



# Rethinking prohibition

## Towards an effective response to drugs in South Africa

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### Summary

South Africa's prohibitionist and punitive response to people who cultivate, sell and use drugs has failed to reduce the supply, demand or harms related to the use and trade in scheduled drugs. This report explores the universal costs and consequences of prohibition before providing a global contextualisation of current drug policy debates. It then outlines the historical context of drug policy in South Africa and suggests what might be done differently in the present and future to reduce the burden of drugs and drug policy in the country.

### Key findings

- Despite the vast expenditure on a prohibitionist and criminal justice approach to drugs globally over more than five decades, drugs are more readily available at lower prices, drug use has increased significantly and the social and health harms associated with current policies and responses to drugs are substantial.
- In South Africa, the criminalisation of people who use drugs is a massive burden on the police, courts and correctional services, as well as a significant barrier to resolving the economic, social and health challenges that communities face in developing an equitable and just society.
- The current societal and political attitude towards people who use drugs, however, means that any changes to drug policy are unlikely to be radical or rapid until communities are able to see the benefits of alternative approaches.

## Recommendations

- Rethinking the current drug policy landscape would not only mean that critical criminal justice resources are made available to fight serious and violent crime, but that those who are currently criminalised for using drugs would be able to access health, social and other services without fear and stigma.
- Future drug policy development in South Africa must involve careful consideration of the objectives and principles that will provide the framework for an inclusive, effective policy that seeks to reduce the potential harms and risks of drugs to the individual, community and society.
- It is essential to reconceptualise the current approach to drugs in South Africa.
- Any policy and legislative framework used to regulate scheduled drugs in South Africa ought to be built upon principles that:
  - » Protect the health and wellbeing of all South Africans while respecting the constitutional right to freedom, privacy, autonomy and bodily integrity;
  - » Reduce the economic, health, social and community harm caused by the use of both legal and scheduled drugs;
  - » Ensure a continuum of evidence-based support and interventions including prevention and education, universal, selective and indicated care, community-based services and support and treatment when appropriate; and
  - » Reduce criminal activity, decreasing violence and criminal gang activities related to the trade in drugs.
- While this report does not propose to have all the answers, the hope is that it will initiate dialogue and debate on the issues of drug policy in South Africa.

## Introduction

Over the last 60 years, global drug policy and the legislative landscape have been dominated by the United Nations (UN) Single Convention on Narcotic Drugs, a document that foregrounds a prohibitionist approach to the production, trade, sale and use of drugs.

The prohibitionist approach – entrenched by the United States (US)-led war on drugs, which focuses on militarised domestic and international drug law enforcement – has resulted in a majority of countries across the world relying on the criminal justice system and increasingly militarised local and international law enforcement agencies to control drugs.

South Africa is no different and has a prohibitionist response to people who supply and use drugs. However, as some jurisdictions in different parts of the world have increasingly been considering and implementing various alternative drug policy models, the approach to drugs in South Africa has also started to shift.

This report explores the universal costs of prohibition and provides a global overview of current drug policy debates. It then outlines the historical context and consequences of a prohibitionist drug policy in South Africa, before outlining why any policy change in the country is likely to be incremental and slow. Finally, the report offers a set of objectives and principles that need to guide drug policy development discussions in South Africa in order to ensure that any reform aligns with both the spirit and letter of the Constitution of South Africa.

### The UN Single Convention on Narcotic Drugs (1961) (Single Convention)<sup>1</sup>

The Single Convention has informed drug legislation and policy globally since 1961. With its subsequent amendments, the Single Convention is the foundation for the globally enforced prohibitionist approach to drugs, labelling drug addiction as ‘a serious evil for the individual ... fraught with social and economic danger to mankind’.<sup>2</sup>

The Single Convention limits the ‘production, manufacture, export, import, distribution of, trade in, use and possession of drugs’ to medical and scientific purposes only.<sup>3</sup> It also outlines penal provisions for the use of drugs other than for medical and scientific purposes, calling on states to ensure that any actions contrary to the Single Convention are ‘punishable offences when committed intentionally, and that serious offences shall be liable to adequate punishment particularly by imprisonment or other penalties of deprivation of liberty’.<sup>4</sup>

## Global prohibition: costs and consequences

### Social and health outcomes linked to prohibition

The use of drugs and the desire for intoxication or altered states has always been part of being human.<sup>5</sup> For the vast majority of people who use drugs, including drugs scheduled by the convention, there will be few, if any, adverse social and health consequences.<sup>6</sup> However, for some people, the use of certain drugs can have devastating consequences and this is especially the case within a prohibitionist setting.<sup>7</sup>

### The use of drugs and the desire for intoxication or altered states has always been part of being human

Drugs that are considered relatively safe for use in a pharmaceutical form can be life-threatening when sourced from the unregulated market (which is a necessary outcome of prohibition).<sup>8</sup> For example, while pharmaceutical diamorphine is used in the United Kingdom (UK) for post-operative pain relief, street-bought diamorphine (heroin) can be dangerous due to contaminants (such as fentanyl) and inconsistent concentrations and strength. For people who use the drug there is the risk of arrest and, for those that develop a dependence on it, the consequences of their drug use can result in disease, loss of income, exclusion and death.<sup>9</sup>

While the use of drugs tends to be evenly spread across all economic, educational and racial groups, certain people will be more likely to become dependent on drugs, and some people are more likely to pay a higher price for their use of drugs. The development of a habituated, dependent pattern of drug use is far more likely to develop in people who have a history of mental illness or trauma (especially childhood trauma),<sup>10</sup> or who experience economic exclusion, unemployment, stigma or marginalisation.<sup>11</sup>

A common connecting factor in many studies on the root causes of substance dependence is a sense of psychosocial dislocation.<sup>12</sup> Communities that are

excluded, stigmatised, or culturally or geographically displaced are more likely to find added meaning in drug use and are more likely to become dependent.<sup>13</sup> Globally, marginalised people, and specifically black and brown people, are disproportionately affected by the current prohibitionist policies.

Ironically, despite the Single Convention emphasising the need to ensure access to pain medications and despite the failure of current policies to restrict the flow of unregulated drugs, over five billion people worldwide do not have adequate access to pain medications.<sup>14</sup>

### The harms of criminalisation

The Single Convention calls on signatories to 'do everything in their power to combat the spread of the illicit use of drugs'.<sup>15</sup> Much of this power has been channelled into criminalising people who trade, sell, possess or use drugs, on the assumption that the threat of arrest and incarceration will reduce the availability and use of, and therefore the harms and costs associated with, certain drugs. Leading institutions in the 'war on drugs' have therefore been the police, courts, corrections/prisons, border authorities and even the military.

However, arresting, prosecuting and incarcerating a person on a drug-related charge is an expensive exercise that carries far-reaching consequences. Drug law enforcement costs the world US\$100 billion annually, with more than one million people in prison for drug-related offences (of whom 83% are incarcerated for the possession of drugs).<sup>16</sup>

In addition, several studies clearly show that incarceration and harsh criminal justice interventions are in and of themselves predictors of future criminal behaviour and drug use.<sup>17</sup> Being remanded in custody and receiving a custodial sentence has life-long consequences. One study on urban African-Americans showed that even a single night in police custody before the age of 32 could triple the chances of becoming drug dependent, as well as increase the likelihood of committing a violent crime by 17 times and a property-related crime by eight times.<sup>18</sup> If the person is sentenced to time in prison, the figures are at least doubled.<sup>19</sup>

Despite the vast expenditure on a criminal justice approach over more than five decades, drugs are more readily available at lower prices, purity has increased and use has increased significantly. The Global Commission on Drug Policy reports that 'many countries that have

enacted harsh laws and implemented widespread arrest and imprisonment of drug users and low-level dealers have higher levels of drug use and related problems than countries with more tolerant approaches'.<sup>20</sup> The punitive approach has 'not only failed to achieve its own objectives, but has also generated serious social and health problems'.<sup>21</sup>

## Transnational organised crime

According to Antonio Costa, former executive director of the United Nations Office on Drugs and Crime (UNODC), what the international drug control system has done is allow a 'huge criminal black market' to thrive.<sup>22</sup> Because there is – and always will be – a demand for drugs, prohibition has allowed transnational criminal networks to seize and control the entire spectrum of the illicit drug market – from production and manufacture to transportation, distribution and sale, at enormous financial profit.

The global drug trafficking market was estimated to be worth between US\$426 and US\$652 billion in 2014, representing a third of the total retail value of the transnational crimes included in the study.<sup>23</sup> The largest share of this market was cannabis at approximately 43% (see Table 1).<sup>24</sup>

**Table 1: Global drug market annual values**

Market	Value
Cannabis	\$183 billion to \$287 billion
Cocaine	\$94 billion to \$143 billion
Opiates	\$75 billion to \$132 billion
Amphetamine-type stimulants	\$74 billion to \$90 billion
<b>Global Total</b>	<b>\$426 billion to \$652 billion</b>

Source: C May, *Transnational crime and the developing world, 2017*

The ripple effects of the illicit drug trade are extensive and destructive.

The absence of legal recourse in an illicit market drives violence, which is perpetrated by criminal groups to exert and maintain control over their production and transit 'turfs', resulting in injury and death and threatening public safety. In the US, gangs are the primary distributors of scheduled drugs at street level and are also involved in the smuggling, production and transportation of drugs.<sup>25</sup>

Drug-related factors have by far the largest impact on levels of gang violence in communities.<sup>26</sup>

The drug trade has been linked to numerous criminal activities, including street-level offences, corruption, money laundering and the purchase of arms. The financing of criminal enterprises impacts on state governance and the ability of state institutions to function effectively. The vast untaxed profits of those controlling drug trafficking organisations are often ploughed into expanding criminal networks, creating ever-bigger problems for law enforcement. While organised criminal groups exist across the globe, they are particularly prevalent within and between vulnerable or fragile states and have 'a strong interest in keeping countries destabilized with weak institutions, as it reduces transaction costs and increases profits'.<sup>27</sup>

According to Costa, expanding criminal markets have necessitated an expanded criminal justice response.<sup>28</sup> Resources that should have been used to fund other public services are diverted into an increasingly militarised law enforcement response, as well as a punitive criminal justice system response towards criminal organisations trading in drugs as well as criminalising possessors and users of drugs. For developing countries, this has a direct impact on their capacity to invest in sustainable development.

Prohibition and abstinence-informed responses to drugs have failed to limit the supply or use of drugs,<sup>29</sup> protect the health and wellbeing of people who use drugs,<sup>30</sup> or ensure access to essential and new medications – but it has allowed transnational organised crime to flourish.<sup>31</sup> The failure of the war on drugs is now openly acknowledged and a position supported by many organisations, including some that were established to support a prohibitionist agenda – a shift that has gradually taken place over the last two decades.

In March 2019, the UN System Coordination Task Team on the Implementation of the UN System Common Position on Drug-Related Matters reported that:

Twelve UN agencies have jointly recommended reviewing and repealing laws criminalizing drug use and the possession of drugs for personal use. The World Health Organization has recommended that countries work towards the decriminalization of drug use as a strategy to reduce incarceration and support access to HIV-related services for people who use drugs.<sup>32</sup>

While there is growing consensus across the globe that current policies have failed, individual states are still reluctant to risk non-compliance with the Single Convention – as the agreed-upon international law regarding drugs – by developing and implementing alternative approaches.

However, some exceptions can serve as examples of what the shift away from a purely prohibitionist response to drugs might look like.

## Models of alternative drug policy

There exists a continuum of policy options that range from an 'effectively unregulated market – the criminal market under prohibition at one end – to another, the legal, commercialized free market'<sup>33</sup> (see Figure 1). Under both extremes, illegal or legal profit is prioritised over health and social harm reduction, while the more centrist positions theoretically allow for the minimising of harm and maximising of benefits.

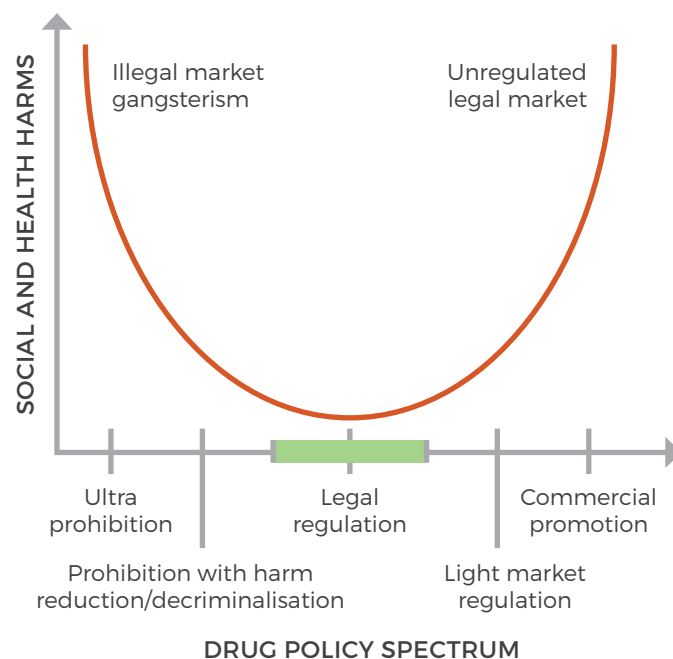
There is no one-size-fits-all approach within any of these policy options – each would need to be customised

Policies along most of this spectrum have been tried in some form or another in different parts of the world, with varying degrees of success. Some of these policy options lie within the current scope of international law, while others are beginning to push the boundaries or even go beyond the limits of international agreements.

