



DRUGS AND IMPRISONMENT

The enforcement of drug laws has major implications for the use and practice of imprisonment the world over.

This special briefing seeks to map out the various ways in which a country's drug policy impacts on its prisons.

In April 2016 the UN General Assembly will hold a special session on drugs, the first for almost 20 years. This provides an opportunity to rethink the best ways to regulate narcotic drugs and to limit the role of criminal punishment to grave crimes.

International conventions require drug offences to be punishable and the most serious crimes to be 'liable to adequate punishment particularly by imprisonment or other penalties of deprivation of liberty'.¹ Treatment, as an alternative to prison, is however mentioned in many provisions of the conventions alongside education, after-care, rehabilitation and social reintegration, clearly indicating that 'abusers of drugs' do not need to be criminally punished.

Drugs and the use of prison

The so-called 'war on drugs' has resulted in the prosecution of drug offences in many countries with lengthy sentences for those involved in trafficking, but also for use and possession of narcotics. In most US states possession is classed as a felony leading to harsh prison terms which in many cases are mandatory.² Recent figures show that in England and Wales in 2013-14 almost 2,000 people received immediate prison sentences for possessing Class C drugs which include tranquillisers, valium and anabolic steroids.³

People charged with or convicted of offences related to the prohibition of drugs represent a sizeable proportion of people in prison both awaiting trial and serving sentences, in many countries. These offences comprise on the one hand the cultivation, production, sale and trafficking of illegal drugs and on the other hand, their possession and use. It has been estimated that expenditure by EU countries on drug law offenders in prisons is within the range of EUR 3.7 billion to EUR 5.9 billion.⁴

A 2013 UNODC study suggests that offences related to drug possession currently comprise more than eight out of ten of total global drug-related offences. The study states that the global increase in drug-related crime is driven mainly by a rising number of offences related to drug possession, particularly in Europe and Africa. As a result of such trends, offences related to drug possession currently

comprise 83 per cent of total global drug-related offences.⁵ Moreover the vast majority of traffickers in prison are low-level offenders.

Research suggests that punishment has a limited impact upon reducing illicit drug use, with countries which impose severe penalties for possession and personal consumption of drugs no more likely to deter drug use in the community than countries imposing less severe sanctions.⁶

A 2014 survey conducted by the UK government found that 'evidence from other countries show that levels of drug use are influenced by factors more complex and nuanced than legislation and enforcement alone'.⁷

Evidence also shows that a high rate of relapse to drug use, drug overdose and recidivism among drug dependent individuals after they are released from prison, especially if there are no linkages to community services and no continuum of care.⁸

In addition to offences related to the production, sale or use of illegal drugs, in many parts of the world large numbers of prisoners are charged with or convicted of other crimes whose commission is in some way connected to illegal drugs. These include violent crimes committed by drug gangs and organised criminal groups which, according to the UN High Commissioner for Human Rights have in the worst cases 'corrupted significant State institutions (...)

creating a climate of impunity, and establishing vast illegal economies that significantly weaken the State'.⁹ They also include property crimes committed by people dependent on drugs who require funds to feed their addiction. Reliable statistics are not available about the numbers of these categories but crimes triggered by drug-related activities account for a particularly large proportion of prisoners in Latin America.

There is also evidence that many crimes are committed under the influence of drugs or alcohol. A recent study of more than 7,000 prisoners in Latin America found that 31 per cent of inmates consumed alcohol or drugs before committing the crime for which he or she was incarcerated.¹⁰

Gender disparity

Prison statistics show that a higher percentage of women than of men are in prison for drug offences.

