



# Legal Framework for Effective Response to HIV & Drug Use

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# Overview

- ▶ Effects of drug policy on HIV transmission
- ▶ What is the Comprehensive Package of Services for People Who Inject Drugs (PWID)
- ▶ What is an enabling environment for addressing HIV among drug users?
- ▶ Why a rights-based response is important
- ▶ UN & other statements on redirecting law enforcement efforts towards drug trafficking
- ▶ Issues with compulsory registration of drug users
- ▶ Suggestions for Myanmar

# Effects of drug policy on HIV transmission

- ▶ In many countries, laws and policies on HIV and drug use operate in opposite directions
- ▶ This leads to:
  - wasting time and money as government efforts cancel each other out
  - massive increases in HIV infection among drug users
  - problems for drug users in accessing HIV services
- ▶ Harmonisation of drugs and HIV laws and policies leads to an enabling environment for addressing HIV among drug users

# Prisons as HIV incubators: UNAIDS

- ▶ “Virtually all (prisoners) will return to their communities, many within a few months to a year. Health in prisons and other closed settings is thus closely connected to the health of the wider society.
- ▶ “...prevalence of HIV, sexually transmitted infections, hepatitis B and C and TB in prison populations has been estimated to be between two and 10 times higher than in the general population.” (UNAIDS GAP Report 2014)

# Comprehensive Package of Services for PWID

- ▶ UNAIDS, UNODC & WHO (2009) agree the following 9 interventions need to be available to 90% or more of PWID:
  - needle and syringe programmes
  - opioid substitution therapy and other evidence-informed drug dependence treatment
  - HIV testing and counselling
  - antiretroviral therapy
  - prevention and treatment of sexually transmitted infections
  - condom programmes for PWID & their sexual partners
  - targeted information, education and communication for people who inject drugs & their sexual partners
  - prevention, vaccination, diagnosis and treatment for viral Hepatitis
  - prevention, diagnosis and treatment for tuberculosis

# Enabling environment

- ▶ WHO reiterated this package in 2014 and added this section on the Enabling Environment:
  - “Laws and policies can help to protect the human rights of key populations – both those living with HIV and those at risk for HIV. **Legal reforms...are critical enablers that can change a hostile environment for key populations to a supportive environment.** Specific consideration should be given to such legal reforms as part of any revision of policies or programmes for key populations.”
  - “Countries should work toward developing policies and laws that decriminalize injection and other use of drugs and, thereby, reduce incarceration.
  - “Countries should work toward developing policies and laws that decriminalize the use of clean needles and syringes (and that permit NSPs) and that legalize OST for people who are opioid-dependent.
  - “Countries should ban compulsory treatment for people who use and/or inject drugs.”
- ▶ WHO 2014 *Consolidated Guidelines on HIV Prevention, Diagnosis, Treatment and Care for Key Populations* Geneva.

# Enabling Environment: UNAIDS

- ▶ UNAIDS GAP Report, 2014:
  - **“End the criminalization of people who use drugs.** Continued movement away from criminalization towards a humane and supportive approach to drug users and the problems they face will transform national strategies into the best public health outcomes.
  - **“End arbitrary detention, so-called compulsory treatment, torture and other forms of ill-treatment.**
  - **“Increase access to justice for people who inject drugs whose rights have been violated.”**

# Why a rights-based response?

- ▶ Commission on Narcotic Drugs (2010):
  - “While drug addiction, organized crime and terrorism undermine a host of human rights, responses to **these problems can only be effective where they respect and restore the rights of those who are most vulnerable, while treating those accused of criminal offences in a just, fair and humane manner.**” CND, E/CN.7/2010/CRP.6 2010
- ▶ UNAIDS *International Guidelines on HIV/AIDS and Human Rights (2006)*:
  - There is overwhelming evidence that rights-based policy responses constitute best practice in terms of achieving effective and measurable outcomes for at-risk populations.



# UNGASS (2011): Signatories

- ▶ “commit to intensify national efforts to create enabling legal, social and policy frameworks in each national context in order to eliminate stigma, discrimination and violence related to HIV and promote access to HIV prevention, treatment, care and support and non-discriminatory access to education, health care, employment and social services, provide legal protection for people affected by HIV.... **and promote and protect all human rights and fundamental freedoms, with particular attention to all people vulnerable to and affected by HIV...**”

# UNAIDS

- ▶ **“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. Punitive laws can deter people from accessing the HIV testing and treatment services they need. In Bangkok, Thailand, 25% of respondents said they were avoiding health care out of fear of being referred to so-called compulsory treatment.”** GAP Report, 2014

# UNAIDS

- ▶ "Punitive laws and policies, whether via prohibiting the provision of sterile injecting equipment and opioid substitution therapy, **criminalising drug use**, possession of injecting paraphernalia, or denying HIV treatment to people who use drugs, **violate people's right to health and harm the community**".
- ▶ Michel Sidibe, Executive Director, UNAIDS 2012

# Commission on Narcotic Drugs

- ▶ “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 programmes for offences involving possession for personal use of drugs offer a more proportionate response and the more effective administration of justice.**”  
(E/CN.7/2010/CRP.6 2010)

# WHO

- ▶ “At the governmental level, close collaboration is needed between the different ministries dealing with illicit drugs to **treat the problem of PWUD as a health issue, and not as a criminal one.** There is a need to review drug control legislation and practices to ensure that inconsistencies in the laws do not hinder HIV prevention efforts.” WHO WPRO 2009

# Global Commission on Drug Policy, 2014

- ▶ **“Putting health and community safety first requires a fundamental reorientation of policy priorities and resources, from failed punitive enforcement to proven health and social interventions.”**
- ▶ **“Traditional goals and measures – such as hectares of illicit crops eradicated, amounts of drugs seized, and number of people arrested, prosecuted, convicted and incarcerated for drug law violations – have failed to produce positive outcomes.”**
- ▶ **“Far more important are goals and measures that focus on reducing both drug-related harms such as fatal overdoses, HIV/AIDS, hepatitis and other diseases...”**

# Compulsory Registration issues

Compulsory registration:

- ▶ Is not used in any developed country
- ▶ Is not helpful in tackling drug traffickers
- ▶ Impedes HIV prevention, testing, treatment and care
- ▶ Drives PWID away from services
- ▶ Causes many problems for no/ few benefits

# Regional Perspectives

## ▶ Indonesia:

- Law No. 35/2009 treats drug traffickers differently from drug users: traffickers are imprisoned while drug users are offered drug treatment (Jakarta Post 20 March 2014)

## ▶ Thailand:

- “... last decade's laws aren't helping to stamp out the drug problem. They have led to the often useless jailing of thousands of drug abusers who need help and support more than punishment.” (Editorial, Bangkok Post, 28 January 2015)



# Suggestions for Myanmar

- ▶ Amendments the *Narcotic Drugs and Psychotropic Substances Law 1993* to include the following:
  - Legal protection for harm reduction workers, including peer outreach workers, to distribute and collect injecting paraphernalia, and to educate people who use drugs about HIV, hepatitis and overdose.
  - Legal protection to carry needles and syringes (including used syringes containing traces of drugs) for the purpose of harm reduction.
  - Definitions of needle–syringe programmes, outreach education and opioid substitution programmes as legal and necessary interventions.