The following policy positions offer a range of options for South African policymakers to take into consideration when debating drug policy reform.

It is important to note, however, that because the issue of drugs in society is highly complex, it would be imprudent to presume that any of these options will solve all of the issues that result from the use of and trade in drugs. There is no one-size-fits-all approach within any of these policy options – each would need to be customised, not only to the national South African context but to the needs and challenges of local communities struggling with drug use and drug trade-related criminality.

**Figure 1: Spectrum of policy options**



Source: *Count the Costs, The war on drugs: options and alternatives*, 2019

## Depenalisation

Depenalisation is a *de facto* intervention where the crime remains in law, but there is a reduction in the imposition of criminal sanctions for that crime.<sup>34</sup>

Depenalisation is one of the least disruptive options available to states as it does not require any changes to legislation. It can be implemented in line with the drug conventions and does not entail politically fraught and potentially complicated changes to legislation. It also reduces the burden on law enforcement and the criminal justice system by decreasing the policing of petty drug offences as well as by overlooking certain criminal offences.<sup>35</sup>

Depenalisation needs to be driven by a national drug strategy and requires new police and prosecutorial policies and standard operating procedures, as well as police training. Since *de facto* depenalisation often relies on police discretion, criminologist Dr Caitlin Hughes and colleagues, in a paper for the International Society for the Study of Drug Policy conference, emphasise the importance of taking police culture into account when considering depenalisation, as this approach 'runs a much higher risk of adverse effects such as justice by geography/demography if there is police opposition to reform or performance targets'.<sup>36</sup> As such, the success

or failure of depenalisation may depend on the level of police support and the flexibility of police or government performance targets.

Table 2 provides examples of countries or jurisdictions that are implementing some form of depenalisation.

**Table 2: Countries practising some form of depenalisation**

Country	Existing law/policy	Depenalisation in practice
<b>Brazil</b>	Law no 11.343 creating the National System for Public Policies on Drugs (2006)	Those caught with drugs for alleged personal use receive a warning about the effects of drugs and render community service or attend a programme or educational course about drugs.
<b>Germany</b>	The German Federal Narcotics Act (1994)	Prosecutors' offices and the courts have discretion to refrain from prosecution or punishment if the suspect possessed or procured small quantities of narcotics for personal use only.
<b>The Netherlands</b>	<i>Gedoogbeleid</i> (tolerance policy)	The Public Prosecution Service does not prosecute persons if they have small quantities of soft drugs (a maximum of five grams of cannabis or five hemp plants).

Compiled by the authors from various sources<sup>37</sup>

## Decriminalisation

Decriminalisation removes 'the statutes of criminal law from those acts to which it is applied'.<sup>38</sup> *De jure* decriminalisation refers to when jurisdictions have made specific, deliberate reforms to their legal framework for drugs; in other words, there is no means of criminally charging the individual with a crime for the use or possession of a drug. *De facto* decriminalisation refers to the non-enforcement of criminal laws that technically remain in force.<sup>39</sup> Individuals who are found using or in possession of drugs may be subject to civil or administrative penalties (such as confiscation of drugs, a fine or warning). They are often referred or diverted to voluntary or obligatory treatment programmes and are not subject to any sanctions or other form of intervention. Diversion seeks to redirect individuals away from the criminal justice system or criminal sanctions towards education, treatment and therapeutic programmes or social services.<sup>40</sup>

Decriminalisation does not contravene the drug conventions if it offers 'treatment and education as alternatives to conviction or punishment for personal consumption offences and for all other relevant offences in "appropriate cases of a minor nature"'.<sup>41</sup> As such, states that choose to decriminalise can fulfil their obligations under international law while still making the shift away from a fully prohibitionist approach to drugs. There is also a general consensus that 'doomsday predictions are simply wrong, and removing criminal sanctions for possession and use of drugs does not lead to skyrocketing prevalence rates'.<sup>42</sup>

The decriminalisation approach does and should provide a range of benefits, although the efficacy of each benefit would depend on a range of variables both at a national level and within the local context in which decriminalisation was implemented. These potential benefits include: prioritising the health and safety of drug users over punishment; reducing costs to the criminal justice system; enabling law enforcement resources to be focused on more appropriate public safety policing and serious crimes; reducing overcrowding in prisons and avoiding the adverse effects of incarcerating individuals who have committed non-violent and petty crimes; increasing access to drug treatment and harm reduction services (such as needle exchanges, drug consumption rooms, heroin-assisted treatment and related services); and reducing the stigmatisation and marginalisation associated with drug use so that drug users can access the support they need.<sup>43</sup>

However, depending on how states decide to implement decriminalisation, the situation can be more complex. Some of the detrimental outcomes of poorly conceived and implemented decriminalisation models include:

- The compulsory detention in drug treatment and rehabilitation centres of people who use drugs. These centres often violate the human rights and threaten the health of detainees. Detention in such an institution 'often takes place without the benefit of sufficient due process, legal safeguards or judicial review'.<sup>44</sup>
- Low or unspecified threshold amounts of drug possession considered appropriate for personal

use. Generic terms such as 'small amount' or 'small quantity' results in the law being applied inconsistently across police and geographical jurisdictions. Some countries, such as Russia, have implemented what has been termed 'hollow decriminalisation'. The thresholds are so low that most individuals who use drugs will still be criminalised and handed harsh prison sentences for the possession of drugs above the mandated threshold for personal possession.<sup>45</sup>

- Lack of or inaccessible health services and inadequately resourced treatment options for those who have been diverted. The Global Commission on Drug Policy reports that despite the proven efficacy of public health measures, 'governments often do not fully implement these interventions, concerned that by improving the health of people who use drugs, they are undermining a "tough on drugs" message'.<sup>46</sup>

However, it has been difficult for researchers and policymakers to draw any overall conclusions about the impact of decriminalisation considering the wide variation in models across the world and uneven implementation between jurisdictions with the same models.<sup>47</sup>

### Drug decriminalisation in Portugal<sup>48</sup>

Described as 'a public health policy founded on values such as humanism, pragmatism and participation', the Portuguese model of drug decriminalisation has received global attention over the last two decades.

Law 30/2000 decriminalised the acquisition, possession and consumption of drugs for personal use. Drug trafficking is still a crime, which incurs a penalty of up to 12 years' imprisonment on conviction. If a person is caught possessing or using drugs less than the stipulated maximum amount for personal use, they are evaluated by a commission for dissuasion of drug addiction (comprised of three members, two from a social or health background and the third from a legal background). The commissions work independently of the criminal justice system and usually recommend one of the following outcomes, depending on their determination of the person's dependence on drugs:

- Dismissal of the case or a provisional suspension of proceedings;
- The imposition of administrative sanctions, ranging from warnings to bans to therapy and fines;
- Referral to treatment, which is always voluntary.

Crucially, a change in the law was accompanied by public health policies oriented towards treatment and harm reduction. Treatment options – based on a full evaluation of the individual's medical and social needs – include detoxification, psychotherapy, opioid substitution treatment (OST) and methadone maintenance treatment. Harm reduction strategies include needle and syringe exchange programmes, distribution of hygiene materials, shelters, refuges and outreach teams, as well as campaigns raising awareness about treatment options and harm reduction services.

The outcomes of the Portuguese model have been positive:

- No increase in overall drug use;
- A reduction in drug overdose deaths;
- A reduction in new HIV diagnoses attributed to injecting;
- A decrease in incarceration for drug offences.

While not a silver bullet for all of Portugal's drug use-related challenges, the policies enacted and implemented by the country represent what can be achieved through a well-structured, coherent and human-centred approach.

## Legal regulation

Legalisation is a process by which something illegal is made legal. The end point of the process of legalisation is legal regulation or a legally regulated market.<sup>49</sup>

The European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) explains that in relation to drugs, legalisation is most commonly applied to acts of supply – the production, manufacture and sale of drugs for non-medical use:

Legalisation would mean that such activities, and use and possession, would be regulated by states' norms, in the same way that it is legal to use alcohol and tobacco. There can still exist some administrative controls and regulations, which might even be supported by criminal sanctions.<sup>50</sup>

Several different models for legalisation have been proposed, mostly concerning cannabis, with varying degrees of government regulation. The key tension in developing models of legalisation lies between balancing the interests of public health (to guard against risky drug use and minimise harms) with the interests of commercialisation (to maximise sales and profits).<sup>51</sup> *Count the Cost* notes that while full legalisation remains a feature of the debate on drug legalisation, 'it has few

advocates and is more useful as a thought experiment to explore the perils of inadequate regulation'.<sup>52</sup>

There are very few examples of the legal regulation of drugs across the world, precisely because the legal regulation route is currently in violation of the UN drug conventions. Those that do exist are restricted to cannabis.

In the Netherlands, local retail sales are tolerated without legalising commercial production. The cultivation, production, dealing in and possession of drugs are criminal acts, but the sale of 'soft drugs' (i.e. cannabis) in coffee shops is tolerated and regulated. For example, coffee shops must not sell hard drugs and only Dutch residents over the age of 18 can purchase cannabis from coffee shops.<sup>53</sup>

## Any significant policy change also brings with it the risk of unintended consequences

Some countries are finding ways to regulate the distribution and sale of cannabis without commercialisation – for example, through not-for-profit entities or social enterprises such as the small membership-based buyers' clubs or cannabis social clubs (CSCs). For example, CSCs in Spain have 'become increasingly recognized and normalized socioeconomic elements in their respective communities'.<sup>54</sup> Other jurisdictions – including Argentina, Belgium, Colombia and Chile – reportedly tolerate the operation of informal CSCs.<sup>55</sup>

Uruguay has arguably gone the furthest of any country along the pathway to full legalisation. In 2013, Uruguay passed legislation that established a legal framework for the state regulation of cannabis for recreational use. The legal framework provides for strict state control. All growers and users must be registered with the Institute for the Regulation and Control of Cannabis (which will only recognise Uruguayan citizens and permanent residents over the age of 18) and the government is the sole buyer of licensed cannabis production and sole supplier for licensed pharmacy sales. To limit commercialisation and health-related harms, there is a ban on advertising and promoting cannabis, it is sold in unbranded packaging that displays product information and health warnings, and public health awareness

campaigns are carried out to educate citizens of the risks involved in the consumption of cannabis.<sup>56</sup>

The International Narcotics Control Board has made a point of criticising Uruguay's cannabis legislation as being in contravention of the UN drug conventions.<sup>57</sup> However, officials in Uruguay have insisted that 'the law is in line with the country's fundamental international human rights treaty obligations, which take precedence over drug control, and that the contradictions between the two are a matter for the international community to resolve'.<sup>58</sup>

This criticism represents one of the significant barriers to states wanting to explore different models of legal regulation – the politically and practically fraught process of challenging, negotiating or even falling outside of the current global legal framework for drugs as articulated in the UN drug conventions. Despite this, and because the provisions of the drug conventions are subject to the 'constitutional, legal and administrative systems'<sup>59</sup> of member states,

an increasing number of countries are finding ways to begin to legally regulate some illegal drug markets ... through expanding medical supply models; implementing de facto legal regulation; or through withdrawing from one or more of the conventions, then seeking to re-accede with a reservation regarding particular drugs, as Bolivia has done for coca leaf.<sup>60</sup>

Any significant policy change also brings with it the risk of unintended consequences; this is especially true in this case, where the policy is largely untested and has the potential to negatively affect the health and wellbeing of vulnerable groups in the population. Risks that researchers and policy analysts have identified regarding the legal regulation of drugs include the possibility that:

- Profit-motivated commercialisation will lead to the aggressive marketing of legally regulated drugs, which will, in turn, lead to an increase in consumption and the harms associated with high levels of consumption;<sup>61</sup>
- Many countries seeking to legally regulate drugs lack the administrative and governance capacity to effectively implement, monitor and enforce changes in the law and regulations, which 'has the potential to allow agile multinational actors opportunities to exploit such weaknesses as well as creating new opportunities for corruption';<sup>62</sup>



- Organised crime reliant on the income from the illicit drug trade will be displaced into other areas.<sup>63</sup>

However, advocates of legal regulation argue that introducing this policy change cautiously over several years with careful monitoring and constant evaluation could mitigate many of these risks. The Global Commission on Drug Policy maintains that the right response is to 'ensure that policies are designed to manage such risks, rather than to abandon reform altogether'.<sup>64</sup>

Advocates see the advantages of legal regulation lying in the fact that all aspects of drug production and distribution are answerable to and can be held accountable under the law. The formulation and composition of drugs can be standardised, thereby reducing the circulation of contaminated drugs and allowing for packaging that provides both content information (including the strength of the drug) and health information (including warnings if appropriate).<sup>65</sup>

Proponents of legal regulation also believe that this approach would be the most effective in retaking control of the drug market, disempowering organised crime and dismantling the wide range of harms caused by organised crime's monopoly of the drug trade.<sup>66</sup>

Rather than providing a silver bullet, legal regulation would 'progressively reduce the scale of illegal drug markets, organized crime activities and the harm they cause, and organized crime's overall power and influence'.<sup>67</sup> According to the Global Commission on Drug Policy, a contraction in the scheduled drug market could affect those involved in various ways, including:

- Exiting the criminal market, a realistic outcome especially for low-level actors or those on the periphery of the criminal networks;
- Shifting into the lawful markets emerging from legal regulation as legitimate entrepreneurs where those opportunities exist;
- Servicing smaller illegal markets that will exist in parallel to or in competition with emerging legal markets;
- Redirecting energies and resources into alternative or new forms of criminality and organised crime.<sup>68</sup>

While the last scenario draws the most concern, policy analysts advise that this risk should not be overstated and should certainly not be a reason for maintaining the current system of drug control.<sup>69</sup>

Instead, advocates of legal regulation say that these concerns are a reminder that drug policy does not operate in isolation and impacts a number of other systems. As such, any shift in drug policy should be phased in gradually as part of 'an interlocking set of reforms [including] strengthening the rule of law, carrying out reform of policing, and increasing accountability for police abuse and corruption'.<sup>70</sup>

## Countries emerging from conflict or political upheaval are the most vulnerable to the impacts of organised crime

Failed states, countries emerging from conflict or political upheaval and fragile democracies are the most vulnerable to the impacts of drug-related organised crime, which is 'most socially corrosive when aligned with structural vulnerabilities such as poverty, conflict, fragile social and political institutions, and particularly, militarized enforcement responses'.<sup>71</sup> The issues of governance, socio-economic development, organised crime, public health and drug policy are intricately complex and interlinked. But far from a reason not to shift towards a decriminalised, if not legally regulated, approach to drugs, these interconnections may in fact be part of the argument for moving towards an approach to drug policy and legislation that will reduce harm across a range of pressing challenges.