A 2012 study revealed that more than one in four women in European and Central Asian prisons were imprisoned for drug offences.¹¹

In many Latin American countries such as Argentina (68.2 per cent) Costa Rica (70 per cent) and Peru (66.38 per cent) the rates are higher still.¹² In Ecuador, 77 per cent of women in prison were incarcerated for drug offences compared to 33.5 per cent of the male prison population.¹³

Percentage of prisoners in selected jurisdictions whose main offence relates to the sale or possession of drugs; and the percentage of prisoners estimated to be drug users

Percentage of prison population	Whose main offence is a drug offence	Who are drug users ¹⁵
EUROPE¹⁶		
Bulgaria	6.2	21.6
Croatia	22.4	17.3
Denmark	22.1	8
France	13.9	–
Germany	14.1	33
Iceland	21.4	–
Ireland	19.6	–
Italy	38.8	23.9
Latvia	14.3	17.7
Netherlands	14	57
Portugal	20.6	–
Romania	4.2	2
Russia	–	14.8
Spain	25.8	–
Sweden	20.6	42
Ukraine	14.9	–
AMERICAS¹⁷		
Argentina Federal	33 Federal	64.4
Bolivia	45	–
Brazil	19.2	–
Canada	16.2 (15.7m, 26.3f)	56.7
Colombia	17	–
Ecuador	34	33.9
Peru	23.8	–
Trinidad and Tobago	35	–
USA states	16.8 (16.2m, 25.1f)	–
USA Federal	49	–
AFRICA¹⁸		
South Africa	2.9	–
ASIA-PACIFIC¹⁹		
Australia	12	70
Indonesia	–	70
New Zealand	10	5.5
Thailand	65 (82f)	–

The gender disparity has been attributed to the greater ease with which low-level crimes can be prosecuted.¹⁴

Research also suggested that more serious offenders, mainly male, escape imprisonment or have their sentences reduced by entering plea-bargaining deals and providing assistance to the prosecution, which women are usually unable to provide.²⁰

Drug offences and the death penalty

Although the death penalty for drug offences is non-compliant with international law, it is retained by 33 countries. Around 600 people are known to have been executed every year as a result. In 2014, the death penalty was used for drug-related offences in a number of countries, including China, Indonesia, Iran, Malaysia, Saudi Arabia, Singapore, Sri Lanka, Thailand, UAE and Viet Nam.²¹

900 prisoners awaiting execution in Malaysia in October 2012 were drug offenders.²² In October 2014, 111 prisoners on death row in Pakistan were drug offenders.²³

In some States, ethnic minorities and marginalised groups living in poverty are disproportionately targeted by drug enforcement efforts.²⁴ Statistics also show that very large proportions of foreign nationals in prison are charged with or convicted of drug related offences particularly trafficking.

Drug law enforcement also disproportionately impacts on minorities. In the USA, African Americans make up 13 per cent of the population. Yet they account for 33.6 per cent of drug arrests and 37 per cent of people sent to state prison on drug charges. Black people are 3.7 times more likely to be arrested for marijuana possession than white people despite comparable usage rates.²⁵ Similar racial disparities have been observed elsewhere including the UK, Canada and Australia.²⁶

Alternatives to prison

A variety of alternatives to imprisonment have been developed to deal with offenders who have problems with drug dependency. Specialist drug courts have proved successful in reducing recidivism, for example in the USA by promoting recovery from addiction.²⁷ Their sanctions provide a judicially supervised programme of substance dependency treatment and other services, aiming to address not only an individual's immediate offence, but their longer-term reintegration into the community, thereby helping to prevent reoffending.

Community based alternatives can include various forms of treatment combined with regular drug testing to ensure that offenders abstain

from drugs. This may include talking therapies, and/or the use of substitution drugs which reduce the harms associated with sharing of needles and provide an opportunity to recover from addiction. In the USA and a variety of other countries, specialist drug courts oversee such programmes.²⁸ Promising results have been obtained by the HOPE Probation programme in Hawaii.²⁹ This has shown that imposing swift, certain but moderate sanctions on offenders who fail to comply with the terms of their probation supervision reduces re-offending and increases rates of recovery.

