>33</sup>

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