## Medical response

The Single Convention mandates a prohibitionist approach with the exception that

... when abusers of drugs have committed such offences, the Parties may provide, either as an alternative to conviction or punishment or in addition to conviction or punishment, that such abusers shall undergo measures of treatment, education, after-care, rehabilitation and social reintegration.<sup>72</sup>

An increasingly popular approach, and a way to possibly circumvent the conventions, is to focus on the health rights and needs of people who use drugs.<sup>73</sup>

The health-focused response to drugs is itself multifaceted but predominantly frames drug use, specifically dependent drug use, as a disorder or disease that, like other chronic conditions, requires treatment. Supported by the World Health Organization (WHO) and UNODC, the health-based approach has been motivated mainly by the increased levels of HIV, the hepatitis C virus (HCV) and other diseases that affect people who use drugs and the communities in which they live.<sup>74</sup> The framing of drug use as a health rather than a criminal problem, with increased access to treatment a priority, is seen as a more appropriate and less punitive way of responding to drug use and as a way to reduce stigma.<sup>75</sup> Drug courts are an example of how even the criminal justice system supports the narrative of ‘patient, not prisoner’.

## The majority of people who use drugs do not experience significant harms or develop a drug dependence

Framing drug use as disease or disorder is, however, an over-simplification and can be just as problematic, stigmatising and harmful as criminalising people for the use of drugs. The majority of people who use drugs do not experience significant harms or develop a drug dependence and therefore do not need ‘addiction treatment’. Further, it has been shown that the disease label can increase stigma and the description of ‘addiction’ as a ‘brain disease that compromises free will’ can be used to justify forced treatment and the removal of autonomy.<sup>76</sup> A singular focus on drug use as a medical problem implies that people can be ‘treated’ out of drug use while ignoring systemic issues that drive the use of drugs.

Like the prison-industrial complex, the pathologisation of people who use drugs is a billion-dollar industry.<sup>77</sup> Similarly, there is a lack of data that supports the conceptualisation of addiction as a ‘chronic relapsing disease that if left untreated could result in death’.<sup>78</sup> An undue medical focus runs the risk of coming full-circle, turning patients into prisoners. While it is essential that people who use drugs can access appropriate medical services, if

the underlying understanding is still firmly rooted in prohibitionist thinking, it is unlikely that these services will meet the needs of those who need them most.

Ultimately criminalisation and medicalisation can serve the same purpose: the social control of targeted people.<sup>79</sup>

## Harm reduction

Harm reduction is a proven alternative response to drugs.

Driven by the imperative to reduce the number of HIV infections among people who inject drugs due to restricted access to sterile injecting equipment, the current understanding tends to focus on bio-medical responses, such as OST and needle and syringe services. However, harm reduction is more than the list of essential harm reduction services described by the WHO, UNODC, the President’s Emergency Plan For AIDS Relief (PEPFAR), the Centers for Disease Control (CDC) and others.

The underlying philosophy of the harm reduction approach and the principles used to develop context-specific and appropriate interventions offer pragmatic, effective, rights-affirming and evidence-based alternatives. Harm reduction avoids the binary of criminalisation or pathologisation. Correctly applied, harm reduction-informed options can create a continuum of services that include early prevention, delayed initiation, less harmful use and the resolution of substance use disorders (SUDs).

As suggested by Mark Shaw,<sup>80</sup> director of the Global Initiative against Transnational Organised Crime, the principles of harm reduction can also be applied to reducing the harms created by crime at community and transnational levels. Shaw’s belief that there could be broader benefits beyond the health sphere by unifying language and policies is further supported by law enforcement officers actively involved in policing within communities where people use drugs.<sup>81</sup> During an interview with a member of the Metro Police in Durban, similar sentiments were expressed: ‘We need to find a new way in dealing with these issues – we should be focusing our efforts on minimising violence and other serious crimes. Trying to reduce the harms of the drug trade, rather than just the trade itself, which will always be there.’<sup>82</sup>

## Prohibition in South Africa: contextual overview

Unsurprisingly, race and racism were factors that prompted South Africa to play a pivotal role in the early days of drug prohibition. Motivated in part by concerns that cannabis rendered the black labourer in Natal lazy and the brown worker in Cape Town dangerous, South Africa's request to the League of Nations' Advisory Committee on the Traffic in Opium and Dangerous Drugs that Indian hemp (dagga) be added to the international list of restricted drugs was approved at the Second Opium Conference of 1924.

The forced separation of the races and militarised police under apartheid shaped and entrenched the control, provision and regulation of drugs in South Africa for much of the latter half of the 20<sup>th</sup> century. The punitive Abuse of Dependence Producing Substances and Rehabilitation Centres Act passed in 1971 oversaw the incarceration of 77 000 citizens, the vast majority of whom were black males, in just the first two years of its enforcement.<sup>83</sup> In their chapter on South African drug policy – within a timely collection of essays revealing the racism inherent in the war on drugs – Shaun Shelly and Simon Howell argue that during apartheid race became a 'marker of suspicion' justified by a hierarchy in which 'colour and deviance are intimately woven, the result of which is that the policing of drugs continues the logic and effects of apartheid by other means'.<sup>84</sup>

Despite a new democratic government and constitution in 1994, there was no critical evaluation or review of South Africa's drug policy. The Drugs and Drug Trafficking Act No 140 of 1992 – which criminalises 'dangerous' and 'undesirable' dependence-producing substances and subjects those convicted of offences related to such substances (including use and possession) to harsh penalties<sup>85</sup> – remained in place, unexamined, despite numerous other laws being thoroughly reviewed in the immediate post-democracy years.

In addition, guided by the international conventions, South Africa incorporated the rhetoric of the war on drugs into the first National Drug Master Plan (NDMP) (1999-2004). The Plan claims that

... drug abuse is a major cause of crime, poverty, reduced productivity, unemployment, dysfunctional family life, political instability, the escalation of chronic diseases such as AIDS and

tuberculosis, injury and premature death. Its sphere of influence reaches across social, racial, cultural, language, religious and gender barriers and, directly or indirectly, affects everyone.<sup>86</sup>

If the use of drugs was the root cause of the serious societal issues listed in the country's first NDMP, the vision of a 'drug-free society' could be a theoretically legitimate aim. However, in reality, the pursuit of a 'drug-free society' has compromised the human rights, culture and wellbeing of many South Africans and the communities in which they live.

The prohibitionist response adopted by South Africa relies heavily on the criminal justice system to regulate the market, identify, arrest, prosecute and punish the people who manufacture, use and sell drugs. However, the cost and consequences of prohibition in the South African context have not been critically evaluated.

## The costs and consequences of prohibition in South Africa

### A criminal justice system response

Drug-related crime in South Africa falls into the statistical coding category 'Crime detected as a result of police action'. In other words, the detection and arrest of people for drug-related offences happens as a result of the proactive deployment of police resources and action. The over-policing of non-violent drug-related offences is not only costly in terms of the resources used, it also diverts human and financial resources away from serious and violent crime.

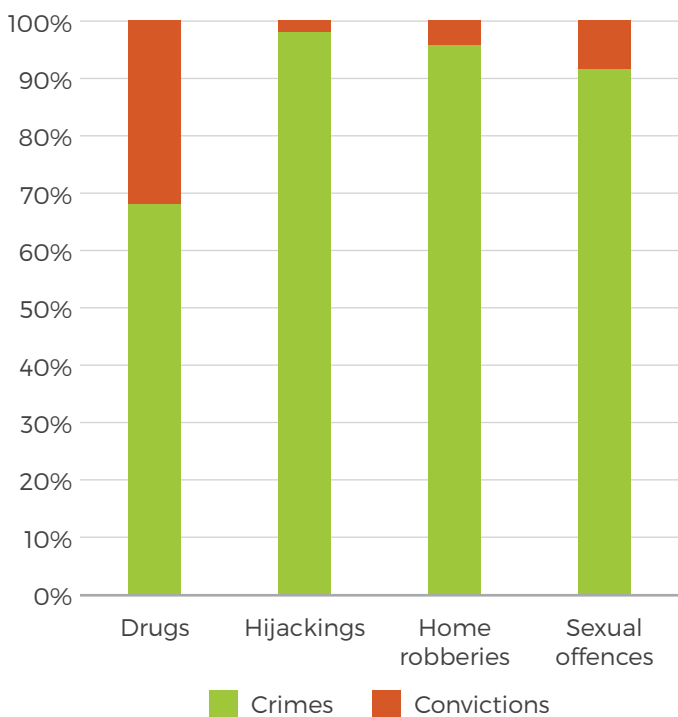
Of all the drug-related arrests, about 40% of people are released without charge

Since 2013, 15% of all arrests in South Africa have been for drug-related crime.<sup>87</sup> In addition, the levels of drug-related crime rose an average of 12% per annum between 2011 and 2017/2018,<sup>88</sup> with a 235% increase in arrests for crimes that involved only the possession or sale of drugs.<sup>89</sup> In comparison, the 17 community-reported serious crimes dropped by 8% over the same period.<sup>90</sup> The 2018/2019 South African Police Service (SAPS) Technical Indicator Descriptions set a target to

increase the number of drug-related crimes reported by 47,36% to 480 385.<sup>91</sup> The performance indicators also target an increase in the seizure of all categories of illicit drugs. A footnote related to this specific indicator states 'This performance indicator provides insight into the outcome of policing actions, such as operations and the investigation of crime. It is, however, impacted on by a number of factors, including, inter alia, the recent Constitutional Court Judgement [see box below] and the actual availability of illicit drugs in communities.'<sup>92</sup>

Once a person has been arrested for a drug related crime, they will either be charged, or let go. Of all the drug-related arrests, about 40% of people are released without charge. Because of the large number of people arrested and released without charge, the National Prosecuting Authority (NPA) has a high conviction rate for drug-related crimes.<sup>93</sup> The number of successful convictions compared to the number of arrests for drug-related crime has been steady at around 50% (49%-58%) for the last decade.<sup>94</sup> Of all criminal convictions reported by the NPA in 2019, 48% (317 475) were for drug-related crime.<sup>95</sup> This high volume of drug offence cases places a substantial burden on the resources of the courts and the NPA.

**Figure 2: Non-violent drug possession offences and convictions vs vehicle hijackings, home robberies, murder and sexual assault**



Source: SAPS crime stats and NPA performance reports

The high rate of conviction is because many of those arrested on a charge of drug possession accept an admission of guilt fine to avoid being remanded.<sup>96</sup> If the person does not admit guilt and pay the fine, or can't afford to pay it, they are remanded in custody. Custody, in the South African context, usually means being detained for days or weeks in an already overcrowded and violent prison system. Remand also impacts on the economic and social wellbeing of the individual, their family and community.

Drug offences account for around 18% of remand admissions in the Western Cape province. A report on remand practices and populations in the Western Cape highlights that:

... people whom a court eventually decides are entitled to bail are needlessly detained in the most notorious remand facility in South Africa for up to two weeks. For those who suffer from addiction, this has implications in terms of enforced detoxification and associated withdrawal, which in some instances can lead to pain, violence or death. Other health impacts and risks experienced at Pollsmoor have been documented elsewhere.<sup>97</sup>

The same report notes that the total cost per drug remand detainee is approximately R20 000, given that the average duration for drug possession offences is 51 days, at the expense of R380 per day in 2017/18.<sup>98</sup> Each person arrested for drug offences who spends time in remand or receives a custodial sentence costs the Department of Correctional Services around R140 00 a year.<sup>99</sup>

There are also significant health costs associated with incarceration. The high levels of tuberculosis (TB), HIV and other diseases among people who are incarcerated in South African prisons are well documented, as are the levels of violence and trauma experienced by this group.<sup>100</sup> Considering the non-violent and victimless nature of the crime, this is a disproportional punishment.