In some countries, particularly in South East Asia, residential alternatives may be little different to imprisonment. Many people are held in mandatory 'drug detention'

centres, including some 235,000 people in China and South East Asia.³⁰ UN monitors found a treatment facility in Brazil to be more like a prison than a hospital, 'as evidenced by the architecture of this facility and by the fact that patients had to keep their heads down and their hands behind their backs when walking through the facility and when talking to staff'.³¹ Inadequacies of informal rehabilitation centres in Peru were exposed by two deadly fires in 2011 and 2012.³²

In March 2012, 12 UN agencies called on states to close compulsory drug detention and rehabilitation centres and implement voluntary, evidence-informed and rights-based health and social services in the community.³³

Drugs and the management of prisons

The often large numbers of prisoners with drug problems and/or involved in drug trafficking pose a wide range of challenges for prison administrators. Various studies have indicated that the percentage of people in prison who have a drug problem ranges from 40 to 80 per cent and drug use amongst offenders entering prison is on the increase.³⁴ The constantly changing nature of psycho-active substances, some legal others not, adds a further dimension of complexity to the problem.

Harsh drug laws have led to sharp increases in the number of prisoners who are detained before trial and serve their sentences in accommodation which is often wholly inadequate in terms of space and facilities. A report on the Americas concluded that 'prisons not only fail to rehabilitate, but often serve as shelters from which criminals continue to operate'.³⁵ A study in East Africa found that 'the rehabilitation mandate of prisons is difficult to achieve in an environment where inmates abuse drugs and substances; this is because cases of inmate 'indiscipline and infractions rise'.³⁶

Apart from the general pressures resulting from overcrowding there are a number of specific challenges arising from the over-incarceration of drug related offenders.

Prisons can become effective vehicles for spreading drug use because it is easy for drug users to establish social relationships and pass on their drug habit.³⁷ Boredom and lack of constructive activities in prisons can also increase the likelihood of drug use.

There is evidence that many prisoners initiate injecting drugs for the first time in prison.³⁸ Between three and five per cent of women prisoners surveyed in 2014 in Jordan and nine per cent in Tunisia stated that they started using drugs or alcohol while in detention.³⁹

Health challenges

Health challenges arise from the fact that people who inject drugs often continue drug use inside prison.

In many countries, access to proven harm-reduction measures – including syringe exchange programmes and opioid substitution

therapy – is extremely limited, non-existent or banned. Where these measures have been introduced, levels of disease have fallen among prisoners, for example in Moldova.⁴⁰

Failure to provide healthcare and harm-reduction programmes for drug injecting users facilitates transmission of diseases such as HIV and hepatitis C.⁴¹ Unsterile injection equipment is often shared in the absence of the provision of needles and syringes, which are available in perhaps 60 out of 10,000 prisons worldwide.⁴² In Mauritania in 2012 there was an estimated HIV prevalence of 24.8 per cent among prisoners, 40 per cent of whom inject drugs.⁴³ The number of HIV positive prisoners in Romania increased six fold between 2008 and 2013.⁴⁴ Attention has also been drawn to the unacceptable high number of deaths of prisoners from overdose in the immediate post release period.⁴⁵ Access to substance abuse treatment programmes, in many countries, is discriminatory towards women, available only in men's prisons⁴⁶ or in less advantageous conditions (eg without a separate 'clean zone').⁴⁷

Safety and violence

In many countries, drugs are smuggled into prison by visitors, businesses which come to the prison, or during trips to court.⁴⁸ There is evidence from a number of countries that drugs are sold to prisoners by, or with the corrupt approval or involvement of staff and even cultivated inside prisons.⁴⁹ For example, illegal drug sales and use are widespread in prisons in Guatemala.⁵⁰ The use and manufacture of illicit drugs in prisons is a serious problem in Indonesia.⁵¹

In some countries, the buying and selling of drugs forms part of a black market inside prisons.⁵² The rivalries triggered thereby frequently lead to lethal violence within prisons. The problem is most acute in so called self-governing prisons, for example in Latin America, where leaders of drug gangs are often in effective control of prisons. Corruption, overcrowding, prisoner abuse, alcohol and drug addiction, and lack of security combine to produce life threatening conditions.⁵³