There are further costs to those who are incarcerated and many consequences extend long after the sentence is served. A criminal record (which applies even if the person pays an admission of guilt fine) often prevents the individual from participating in the formal economy – this can lead to increased criminal activity, often in the form of acquisition crime driven by necessity. Such narratives are not unique or singular, and the costs and consequences in South Africa of a punitive framework echo those described from around the world.

## Who is paying the price?

If psychosocial dislocation drives the dependent use of drugs,<sup>101</sup> it is not hard to understand why people from the 'Cape Flats' – who have a history of slavery, fragmented families and forced removals during the apartheid era<sup>102</sup> – are the population in South Africa with the highest levels of drug dependence.<sup>103</sup> The increasing urbanisation of black populations in South Africa, which has resulted in the loss of traditional oral history, the separation of families and increasing inequity, has seen a corresponding rise in drug use and dependence. For example, before 2010, the use of heroin was primarily restricted to young, middle class, white males.<sup>104</sup> More recently, there has been an increase in heroin use among black and brown populations.<sup>105</sup> In the City of Tshwane, the majority of those accessing the University of Pretoria's Community Oriented Substance Use Programme (COSUP) are black people seeking help for their heroin dependence.<sup>106</sup>

## There is a disparity between arrest rates of rich and poor people and white, coloured, Indian and black people

When it comes to drug arrests, all are not equal before the law. There is a disparity between arrest rates of rich and poor people and white, coloured, Indian and black people.<sup>107</sup> Economically marginalised communities are more likely to be arrested for drug use and possession simply because they are more visible and their communities are more aggressively policed. In South Africa, coloured men are nearly 2.5 times more likely than other racial groups of being arrested on suspicion of drug possession or drug dealing.<sup>108</sup> And because of the high rates of arrest and incarceration for drug-related offences, coloured people make up 18,2% of the prison population despite being only 8,8% of the total population of South Africa; in comparison, white people make up 7,8% of the population, but are only 1,6% of the prison population.<sup>109</sup>

Children from economically marginalised communities are also vulnerable to the unintended consequences of the prohibitionist approach. The SAPS annual report indicates that in 2018/2019, there were 2 143 543 'actions' under the category 'School visits (including patrols, attending to complaints, searches for drugs

and weapons, attending meetings on school safety and other crime prevention initiatives)'.<sup>110</sup> One of the predictors of adolescent drug use developing into a drug dependence is being caught and labelled as a person who uses drugs.<sup>111</sup> Placing a young person who uses drugs into a treatment setting can introduce them to new drugs and patterns of use, not to mention the further marginalisation and isolation as a result of the stigma experienced when they are released from treatment. Programmes that rely on confrontation, criticism, deviancy modelling and stigma are more likely to harm individuals.<sup>112</sup> To try and 'scare children straight' can increase the chances of future contact with the criminal justice system and causes more harm than good.<sup>113</sup> Indeed, a recent court judgement concluded that custodial sentences for children due to drug use were unconstitutional.<sup>114</sup>

With the increased likelihood of arrest and incarceration, cycles of marginalisation are further perpetuated both socially and economically. Incarceration, which robs people of economic participation and narrows legal options for earning money, increases poverty and creates a cycle of criminalisation and economic exclusion that can last for generations.<sup>115</sup>

## Is it worth the price?

In South Africa, as in the rest of the world, despite a decade of sustained and coordinated efforts to disrupt drug markets, record levels of drug seizures, a three-fold increase in arrests and high levels of conviction, the supply and consumption of drugs has increased, while the price of drugs has dropped.<sup>116</sup> Data continue to show that the threat of arrest (including for juveniles) or prison sentences does not reduce drug use or prevalence; conversely, the application of the law is likely to increase dependent drug use and recidivism.

The criminalisation of people who use drugs also drives organised crime. Much gang violence in South Africa is motivated by competition over the revenue generated by the trade in illicit drugs, with the majority of gangs in Cape Town making their money through the procuring and distribution of drugs such as crystal methamphetamine (known as 'tik'), heroin (known as 'nyaope', 'whoonga' or 'unga') and cannabis.<sup>117</sup> A recent report on the smuggling routes into and growing heroin market in South Africa describes the impact of this transnational organised crime on communities in major metros in the country:

Where communities live under gang governance, as they do in some parts of Cape Town, Johannesburg and Nelson Mandela Bay, they are subject to extreme levels of violence as gangs compete for control of drug markets. This violence has a secondary negative effect on communities that is most evident during gang wars, when long-running gang battles prevent children from walking to school or ambulances from operating.<sup>118</sup>

The evidence shows that the criminalisation of people who use drugs is, at best, ineffective and, at worst, causes undue suffering and harm.

Prohibitionist policies cannot be justified through the use of a cost-to-benefit equation. The cost is financially astronomical, socially immeasurable and, in both instances, there is only a negative return. In the words of the late Kofi Annan, 'Drugs have destroyed many lives, but wrong government policies have destroyed many more.'<sup>119</sup>

The prohibitionist approach to drugs in South Africa therefore requires a rethink – in a way that will reframe the issues to pivot away from criminalisation towards a solutions-driven and harm-reduction approach.

## Amid reform resistance, signs of change

### Reform resistance

Despite the clarity of the data showing that prohibition is not restricting the demand or supply of drugs nor reducing drug-related harms, as well as the 2017 Constitutional Court ruling declaring the criminalisation of the use of cannabis unconstitutional (see box below), there has been no indication that the general sentiment towards the criminalisation of drug possession and use is about to change significantly in South Africa. In fact, support for the prohibition of drugs in South Africa and the criminalisation of people who use drugs is extensive and informs the response to drugs at all levels of society.

From the government's point of view, one of the primary concerns about drug policy reform is non-compliance with the UN Single Convention. As there is little political will in South Africa to withdraw from the Single Convention in order to re-accede with reservations or fully withdraw, and as there is no indication that these conventions will be revised or abandoned in the near future, any *de jure* relaxation of the prohibitionist

response to drug use in South Africa must be justifiable in terms of the conventions.

## There has been no indication that the general sentiment is about to change significantly in South Africa

Politicians in South Africa continue to refer to drugs with words such as 'scourge', 'evil' and 'abuse', often citing drugs as the cause of crime, violence, domestic abuse and poverty. The Minister of Police, Bheki Cele, made the following statements in his 2019 budget speech:

We will be intensifying our campaigns ... in the fight against drug and substance abuse. Which continues to be a problem in our society, the increase in illicit drug use and alcohol consumption are some of the main contributors to the perpetration of violent crime. Chairperson we will continue to focus on three levels of the drug value chain, which are:

- International and domestic organised crime drug syndicates (addressing highflyers);
- Drug manufacturers (domestic drug laboratories);
- Drug cultivation (cultivation of cannabis and targeting hydroponic dagga laboratories).

We will also work on tightening legislation around drug and substance abuse.<sup>120</sup>

Cele also said that one of the strategies to enhance visibility would be to 'remove drug addicts off the streets' and that 'drug-infested communities' would be prioritised.<sup>121</sup> Also in 2019, Ronald Lamola said that one of his first priorities as the new minister of justice and correctional services was to arrest people who used drugs and 'dealers' in order to 'clean the streets'.<sup>122</sup> Drugs have become a politically expedient catch-all to avoid political accountability on certain issues.

Such views are not limited to government ministers. The 2016/17 Victims of Crime Survey reported that 44% of South Africans felt that 'drug-related needs' was the main reason people committed crime. This perception that 'drugs are the problem' is not surprising considering the rhetoric of politicians, as cited above.

## Signs of change

Despite support for the prohibitionist approach and the criminalisation of people who use drugs informing the state's response at all levels of society in South Africa, there are individuals within the police, government and stakeholders who are openly supportive of alternative responses to drugs. There are also pockets of innovation where the failures of current policies have necessitated the need for pragmatic responses. Highlighting some examples of these is instructive of how change may be implemented.

### Constitutional Court Ruling on Cannabis

On 18 September 2018, the Constitutional Court of South Africa ruled that certain sections of the Drugs and Drug Trafficking Act 140 of 1992 were inconsistent with Section 14 of the Constitution of South Africa to the extent that they criminalise the use or possession in private or cultivation in a private place of cannabis by an adult for his or her own personal consumption in private.

In its deliberations, the Constitutional Court took into account the right to privacy enshrined in the Constitution of South Africa, the legislative and policy positions of other countries towards cannabis and the health concerns surrounding cannabis. The Court found that:

- The right to privacy entitles an adult person to use or cultivate or possess cannabis in private for his or her personal consumption.
- There are many societies around the world based on the democratic principles of freedom, equality and human dignity that have either legalised or decriminalised the possession of cannabis in small quantities for personal consumption.
- There is no persuasive evidence to suggest that cannabis in small amounts is harmful to users (especially when compared to the harm resulting from the use of alcohol), that cannabis use causes violent or aggressive behaviour or that the use of cannabis leads to the use of more dangerous drugs.<sup>123</sup>

The ruling led to a drop of nearly 100 000 annual arrests, yet many people are still being arrested for cannabis use and possession.

On 5 August 2020, Cabinet approved the Cannabis for Private Purposes Bill, which gives effect to the Constitutional Court ruling, ahead of its submission to Parliament for processing.

Law enforcement agencies are at the forefront of the response to drug use and often have to deal with the people most affected by the consequences of a prohibitionist policy. Faced with these realities and the revolving door of recidivism, several mid- to high-ranking officers have expressed a willingness to explore alternatives to a purely criminal justice response to drugs.

Recently, Visible Policing provided unprecedented support to COSUP's harm reduction project, which provides essential services to people who use drugs.<sup>124</sup> In eThekweni, Metro Police have worked alongside people who use drugs to provide services at shelters during the Covid-19 lockdown. In Cape Town, the Metro Police requested advice from civil society on how best to manage the health issues of street-dwelling people who use drugs during the Covid-19 lockdown instead of arresting them.<sup>125</sup>

Furthermore, the City of Tshwane is the first in Africa to fund community-based low-threshold harm reduction health and wellbeing services for people who use drugs (see box below). Although the eThekweni municipality previously prevented harm reduction services, the necessities of the Covid-19 lockdown highlighted and motivated the need for change. The municipality is working closely with civil society and the South African Network of People Who Use Drugs (SANUP) to find the best way to meet the health needs of people who inject and use drugs.

### The Community Oriented Substance Use Programme in the City of Tshwane<sup>126</sup>

COSUP is the first publicly funded, community-based programmatic response to the use of illegal substances in South Africa. It is founded on a systems-thinking, harm-reduction approach to public health and clinical care.

Implemented by the University of Pretoria in four of the seven Tshwane metropolitan municipality regions, COSUP seeks to provide a continuum of evidence-based, substance-use services that are integrated into the delivery of community-oriented primary care. The core service package includes: physical, mental and substance use screenings, assessments, brief interventions and referrals; harm reduction counselling; OST; needle and syringe services; and social services, skills development and shelter. HIV and TB screening has been integrated into the package, and viral hepatitis testing is conducted where laboratory services and resources

allow. Treatment of HIV, TB and HCV infections is provided in partnership with the available health services.

Between 2016 and 2019, COSUP created practical working relations with 169 organisations and institutions and set up 17 service sites in Tshwane. The majority of the service sites operate within or from the premises of non-profit and faith-based organisations, while five sites are in public health facilities. These sites provide counselling, linkage to care and OST services to 1 513 adults, most of whom are male, with similar proportions of clients who smoke or inject heroin. It also offers needle and syringe services (with approximately 17 000 needles distributed per month) and has built human resource capacity in harm reduction among staff, clients and personnel in partner organisations.

Some of the challenges encountered by COSUP have included: uncooperative or negative attitudes from healthcare workers, law enforcement and community members; the inflated cost of OST medication; sustainability of funding; and limited capacity and experience in evidence-based treatment of opioid use disorders and harm reduction.

The new NDMP (2019 – 2024) was released on 25 June 2020.<sup>127</sup> Unlike previous versions, people who use drugs participated in the consultative process that fed into the drafting of the latest plan. The NDMP is founded on the following principles:

1. Rights-based: the Plan respects, protects, and promotes human rights. All objectives are based on human rights principles enshrined in the Constitution of South Africa.
2. Evidence-based: the Plan will be adapted as new evidence becomes available.
3. Multi-sectoral and multi-lateral: the success of the strategy depends on several government departments, stakeholders and cooperation at several levels.
4. People-centred: the Plan is cognisant of the harms related to SUDs and addresses drug-related bio-psycho-socioeconomic issues related to the illicit home and commercial cultivation, manufacture, and production of and trafficking in drugs.
5. Inclusive and participatory: people who use drugs and communities must be consulted in the development and implementation of the NDMP 2019-2024.

SANUP analysed the strengths and weaknesses of the most recent NDMP, which are summarised in Table 3.

**Table 3: Strengths and weaknesses of the NDMP (2019 – 2024)<sup>128</sup>**

Strengths	Weaknesses
Represents a significant change in direction when compared to previous plans.	Sections that promote a biomedical understanding of drug use detract from the message of inequity and lack of opportunity as a driver for drug dependence.
Includes a long overdue emphasis on human rights.	There is undue attention on novel psychoactive substances that doesn't reflect the reality of drug use on the ground.
Has a new focus on reducing the levels of dependence and harm that the use of certain drugs can cause, allowing for a broader range of evidence-based and rights-affirming responses.	The police indicators that include numbers of arrests are not evidence-based or appropriate.
The five principles that inform the plan are progressive.	A critical issue that is not adequately addressed is how the Central Drug Authority will be funded and afforded the authority and resources that it needs to implement, monitor and adjust the plan as described in the document.
Recognises the harms caused by the criminal justice response.	The plan does not include a clear statement on policy direction.
An emphasis on poverty and how marginalised communities are disproportionately affected by current policies represents a shift in the understanding of what is needed to reduce the harms associated with drugs.	The plan lacks a clear mandate for the provision of life-saving harm-reduction services, including needle and syringe provision and opioid agonist therapies. Indicators specifically related to the provision of essential harm-reduction services that were included in earlier versions have been removed.



Strengths	Weaknesses
<p>The focus on key populations is promising. The key populations are defined as:</p> <ul style="list-style-type: none"> <li>• Youth in and out of school/institutions of higher learning</li> <li>• Children</li> <li>• Women</li> <li>• Persons with disabilities</li> <li>• Pregnant women</li> <li>• Families in all their manifestations, including child-headed families</li> <li>• Disadvantaged people in vulnerable communities</li> <li>• Occupational groups at risks (such as artists, athletes and professionals)</li> <li>• Key populations (such as LGBTIQ, sex workers, migrant workers, etc).</li> </ul>	<p>The plan lacks a clear statement on the Constitutional Court ruling that the use of cannabis should not result in arrest, and that the police performance indicators that call for the arrest of people who use drugs must be revised and arrest targets scrapped.</p>

## Moving away from prohibition

No matter how convincing the data, there will be opposition to abandoning the war on drugs – and the moral, racial, economic and power agendas that informed this approach. This opposition cannot be ignored or underestimated. Pushback must be considered when planning or recommending any alternative responses to the use and possession of drugs. It would also be misguided to presume that legal regulation or decriminalisation will solve all of the issues that result from the use of and trade in drugs. Any solution that succeeds in reducing the burden of the current drug response and use of drugs will need to be intersectoral, progressive, negotiated, implemented incrementally and contextually appropriate. The issue of drugs in society is complex. Reductionist responses that label drug use as ‘criminal’ or ‘pathological’ and prescribe a set of fixed interventions are likely to result in significant collateral harms.

Several inter-related factors need to come together to motivate, facilitate and sustain a shift in a policy position or response to an issue. Policy change is a highly complex process and no single policy model is likely to comprehensively answer how to approach an issue as complex as drug policy.

Data alone will not be sufficient to motivate, facilitate and sustain the radical shift in drug policy that is needed to mitigate the current harms. Decades of prohibition and emotional rhetoric has been absorbed into the public perception and policy framework related to drugs.

The groundwork for change often entails an initial shift in attitudes and behaviour. To enable a significant shift

away from prohibitionist drug policy, there ideally needs to be a shift in public perception about how drug policy impacts on the lives of all South Africans. To challenge the idea that drugs are the cause of all manner of social ills directly may be difficult in South Africa, especially given the political framing of drug use as the cause of many social ills.

## Several inter-related factors need to come together to motivate, facilitate and sustain a shift in a policy position

However, highlighting the damage caused by and costs of a prohibitionist drug policy – at the human, community and national levels – may help to facilitate a change in attitude and behaviour towards the criminalisation of drug users. And while political rhetoric does influence the public perception of drugs, political powers are also heavily influenced by public opinion and media content. If these start to shift, political sentiment may need to follow suit.

Alternative approaches to prohibition can be achieved through a variety of mechanisms, some requiring legislative changes and others that can achieve their objectives by shifting behaviours and policies through non-legislative means. Legislative change is a lengthy process and, while it is certainly a possibility, there are interim steps that can test different approaches to drug use and help advocate for future changes to the legislation.

The role of municipalities should be highlighted as an important aspect of facilitating policy change. Cities experience the adverse effects of drug policy and drug use more directly and are often held more accountable than national political structures. The funding provided by the City of Tshwane for harm-reduction services confirms the growing recognition that localised policymaking can be more progressive than the national policy position and that focusing on changing municipal policies may be easier than trying to change national policy positions.<sup>129</sup> In South Africa, by-laws are often a tool used by municipalities to restrict movement, sanitise areas by excluding specific populations and provide unconstitutional and undue power to law enforcement.

## It is unlikely that a change in drug policy and the abandonment of prohibition will be rapid or radical

Considering the issues discussed in this paper, it is unlikely that a change in drug policy and the abandonment of prohibition will be rapid or radical. The changes are likely to be slow, incremental, uneven and localised. Clear improvements in the health, wealth and wellbeing of communities where new policies are implemented could catalyse changes to national policies. For these changes to occur, and for the full benefits of a shift from prohibition to be realised, there must be careful consideration given to what the objectives of drug policy should be. Once the objectives are clear, a set of principles can be established to inform policy development according to context and the priorities of the stakeholders.

As South Africa starts the debate about alternatives to prohibition, it is critical to hold the objectives and principles in mind to ensure that any experiments can contribute constructively to the debate and avoid the many pitfalls that exist in any significant change of policy.

## Objectives and principles of change

### Objectives

The stated primary concern of the Single Convention is 'the health and welfare of mankind'. While the

convention has failed in the primary objective of protecting the health and wellbeing of people, the objective itself is appropriate and should be the central objective of any public policy, especially drug policy.

The objectives of an effective drug policy should be:

1. To protect the health and wellbeing of all South Africans while respecting the constitutional rights to privacy, autonomy and bodily integrity.
2. To reduce the economic, health-related, social and community harm caused by the use of both legal and scheduled drugs.
3. To ensure a continuum of evidence-based support and interventions, including prevention, education, universal, selective and indicated care,<sup>130</sup> community-based services, and support and treatment when appropriate.
4. To reduce individual and gang-related criminal activity and violence related to the trade in drugs.

Current policies fail in all of these areas. It is therefore essential to reconceptualise the current approach to drugs. While we do not propose to have all the answers, we recommend a clear set of principles to guide any policies to achieve the stated objectives.

### Principles

The aim of any policy should be to ensure a consistency of outcomes, rather than a consistency of application of rules or interventions.

## To try and formulate a set of rules or interventions in the way that many policies do is practically impossible

To achieve the objectives of drug policy and ensure the health, wellbeing and rights of people, reduce the dependent habitual use of drugs, reduce the potential individual and community harms of drug use and prevent the harms related to historical approaches and stigma is undoubtedly a difficult task. To try and formulate a set of rules or interventions in the way that many policies do is practically impossible. The variables are infinite and human behaviour is unpredictable and modified by circumstances and context.

Therefore, instead of developing a set of rules and interventions, it is useful to elaborate a set of principles that can be applied to develop context-specific responses, interventions and programmes to achieve the desired community and individual objectives related to the use of drugs.

While open to debate and refinement, the following principles provide a starting point for the development of an effective approach to drugs that can meet the stated objectives and produce the desired outcomes.

- **Drug policy and the law must be informed by and comply with the Constitution of South Africa.** Drug policy should strengthen and not infringe on the rights of all people, including those who use drugs. Specific attention must be given to the right to privacy, freedom, bodily and psychological integrity.
- **The development of drug policies and their effective implementation requires a multi-sectoral and multi-lateral approach and must be inclusive and participatory.** The meaningful inclusion of people who use drugs in the development of drug-related policies is critical and in line with the principle of 'nothing for us, without us'.
- **Interventions, policies, responses and programmes intended to address the adult, occasional, habitual or dependent use of drugs:**
  - » **Must be informed by the best available scientific evidence.** The data and evidence base must be evaluated regularly and the interventions, policies, responses and programmes updated accordingly.
  - » **Must seek to reduce the potential harms and risks to the individual and community.** As such, policies should embrace the principles of harm reduction and focus on the negative consequences of drug use, not the prevalence.
  - » **Must recognise the use of drugs as a social and health issue.** Responses should reflect this. A criminal justice response to the demand side of drug policy is not appropriate or effective. Criminal sanctions should be reserved only for those who commit a crime that is punishable under the general rule of law, independent of the use of drugs.
- **Interventions, responses and actions intended to address the supply of drugs:**

- » **Must not target traditional growers and cultivators of crops such as cannabis.** The right to economic participation of traditional growing communities should be protected, especially considering the move towards regulated cannabis supply.
  - » **People who have had their economic participation in the formal economy curtailed due to drug offences or who are subsistence sellers of drugs should not be considered traffickers or be included in the same category as members of organised criminal enterprises.**
  - » **The response to transnational organised crime should focus on the minimisation of harms related to criminal enterprise,** and specifically violence. In consideration of this principle, the combating of organised crime should not be a justification for the militarisation of the police.
- **Policies designed to meet the objectives and achieve the desired outcomes should focus on the broader systemic issues that drive the dependent and harmful use of drugs.** The focus should be less on the control of drugs and more on increasing investment in the economic inclusion of communities, social integration and support for people who are struggling with the challenges they face.

## Conclusion

Prohibitionist drug policies and the criminalisation of people who use drugs remain fundamental barriers to an equitable and just society. In South Africa, the response to the use of drugs maintains apartheid-style policing as a reality in the lives of many communities. The harms created by the current policies and responses to drugs are far worse than the harms related to any drug, and the effects are intergenerational.

Prohibitionist drug policies remain a fundamental barrier to an equitable and just society

South Africa must reconsider drug policy and consider alternatives to prohibition. However, there are significant challenges to radical change. The Single Convention on Narcotic Drugs and subsequent amendments restrict

the options available. The usefulness of drugs as a politically expedient target to distract communities from the realities and failures of government keep the political rhetoric alive and communities blind to many of the policy-related harms they suffer daily.

There are several examples of countries that have deviated from pure prohibition, and although the changes have had different levels of success, many of these hold lessons for the South African context. In South Africa, there are signs of change, including the landmark ruling by the Constitutional Court on the right to use cannabis in a private space. Despite the need for radical and rapid reform, the move away from prohibition is likely to be a protracted process of small steps until the benefits of alternative approaches are made visible to communities.

Setting a target for future policy, we have recommended a set of objectives that should be the goal of effective drug policy. We have also presented a set of principles that should inform future drug policy and the actions and interventions designed to address the cultivation, sale and use of unregulated drugs. These objectives and principles will help guide South Africa to a future where:

- People can make well-informed autonomous choices about their use of drugs without being criminalised, stigmatised or excluded;
- Drug policy does not increase drug-related harms and does not perpetuate oppression and economic exclusion or restrict access to education, health and wellbeing services because someone is using or has used drugs.

In conclusion, drug policy, like all other policies, should align with the Constitution of South Africa.

## Note

The relevant graphs and numbers referenced in this report were calculated using data entered into an Excel spreadsheet compiled from data from the following sources:

- SAPS annual crime statistics
- SAPS annual reports and performance reviews
- Answers to parliamentary questions
- Reports of the NPA