In Denmark's Ringe Prison where up to 75 per cent of inmates have a substance abuse problem, monitors were told that drugs were available on the accommodation wings and their use and trade were linked to violent incidents.⁵⁴ An inspection of a private prison in Liverpool in the UK found that 'gang issues and the availability of drugs, particularly new psychoactive substances (so-called 'legal highs' such as 'Spice' and 'Black Mamba'), were a significant factor in much of the violence'.⁵⁵

Attempts to assert control over drug problems can lead to unrest and even riots.⁵⁶

In order to gain control, prison authorities often attempt to keep convicted drug traffickers apart from the rest of the prison population. This strategy is used in many prisons in Brazil⁵⁷ and is being planned in Thailand.⁵⁸ In Turkey drug offenders are held in high security prisons where many are held in isolation with consequent damage to their physical and psychological well-being.⁵⁹

Trends in policy and practice

There is a growing recognition that drug use should be treated as a public health rather than a criminal justice problem. In its World Drug Report 2012, UNODC suggested rebalancing drug control policy through alternative development, prevention, treatment and fundamental human rights.⁶⁰

According to the UNODC, treating drug use as a public health issue and reducing the use of imprisonment is entirely consistent with international conventions.⁶¹ The Executive Director told the 2014 Commission on Narcotic Drugs that 'a public health response to the drug use problem should consider alternatives to penalization and incarceration of people with use disorders'.⁶²

The UN High Commissioner for Human Rights has also stated that it is 'possible, and consistent with current international drug control treaties, to re-frame some drug-related conduct as administrative offences, followed with a social and medical response'.⁶³

As a consequence a number of countries have introduced a less repressive approach, particularly to the possession of small quantities of drugs. For example, Georgia,⁶⁴ Italy,⁶⁵ Malta,⁶⁶ Slovakia,⁶⁷ Dubai,⁶⁸ The Gambia,⁶⁹ Jamaica,⁷⁰ Ecuador⁷¹ and Japan⁷² have reduced or are planning to reduce the severity of the criminal justice response to drug users.

In August 2013, the US Attorney General instructed federal prosecutors to stop charging many non-violent drug defendants with offences that carry mandatory minimum sentences. More recently, the Justice Department has encouraged more applications for clemency by such offenders and the US Sentencing Commission voted to lower substantially its recommended sentences for drug dealers, and has made this retroactively applicable to 46,000 prisoners, whose sentences would be cut by an average of 25 months. Prisoners began to be released in November 2015 and the releases will be phased in over a period of years.⁷³

Reducing penalties for drug use can have unintended consequences however. In Brazil, the 'depenalisation' of drug use appears to have led to more users being charged with trafficking offences for which sentences were increased. This, in turn, is one of the main factors behind the increase in Brazil's prison population in recent years.⁷⁴

A small number of countries are looking to toughen responses to drug possession eg Bulgaria⁷⁵ and others to increase sentences for trafficking eg the Australian state of Victoria.⁷⁶

More deep seated reforms to the regulation of drugs are underway in a number of countries. Twenty-three US states and the District of Columbia have legalised marijuana for medical use. Alaska, Colorado, Oregon, Washington state and Washington DC have allowed the sale and use of marijuana for recreational use.⁷⁷ In December 2013 Uruguay became the first country in the world to make it legal to grow, sell and consume marijuana.⁷⁸

RECOMMENDATION

In light of the growing acknowledgement of the unintended negative consequences of the 'war on drugs' and the recognition that treatment and rehabilitation of illicit drug users are more effective than imprisonment, drug policies should be reviewed.

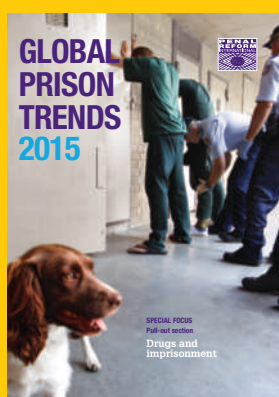
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