## Notes

- 1 As amended by the Protocol (1972) and supported by The Convention on Psychotropic Substances (1971) and the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988).
- 2 UNODC, The International Drug Control Conventions, 2013, 23, [www.unodc.org/documents/commissions/CND/Int\\_Drug\\_Control\\_Conventions/Ebook/The\\_International\\_Drug\\_Control\\_Conventions\\_E.pdf](http://www.unodc.org/documents/commissions/CND/Int_Drug_Control_Conventions/Ebook/The_International_Drug_Control_Conventions_E.pdf).
- 3 UNODC, The International Drug Control Conventions, 2013, 30, [www.unodc.org/documents/commissions/CND/Int\\_Drug\\_Control\\_Conventions/Ebook/The\\_International\\_Drug\\_Control\\_Conventions\\_E.pdf](http://www.unodc.org/documents/commissions/CND/Int_Drug_Control_Conventions/Ebook/The_International_Drug_Control_Conventions_E.pdf).
- 4 UNODC, The International Drug Control Conventions, 2013, 55, [www.unodc.org/documents/commissions/CND/Int\\_Drug\\_Control\\_Conventions/Ebook/The\\_International\\_Drug\\_Control\\_Conventions\\_E.pdf](http://www.unodc.org/documents/commissions/CND/Int_Drug_Control_Conventions/Ebook/The_International_Drug_Control_Conventions_E.pdf).
- 5 RK Siegel, *Intoxication: The universal drive for mind-altering substances*, Rochester, Vermont: Inner Traditions/Bear & Co, 2005.
- 6 United Nations, World Drug Report 2020, <https://wdr.unodc.org/wdr2020/en/drug-use-health.html>.
- 7 Ibid.
- 8 J van Amsterdam et al, (14 Sept. 2015.), Ranking the harm of non-medically used prescription opioids in the UK, *Regulatory Toxicology and Pharmacology*, 73: 3, December 2015, [www.sciencedirect.com/ucp/pii/S0273230015300659](http://www.sciencedirect.com/ucp/pii/S0273230015300659).
- 9 AC Tsai, Addressing the context and consequences of substance use, misuse, and dependence: A global imperative, *Journals.plos.org*, 2019, <https://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1003000>.
- 10 People who have experienced adverse childhood events (ACE) experienced a two to fourfold increase in likelihood for early drug initiation, and those with five or more events were found to be seven to 10 times more likely to develop a drug dependence. See: SR Dube, VJ Felitti, M Dong, DP Chapman, WH Giles & RF Anda, Childhood Abuse, Neglect, and Household Dysfunction and the Risk of Illicit Drug Use: The Adverse Childhood Experiences Study, *PEDIATRICS*, 111(3), 564–572. doi:10.1542/peds.111.3.564, 2003, [www.ncbi.nlm.nih.gov/pubmed/12612237](http://www.ncbi.nlm.nih.gov/pubmed/12612237). See also VJ Felitti, (2003), Origins of addictive behavior: evidence from a study of stressful childhood experiences, *Praxis Der Kinderpsychologie Und Kinderpsychiatrie*, 52(8), 2003, 547–559, [www.nijc.org/pdfs/Subject%20Matter%20Articles/Drugs%20and%20Alc/ACE%20Study%20-%20OriginsOfAddiction.pdf](http://www.nijc.org/pdfs/Subject%20Matter%20Articles/Drugs%20and%20Alc/ACE%20Study%20-%20OriginsOfAddiction.pdf).
- 11 J Buchanan, Missing links? Problem drug use and social exclusion, *SAGE Journals*, 2004, <https://journals.sagepub.com/doi/10.1177/0264550504048246>.
- 12 BK Alexander, *The Globalization of Addiction*, Oxford Medicine Online, May 2013, <https://oxfordmedicine.com/view/10.1093/med/9780199588718.001.0001/med-9780199588718>.
- 13 BK Alexander, *The Globalization of Addiction*, Oxford Medicine Online, May 2013, <https://oxfordmedicine.com/view/10.1093/med/9780199588718.001.0001/med-9780199588718>; RK Siegel, *Intoxication: The universal drive for mind-altering substances*, Rochester, Vermont: Inner Traditions/Bear & Co, 2005.
- 14 World Health Organization, A First Comparison Between the Consumption of and the Need for Opioid Analgesics at Country, Regional, and Global Levels, 2011, <http://apps.who.int/medicinedocs/documents/s17976en/s17976en.pdf>.
- 15 UNODC, The International Drug Control Conventions, 2013, 21, [www.unodc.org/documents/commissions/CND/Int\\_Drug\\_Control\\_Conventions/Ebook/The\\_International\\_Drug\\_Control\\_Conventions\\_E.pdf](http://www.unodc.org/documents/commissions/CND/Int_Drug_Control_Conventions/Ebook/The_International_Drug_Control_Conventions_E.pdf).
- 16 Commission on Crime Prevention and Criminal Justice, World crime trends and emerging issues and responses in the field of crime prevention and criminal justice, 2013, E/CN.15/2013/9, [www.unodc.org/documents/data-and-analysis/statistics/crime/World\\_Crime\\_Trends\\_2013.pdf](http://www.unodc.org/documents/data-and-analysis/statistics/crime/World_Crime_Trends_2013.pdf); Transform Drug Policy Foundation, The Alternative World Drug Report, 2012, <http://countthecosts.org/sites/default/files/AWDR.pdf>.
- 17 U Gatti, RE Tremblay and F Vitaro, Iatrogenic effect of juvenile justice. *Journal of Child Psychology and Psychiatry*, 50(8), 2009, 991–998, doi:10.1111/j.1469-7610.2008.02057.x; AB Gilman, Incarceration and the life course: Predictors, correlates, and consequences of juvenile incarceration, Digital.lib.washington.edu, 24 February 2015, <https://digital.lib.washington.edu/researchworks/handle/1773/27584>; AB Gilman, KG Hill and JK Hawkins, When is a youth's debt to society paid? Examining the long-term consequences of juvenile incarceration for adult functioning. *Journal of developmental and life-course criminology*, 1(1), 2015, 33–47.
- 18 EE Doherty, JM Cwick, KM Green & ME Ensminger, Examining the consequences of the 'prevalent life events' of arrest and incarceration among an urban African-American cohort, *Justice Quarterly*, 33(6), 2016, 970–999.
- 19 Ibid.
- 20 Global Commission on Drug Policy, War on Drugs, June 2011, 10, [www.globalcommissionondrugs.org/wp-content/themes/gcdp\\_v1/pdf/Global\\_Commission\\_Report\\_English.pdf](http://www.globalcommissionondrugs.org/wp-content/themes/gcdp_v1/pdf/Global_Commission_Report_English.pdf).
- 21 Global Commission on Drug Policy, Taking control: Pathways to drug policies that work, September 2014, 11, [www.globalcommissionondrugs.org/wp-content/uploads/2016/03/GCDP\\_2014\\_taking-control\\_EN.pdf](http://www.globalcommissionondrugs.org/wp-content/uploads/2016/03/GCDP_2014_taking-control_EN.pdf).
- 22 A Costa, Making drug control 'fit for purpose': Building on the UNGASS decade, 2008, 19, [www.unodc.org/documents/commissions/CND/CND\\_Sessions/CND\\_51/1\\_CRPs/E-CN7-2008-CRP17\\_E.pdf](http://www.unodc.org/documents/commissions/CND/CND_Sessions/CND_51/1_CRPs/E-CN7-2008-CRP17_E.pdf).
- 23 C May, Transnational crime and the developing world, 2017, 3, <https://gfintegrity.org/report/transnational-crime-and-the-developing-world/>. The other forms of transnational organised crimes included in the study are: counterfeiting, illegal logging, human trafficking, illegal mining, IUU fishing, illegal wildlife trade, crude oil theft, small arms and light weapons trafficking and organ trafficking.
- 24 C May, Transnational crime and the developing world, 2017, xi, <https://gfintegrity.org/report/transnational-crime-and-the-developing-world/>.
- 25 National Drug Intelligence Center, Drugs and gangs, 2009, [www.justice.gov/archive/ndic/pubs11/13157/index.htm](http://www.justice.gov/archive/ndic/pubs11/13157/index.htm).

- 26 National Gang Center, Gang-related offenses, 2012, [www.nationalgangcenter.gov/survey-analysis/gang-related-offenses](http://www.nationalgangcenter.gov/survey-analysis/gang-related-offenses).
- 27 C May, Transnational crime and the developing world, 2017, 8, <https://gfintegrity.org/report/transnational-crime-and-the-developing-world/>.
- 28 A Costa, Making drug control 'fit for purpose': Building on the UNGASS decade, 2008, 10, [www.unodc.org/documents/commissions/CND/CND\\_Sessions/CND\\_51/1\\_CRPs/E-CN7-2008-CRP17\\_E.pdf](http://www.unodc.org/documents/commissions/CND/CND_Sessions/CND_51/1_CRPs/E-CN7-2008-CRP17_E.pdf).
- 29 United Nations, World Drug Report 2019: Executive Summary, Conclusions and Policy Implications, 2019, 7, [https://wdr.unodc.org/wdr2019/prelaunch/WDR19\\_Booklet\\_1\\_EXECUTIVE\\_SUMMARY.pdf](https://wdr.unodc.org/wdr2019/prelaunch/WDR19_Booklet_1_EXECUTIVE_SUMMARY.pdf).
- 30 J Csete, A Kamarulzaman, M Kazatchkine, F Altice, M Balicki, J Buxton, J Cepeda, M Comfort, E Goosby, J Goulão, and C Hart, Public health and international drug policy, *The Lancet*, 387(10026), 2016, 1427-1480, [www.thelancet.com/action/showPdf?pii=S0140-6736%2816%2900619-X](http://www.thelancet.com/action/showPdf?pii=S0140-6736%2816%2900619-X).
- 31 D Lohman and N Burke-Shyne, *The impact of international drug policy on access to controlled medicines*, Open Society Foundations, 2015, [https://hivlawcommission.org/wp-content/uploads/2017/06/impact-international-drug-policy-access-controlled-medicines-20151203\\_0.pdf](https://hivlawcommission.org/wp-content/uploads/2017/06/impact-international-drug-policy-access-controlled-medicines-20151203_0.pdf).
- 32 UN system coordination Task Team on the Implementation of the UN System Common Position on drug-related matters, *What we have learned over the last ten years: A summary of knowledge acquired and produced by the UN system on drug-related matters*, 2019, 41-42, [www.unodc.org/documents/commissions/CND/2019/Contributions/UN\\_Entities/What\\_we\\_have\\_learned\\_over\\_the\\_last\\_ten\\_years\\_-\\_14\\_March\\_2019\\_-\\_w\\_signature.pdf](http://www.unodc.org/documents/commissions/CND/2019/Contributions/UN_Entities/What_we_have_learned_over_the_last_ten_years_-_14_March_2019_-_w_signature.pdf).
- 33 Global Commission on Drug Policy, Regulation – the responsible control of drugs, 2018, 12, [www.globalcommissionondrugs.org/wp-content/uploads/2018/09/ENG-2018\\_Regulation\\_Report\\_WEB-FINAL.pdf](http://www.globalcommissionondrugs.org/wp-content/uploads/2018/09/ENG-2018_Regulation_Report_WEB-FINAL.pdf).
- 34 EMCDDA, *Perspectives on drugs: Models for the legal supply of cannabis: recent developments*, 2016, 2, [www.emcdda.europa.eu/system/files/publications/2720/Legal%20supply%20cannabis\\_update%202016.pdf](http://www.emcdda.europa.eu/system/files/publications/2720/Legal%20supply%20cannabis_update%202016.pdf).
- 35 C Hughes et al, *Models for the decriminalisation, depenalisation and diversion of illicit drug possession: An international realist review*, 2019, 8, <https://harmreductioneurasia.org/wp-content/uploads/2019/07/Hughes-et-al-ISSDP-2019-Models-for-the-decriminalisation-depenalisation-and-diversion-of-illicit-drug-possession-FINAL.pdf>.
- 36 C Hughes et al, *Models for the decriminalisation, depenalisation and diversion of illicit drug possession: An international realist review*, 2019, 15, <https://harmreductioneurasia.org/wp-content/uploads/2019/07/Hughes-et-al-ISSDP-2019-Models-for-the-decriminalisation-depenalisation-and-diversion-of-illicit-drug-possession-FINAL.pdf>.
- 37 The Law Library of Congress, Decriminalization of Narcotics, 2016, [www.loc.gov/law/help/decriminalization-of-narcotics/decriminalization-of-narcotics.pdf](http://www.loc.gov/law/help/decriminalization-of-narcotics/decriminalization-of-narcotics.pdf); C Hughes et al, *Models for the decriminalisation, depenalisation and diversion of illicit drug possession: An international realist review*, 2019, 8, <https://harmreductioneurasia.org/wp-content/uploads/2019/07/Hughes-et-al-ISSDP-2019-Models-for-the-decriminalisation-depenalisation-and-diversion-of-illicit-drug-possession-FINAL.pdf>; Government of the Netherlands, Tolerance policy for soft drugs and coffee shops, 2020, [www.rijksoverheid.nl/onderwerpen/drugs/gedoogbeleid-softdrugs-en-coffeeshops&prev=search](http://www.rijksoverheid.nl/onderwerpen/drugs/gedoogbeleid-softdrugs-en-coffeeshops&prev=search); EMCDDA, Country information, 2020, [www.emcdda.europa.eu/countries\\_en](http://www.emcdda.europa.eu/countries_en); LEAD, [www.leadbureau.org](http://www.leadbureau.org).
- 38 EMCDDA, *Decriminalisation in Europe? Recent developments in legal approaches to drug use*, 2001, 2, [www.emcdda.europa.eu/attachements.cfm/att\\_5741\\_EN\\_Decriminalisation\\_Legal\\_Approaches.pdf](http://www.emcdda.europa.eu/attachements.cfm/att_5741_EN_Decriminalisation_Legal_Approaches.pdf).
- 39 *Count the Costs, The war on drugs: options and alternatives*, Transform Drug Policy Foundation, 2019, 7, <https://transformdrugs.org/wp-content/uploads/2019/02/CTC-options-briefing.pdf>.
- 40 A Stevens, C Hughes, S Hulme & R Cassidy, Depenalization, diversion and decriminalization: A realist review and programme theory of alternatives to criminalization for simple drug possession, *European Journal of Criminology*, 2019, 3, <https://journals.sagepub.com/doi/pdf/10.1177/1477370819887514>.
- 41 UN system coordination task team on the Implementation of the UN System Common Position on drug-related matters, *What we have learned over the last ten years: A summary of knowledge acquired and produced by the UN system on drug-related matters*, 2019, 25, [www.unodc.org/documents/commissions/CND/2019/Contributions/UN\\_Entities/What\\_we\\_have\\_learned\\_over\\_the\\_last\\_ten\\_years\\_-\\_14\\_March\\_2019\\_-\\_w\\_signature.pdf](http://www.unodc.org/documents/commissions/CND/2019/Contributions/UN_Entities/What_we_have_learned_over_the_last_ten_years_-_14_March_2019_-_w_signature.pdf).
- 42 A Rosmarin and N Eastwood, *A quiet revolution: Drug decriminalisation policies in practice across the globe*, Open Society Foundations, 2016, 7, [www.release.org.uk/sites/default/files/pdf/publications/A%20Quiet%20Revolution%20-%20Decriminalisation%20Across%20the%20Globe.pdf](http://www.release.org.uk/sites/default/files/pdf/publications/A%20Quiet%20Revolution%20-%20Decriminalisation%20Across%20the%20Globe.pdf).
- 43 Drug Policy Alliance, Drug decriminalization, 2019, [www.drugpolicy.org/issues/drug-decriminalization](http://www.drugpolicy.org/issues/drug-decriminalization); N Eastwood, E Fox and A Rosmarin, *A quiet revolution: Drug decriminalisation policies in practice across the globe*, 2016, [www.release.org.uk/sites/default/files/pdf/publications/A%20Quiet%20Revolution%20-%20Decriminalisation%20Across%20the%20Globe.pdf](http://www.release.org.uk/sites/default/files/pdf/publications/A%20Quiet%20Revolution%20-%20Decriminalisation%20Across%20the%20Globe.pdf); Global Commission on Drug Policy, *Advancing drug policy reform: A new approach to decriminalisation*, 2016, [www.globalcommissionondrugs.org/wp-content/uploads/2016/11/GCDP-Report-2016-ENGLISH.pdf](http://www.globalcommissionondrugs.org/wp-content/uploads/2016/11/GCDP-Report-2016-ENGLISH.pdf).
- 44 WHO, Joint Statement: Compulsory drug detention and rehabilitation centres, March 2012, [www.who.int/hhr/JC2310\\_joint\\_statement\\_20120306final\\_en.pdf?ua=1](http://www.who.int/hhr/JC2310_joint_statement_20120306final_en.pdf?ua=1). For example, 'China's 2008 Anti-Drug Law gives government officials and security forces widespread discretion to incarcerate individuals suspected of drug use for up to six years – without trial or judicial oversight ... [where individuals] are routinely beaten, denied medical treatment, and forced to work up to 18 hours a day without pay. Although sentenced to 'rehabilitation,' they are denied access to effective drug dependency treatment and provided no opportunity

- to learn skills to reintegrate into the community: Harm Reduction International, *Human rights and drug policy: compulsory drug treatment*, 2010, [https://www.hri.global/files/2010/11/01/HRA\\_BriefingNew\\_4.pdf](https://www.hri.global/files/2010/11/01/HRA_BriefingNew_4.pdf).
- 45 N Eastwood, E Fox and A Rosmarin, *A quiet revolution: Drug decriminalisation policies in practice across the globe*, 2016, 7, [www.release.org.uk/sites/default/files/pdf/publications/A%20Quiet%20Revolution%20-%20Decriminalisation%20Across%20the%20Globe.pdf](http://www.release.org.uk/sites/default/files/pdf/publications/A%20Quiet%20Revolution%20-%20Decriminalisation%20Across%20the%20Globe.pdf).
- 46 Global Commission on Drug Policy, *War on drugs*, 2011, .
- 47 For further information, see: The Law Library of Congress, *Decriminalization of Narcotics*, 2016, 18, 20, 24, 41, [www.loc.gov/law/help/decriminalization-of-narcotics/decriminalization-of-narcotics.pdf](http://www.loc.gov/law/help/decriminalization-of-narcotics/decriminalization-of-narcotics.pdf); N Eastwood, E Fox and A Rosmarin, *A quiet revolution: Drug decriminalisation policies in practice across the globe*, 2016, 14-17, 21, 25, [www.release.org.uk/sites/default/files/pdf/publications/A%20Quiet%20Revolution%20-%20Decriminalisation%20Across%20the%20Globe.pdf](http://www.release.org.uk/sites/default/files/pdf/publications/A%20Quiet%20Revolution%20-%20Decriminalisation%20Across%20the%20Globe.pdf); Drug Law Reform Project, *Overview of drug laws and legislative trends in Costa Rica*, 2016, [www.druglawreform.info/en/country-information/central-america/costa-rica/item/5017-costa-rica](http://www.druglawreform.info/en/country-information/central-america/costa-rica/item/5017-costa-rica); EMCDDA, *Country information*, 2020, [www.emcdda.europa.eu/countries\\_en](http://www.emcdda.europa.eu/countries_en); Government of the Netherlands, *Toleration policy regarding soft drugs and coffee shops*, 2020, [www.government.nl/topics/drugs/toleration-policy-regarding-soft-drugs-and-coffee-shops](http://www.government.nl/topics/drugs/toleration-policy-regarding-soft-drugs-and-coffee-shops); New Zealand Ministry of Health, *Changes to the Misuse of Drugs Act*, August 2019; Recovery.org, *Guide to US drug laws*, 10 January 2020, [www.recovery.org/addiction/us-drug-laws/](http://www.recovery.org/addiction/us-drug-laws/). Norway is currently in the process of reforming its drug policy based on the report of a commission of enquiry into how the government's approach to drugs could move from the justice sector to the health service. See: Government of Norway, *A historic day for Norwegian drug policy*, 20 December 2019, [www.regjeringen.no/en/aktuelt/historic-day-for-norwegian-drug-policy/id2683528/](http://www.regjeringen.no/en/aktuelt/historic-day-for-norwegian-drug-policy/id2683528/); *Count the Costs, The war on drugs: options and alternatives*, Transform Drug Policy Foundation, 2019, 7, <https://transformdrugs.org/wp-content/uploads/2019/02/CTC-options-briefing.pdf>.
- 48 Information compiled from the following sources: EMCDDA, *Drug policy profiles: Portugal*, 2011, [www.emcdda.europa.eu/system/files/publications/642/PolicyProfile\\_Portugal\\_WEB\\_Final\\_289201.pdf](http://www.emcdda.europa.eu/system/files/publications/642/PolicyProfile_Portugal_WEB_Final_289201.pdf); EMCDDA, *Portugal country drug report*, 2019, [www.emcdda.europa.eu/countries/drug-reports/2019/portugal\\_en](http://www.emcdda.europa.eu/countries/drug-reports/2019/portugal_en); Drug Policy Alliance, *Drug decriminalization in Portugal: learning from a health and human-centered approach*, 2018, [www.drugpolicy.org/sites/default/files/dpa-drug-decriminalization-portugal-health-human-centered-approach\\_0.pdf](http://www.drugpolicy.org/sites/default/files/dpa-drug-decriminalization-portugal-health-human-centered-approach_0.pdf); *Count the Costs, The war on drugs: options and alternatives*, Transform Drug Policy Foundation, 2019, <https://transformdrugs.org/wp-content/uploads/2019/02/CTC-options-briefing.pdf>; H Lacquer, *Uses and abuses of drug decriminalization in Portugal*, 2014, [www.researchgate.net/publication/269468659\\_Uses\\_and\\_Abuses\\_of\\_Drug\\_Decriminalization\\_in\\_Portugal](http://www.researchgate.net/publication/269468659_Uses_and_Abuses_of_Drug_Decriminalization_in_Portugal).
- 49 Global Commission on Drug Policy, *Regulation – the responsible control of drugs*, 2018, 12, [www.globalcommissionondrugs.org/wp-content/uploads/2018/09/ENG-2018\\_Regulation\\_Report\\_WEB-FINAL.pdf](http://www.globalcommissionondrugs.org/wp-content/uploads/2018/09/ENG-2018_Regulation_Report_WEB-FINAL.pdf).
- 50 EMCDDA, *Decriminalisation in Europe? Recent developments in legal approaches to drug use*, 2001, 2, [www.emcdda.europa.eu/attachements.cfm/att\\_5741\\_EN\\_Decriminalisation\\_Legal\\_Approaches.pdf](http://www.emcdda.europa.eu/attachements.cfm/att_5741_EN_Decriminalisation_Legal_Approaches.pdf).
- 51 Global Commission on Drug Policy, *Regulation – the responsible control of drugs*, 2018, 15, [www.globalcommissionondrugs.org/wp-content/uploads/2018/09/ENG-2018\\_Regulation\\_Report\\_WEB-FINAL.pdf](http://www.globalcommissionondrugs.org/wp-content/uploads/2018/09/ENG-2018_Regulation_Report_WEB-FINAL.pdf).
- 52 *Count the Costs, The war on drugs: options and alternatives*, Transform Drug Policy Foundation, 2019, 11, <https://transformdrugs.org/wp-content/uploads/2019/02/CTC-options-briefing.pdf>.
- 53 Government of the Netherlands, *Toleration policy regarding soft drugs and coffee shops*, 2020, [www.government.nl/topics/drugs/toleration-policy-regarding-soft-drugs-and-coffee-shops](http://www.government.nl/topics/drugs/toleration-policy-regarding-soft-drugs-and-coffee-shops).
- 54 C Hudock, *The Spanish Cannabis Social Club Model, Explained*, 2019, <https://newfrontierdata.com/cannabis-insights/the-spanish-cannabis-social-club/>.
- 55 Transform, *Cannabis social clubs in Spain: legalisation without commercialisation*, 2018, [https://transformdrugs.org/wp-content/uploads/2018/10/Spain\\_0.pdf](https://transformdrugs.org/wp-content/uploads/2018/10/Spain_0.pdf).
- 56 The Law Library of Congress, *Decriminalization of Narcotics*, 2016, 4, [www.loc.gov/law/help/decriminalization-of-narcotics/decriminalization-of-narcotics.pdf](http://www.loc.gov/law/help/decriminalization-of-narcotics/decriminalization-of-narcotics.pdf); N Eastwood, E Fox and A Rosmarin, *A quiet revolution: Drug decriminalisation policies in practice across the globe*, 2016, 36, [www.release.org.uk/sites/default/files/pdf/publications/A%20Quiet%20Revolution%20-%20Decriminalisation%20Across%20the%20Globe.pdf](http://www.release.org.uk/sites/default/files/pdf/publications/A%20Quiet%20Revolution%20-%20Decriminalisation%20Across%20the%20Globe.pdf); Transform, *Cannabis legalisation in Uruguay: public health and safety over private profit*, 2017, <https://transformdrugs.org/cannabis-legalisation-in-uruguay-public-health-and-safety-over-private-profit/>; Global Commission on Drug Policy, *Regulation – the responsible control of drugs*, 2018, 16, [www.globalcommissionondrugs.org/wp-content/uploads/2018/09/ENG-2018\\_Regulation\\_Report\\_WEB-FINAL.pdf](http://www.globalcommissionondrugs.org/wp-content/uploads/2018/09/ENG-2018_Regulation_Report_WEB-FINAL.pdf).
- 57 INCB, *INCB is concerned about draft cannabis legislation in Uruguay*, 2013, [www.incb.org/documents/Publications/PressRelease/PR2013/press\\_release\\_191113e.pdf](http://www.incb.org/documents/Publications/PressRelease/PR2013/press_release_191113e.pdf).
- 58 J Walsh and G Ramsey, *Uruguay's drug policy: major innovations, major challenges*, 2016, 11, [www.brookings.edu/wp-content/uploads/2016/07/Walsh-Uruguay-final.pdf](http://www.brookings.edu/wp-content/uploads/2016/07/Walsh-Uruguay-final.pdf).
- 59 UNODC, *The International Drug Control Conventions*, 2013, 54, [www.unodc.org/documents/commissions/CND/Int\\_Drug\\_Control\\_Conventions/Ebook/The\\_International\\_Drug\\_Control\\_Conventions\\_E.pdf](http://www.unodc.org/documents/commissions/CND/Int_Drug_Control_Conventions/Ebook/The_International_Drug_Control_Conventions_E.pdf).
- 60 *Count the Costs, The war on drugs: options and alternatives*, Transform Drug Policy Foundation, 2019, 9, [www.countthecosts.org/sites/default/files/options-briefing.pdf](http://www.countthecosts.org/sites/default/files/options-briefing.pdf).
- 61 Global Commission on Drug Policy, *Regulation – the responsible control of drugs*, 2018, 15, [https://www.globalcommissionondrugs.org/wp-content/uploads/2018/09/ENG-2018\\_Regulation\\_Report\\_WEB-FINAL.pdf](https://www.globalcommissionondrugs.org/wp-content/uploads/2018/09/ENG-2018_Regulation_Report_WEB-FINAL.pdf), p 15.

- 62 St George's House and Transform Drugs, *Challenges for a world where drugs are legally regulated*, September 2019, 8, <https://www.stgeorghouse.org/wp-content/uploads/2020/01/Challenges-for-a-world-where-drugs-are-legally-regulated-final-report.pdf>, p 8.
- 63 *Count the Costs, The war on drugs: options and alternatives*, Transform Drug Policy Foundation, 2019, 11, <https://transformdrugs.org/wp-content/uploads/2019/02/CTC-options-briefing.pdf>.
- 64 Global Commission on Drug Policy, Regulation – the responsible control of drugs, 2018, 15, [www.globalcommissionondrugs.org/wp-content/uploads/2018/09/ENG-2018\\_Regulation\\_Report\\_WEB-FINAL.pdf](http://www.globalcommissionondrugs.org/wp-content/uploads/2018/09/ENG-2018_Regulation_Report_WEB-FINAL.pdf).
- 65 St George's House and Transform Drugs, *Challenges for a world where drugs are legally regulated*, September 2019, 11, [www.stgeorghouse.org/wp-content/uploads/2020/01/Challenges-for-a-world-where-drugs-are-legally-regulated-final-report.pdf](http://www.stgeorghouse.org/wp-content/uploads/2020/01/Challenges-for-a-world-where-drugs-are-legally-regulated-final-report.pdf).
- 66 *Count the Costs, The war on drugs: options and alternatives*, Transform Drug Policy Foundation, 2019, 10, <https://transformdrugs.org/wp-content/uploads/2019/02/CTC-options-briefing.pdf>.
- 67 Global Commission on Drug Policy, Regulation – the responsible control of drugs, 2018, 30, [www.globalcommissionondrugs.org/wp-content/uploads/2018/09/ENG-2018\\_Regulation\\_Report\\_WEB-FINAL.pdf](http://www.globalcommissionondrugs.org/wp-content/uploads/2018/09/ENG-2018_Regulation_Report_WEB-FINAL.pdf).
- 68 Ibid.
- 69 St George's House and Transform Drug Policy Foundation, *Challenges for a world where drugs are legally regulated*, 2019, 10, <https://transformdrugs.org/wp-content/uploads/2020/02/St-Georges-House-Report-WEB.pdf>; Global Commission on Drug Policy, Regulation – the responsible control of drugs, 2018, 31, [www.globalcommissionondrugs.org/wp-content/uploads/2018/09/ENG-2018\\_Regulation\\_Report\\_WEB-FINAL.pdf](http://www.globalcommissionondrugs.org/wp-content/uploads/2018/09/ENG-2018_Regulation_Report_WEB-FINAL.pdf).
- 70 Global Commission on Drug Policy, Regulation – the responsible control of drugs, 2018, 34, [www.globalcommissionondrugs.org/wp-content/uploads/2018/09/ENG-2018\\_Regulation\\_Report\\_WEB-FINAL.pdf](http://www.globalcommissionondrugs.org/wp-content/uploads/2018/09/ENG-2018_Regulation_Report_WEB-FINAL.pdf).
- 71 Global Commission on Drug Policy, Regulation – the responsible control of drugs, 2018, 33, [www.globalcommissionondrugs.org/wp-content/uploads/2018/09/ENG-2018\\_Regulation\\_Report\\_WEB-FINAL.pdf](http://www.globalcommissionondrugs.org/wp-content/uploads/2018/09/ENG-2018_Regulation_Report_WEB-FINAL.pdf).
- 72 UNODC, The International Drug Control Conventions, 2013, 54-55, [www.unodc.org/documents/commissions/CND/Int\\_Drug\\_Control\\_Conventions/Ebook/The\\_International\\_Drug\\_Control\\_Conventions\\_E.pdf](http://www.unodc.org/documents/commissions/CND/Int_Drug_Control_Conventions/Ebook/The_International_Drug_Control_Conventions_E.pdf).
- 73 ND Volkow et al. Drug use disorders: impact of a public health rather than a criminal justice approach, *World Psychiatry*, 16.2, 2017, 213-214.
- 74 G Gerra et al, Treatment and care for people with drug use disorders in contact with the criminal justice system: alternatives to conviction or punishment, *Drug and Alcohol Review*, 38, WILEY, 2019; United Nations Office of Drugs and Crime, *Outcome of the 2016 Special Session on the World Drug Problem*, Vienna: UNODC, 2016.
- 75 ND Volkow et al, Drug use disorders: impact of a public health rather than a criminal justice approach, *World Psychiatry*, 16.2, 2017, 213-214.
- 76 On 21 December, US President Trump announced a plan to remove 'very dangerous people off the street', including 'drug addicts', *Washington Post*, 21 December 2019, [www.washingtonpost.com/video/politics/trump-we-need-to-keep-very-dangerous-people-off-our-streets/2019/12/21/7621acf4-747d-4fc8-9bb6-108b42153e10\\_video.html](http://www.washingtonpost.com/video/politics/trump-we-need-to-keep-very-dangerous-people-off-our-streets/2019/12/21/7621acf4-747d-4fc8-9bb6-108b42153e10_video.html).
- 77 AM Fletcher, *Inside rehab: The surprising truth about addiction treatment--and how to get help that works*, Penguin, 2013.
- 78 In 1997 the head of NIDA, Alan Leshner, wrote an opinion piece (A Leshner (1997), Addiction is a brain disease, and it matters – PubMed, <https://pubmed.ncbi.nlm.nih.gov/9311924/>) and the brain disease model of addiction is presented by NIDA as chronic relapsing brain disorder (see [www.drugabuse.gov/publications/drugs-brains-behavior-science-addiction/drug-misuse-addiction](http://www.drugabuse.gov/publications/drugs-brains-behavior-science-addiction/drug-misuse-addiction)). However, there is some data that directly contradicts this claim and that there is little data to support it, resulting in criticism. For examples, see: R Hammer, M Dingel, J Ostergren, B Partridge, J McCormick and BA Koenig, Addiction: Current Criticism of the Brain Disease Paradigm. *AJOB Neuroscience*, 4(3), 2013, 27-32. doi:10.1080/21507740.2013.796328; E Racine, S Sattler and A Escande, Free Will and the Brain Disease Model of Addiction: The Not So Seductive Allure of Neuroscience and Its Modest Impact on the Attribution of Free Will to People with an Addiction, *Frontiers in Psychology*, 2017, 8, doi:10.3389/fpsyg.2017.01850; M Lewis, *The Biology of Desire: Why addiction is not a disease*, Public Affairs, 2015, ISBN-13: 9781610397124.
- 79 A Rafalovich, Conflict and Complementarity: Medicalization, Criminalization, and the Question of Human Agency. *Deviant Behavior*, 2020, 1-14, doi:10.1080/01639625.2020.1734747.
- 80 M Shaw, What could an asymmetrical strategy against organised crime look like? A lesson from the drug policy debate, *Journal of Illicit Economies and Development*, 1.1, 2019, 99-106.
- 81 M Marks and S Howell, Cops, drugs and interloping academics: an ethnographic exploration of the possibility of policing drugs differently in South Africa, *Police Practice and Research*, 17.4, 2016, 341-352.
- 82 Interview with a member of the Metro Police in Durban, 23 January 2020.
- 83 F Theron, The dagga problem: a sociological perspective with special reference to the question of social policy, 1974, 152, [http://open.uct.ac.za/bitstream/item/16487/thesis\\_hum\\_1974\\_theron\\_frana\\_sect\\_ois.pdf](http://open.uct.ac.za/bitstream/item/16487/thesis_hum_1974_theron_frana_sect_ois.pdf).
- 84 S Shelly and S Howell, Perpetuating apartheid: South African drug policy in K Koram (ed), *The war on drugs and the global colour line*, 2019, 168, [www.researchgate.net/publication/331904807\\_Perpetuating\\_apartheid\\_South\\_African\\_drug\\_policy](http://www.researchgate.net/publication/331904807_Perpetuating_apartheid_South_African_drug_policy).
- 85 Drugs and Drug Trafficking Act No 140 of 1992, [www.gov.za/sites/default/files/gcis\\_document/201409/a1401992.pdf](http://www.gov.za/sites/default/files/gcis_document/201409/a1401992.pdf).



- 86 National Drug Master Plan 1999 – 2004, <https://alcoholsouthafrica.files.wordpress.com/2012/04/sa-drug-masterplan.pdf>.
- 87 Calculated from information from the ISS Crime Hub comparing arrests for all crimes between 2012/2013 and 2018/2019 and arrests for drug-related crimes between 2012/2013 and 2018/2019. See: <https://issafrica.org/crimehub/facts-and-figures/criminal-justice-performance>.
- 88 South African Police Service, Crime statistics: crime situation in Republic of South Africa (April – March 2018 – 2019), 2019, 186, [www.saps.gov.za/services/april\\_to\\_march2018\\_19\\_presentation.pdf](http://www.saps.gov.za/services/april_to_march2018_19_presentation.pdf).
- 89 ISS Crime Hub, Criminal justice performance, 2020, <https://issafrica.org/crimehub/facts-and-figures/criminal-justice-performance>.
- 90 The 17 community-reported crimes are: contact crimes (murder, attempted murder, sexual offences, assault with the intention to inflict grievous bodily harm, common assault, common robbery and robbery with aggravating circumstances); contact-related crimes (arson and malicious damage to property); crimes against property (burglary at residential premises, burglary at non-residential premises, theft of motor vehicles and motorcycles, theft out of or from motor vehicles and stock-theft); and other serious crimes (all theft not mentioned elsewhere, commercial crime and shoplifting).
- 91 South African Police Service, 2018/2019 SAPS Technical Indicator Descriptions, 67, [www.saps.gov.za/about/stratframework/strategic\\_plan/2018\\_2019/saps\\_technical\\_indicator\\_descriptions\\_2018\\_19.pdf](http://www.saps.gov.za/about/stratframework/strategic_plan/2018_2019/saps_technical_indicator_descriptions_2018_19.pdf).
- 92 South African Police Service, 2019/2020 Annual Performance Plan, 2019, 11, [www.saps.gov.za/about/stratframework/strategic\\_plan/2019\\_2020/annual\\_performance\\_plan\\_2019\\_2020.pdf](http://www.saps.gov.za/about/stratframework/strategic_plan/2019_2020/annual_performance_plan_2019_2020.pdf).
- 93 National Prosecuting Authority, Annual Report 2018-2019, 62, [www.npa.gov.za/sites/default/files/annual-reports/NDPP%20Annual%20Report%20-2018-19.pdf](http://www.npa.gov.za/sites/default/files/annual-reports/NDPP%20Annual%20Report%20-2018-19.pdf).
- 94 These figures were calculated using i. Police crime statistics for arrests for drug related crime, ii. The NPA performance reports iii. Responses to parliamentary questions, and iv. The NPA performance Report by the Africa Criminal Justice Reform (see Figure 2).
- 95 Africa Criminal Justice Reform, National Prosecuting Authority Performance, 5 December 2019, <http://repository.uwc.ac.za/handle/10566/5116?show=full>.
- 96 Ibid
- 97 J Redpath, *Liberty not the only loss – The Socio-Economic Impact of Remand Detention in the Western Cape*, ACJR, 2019, <https://acjr.org.za/resource-centre/liberty-not-the-only-loss-report.pdf>.
- 98 Ibid.
- 99 Ibid.
- 100 BK Alexander, *The Globalization of Addiction*, Oxford Medicine Online, May 2013, <https://oxfordmedicine.com/view/10.1093/med/9780199588718.001.0001/med-9780199588718>.
- 101 Ibid.
- 102 D Pinnock, *Gangtown*, Tafelberg, 2016.
- 103 S Shelly and S Howell, Perpetuating apartheid: South African drug policy in K Koram (ed), *The War on Drugs and the Global Colour Line*, Pluto Press, [www.plutobooks.com/9780745338804/the-war-on-drugs-and-the-global-colour-line](http://www.plutobooks.com/9780745338804/the-war-on-drugs-and-the-global-colour-line).
- 104 S Haysom, P Gastrow and M Shaw, (2018). *The heroin coast: A political economy along the eastern African seaboard*, Research paper, 2018, 04, <https://globalinitiative.net/wp-content/uploads/2018/07/2018-06-27-research-paper-heroin-coast-pdf.pdf>.
- 105 Ibid: SACENDU reports available from: [www.samrc.ac.za/intramural-research-units/ATOD-sacendu](http://www.samrc.ac.za/intramural-research-units/ATOD-sacendu).
- 106 Cosup Report, [www.up.ac.za/news/post\\_2699510-cosup-gives-hope-to-substance-users](http://www.up.ac.za/news/post_2699510-cosup-gives-hope-to-substance-users).
- 107 The 'war on drugs' has disproportionately affected black people. See for example M Alexander, *The new Jim Crow: Mass incarceration in the age of colorblindness*, 2010, The New Press. Or <https://idpc.net/blog/2020/06/the-war-on-drugs-is-built-on-racism-it-s-time-to-decolonise-drug-policies>.
- 108 S Shelly and S Howell, Perpetuating apartheid: South African drug policy in K Koram (ed), *The war on drugs and the global colour line*, 2019, 169, [www.researchgate.net/publication/331904807\\_Perpetuating\\_apartheid\\_South\\_African\\_drug\\_policy](http://www.researchgate.net/publication/331904807_Perpetuating_apartheid_South_African_drug_policy).
- 109 Figures were calculated using census data and arrest rates from SAPS annual crime figures by suburb.
- 110 South African Police Service, SAPS annual report 2018/2019, 129, [www.saps.gov.za/about/stratframework/annual\\_report/2018\\_2019/saps\\_annualreport2018\\_2019v2.pdf](http://www.saps.gov.za/about/stratframework/annual_report/2018_2019/saps_annualreport2018_2019v2.pdf).
- 111 R Room, Stigma, social inequality and alcohol and drug use. *Drug and Alcohol Review*, 24, 2005, 143-155. doi:10.1080/09595230500102434.
- 112 RH Moos, Iatrogenic effects of psychosocial interventions for substance use disorders: prevalence, predictors, prevention. *Addiction*, 100(5), 2005, 595-604. doi:10.1111/j.1360-0443.2005.01073.x, <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1360-0443.2005.01073.x>.
- 113 SO Lilienfeld, Scientifically Unsupported and Supported Interventions for Childhood Psychopathology: A Summary. *PEDIATRICS* 115; 2005, 761-764.
- 114 See: S vs L M and others, 31 July 2020, [www.saflii.org/za/cases/ZAGPJHC/2020/170.html](http://www.saflii.org/za/cases/ZAGPJHC/2020/170.html).
- 115 R DeFina and L Hannon, The Impact of Mass Incarceration on Poverty, *Crime & Delinquency*, 59(4), 2013, 562-586, <https://doi.org/10.1177/0011128708328864>.
- 116 For a comprehensive analysis of the impact of the 'war on drugs' see the series of reports *Count the Costs* by the Transform Drug Policy Foundation, available from <https://transformdrugs.org/publications/>. A summary is available from [www.unodc.org/documents/ungass2016/Contributions/Civil/Count-the-Costs-Initiative/AWDR-exec-summary.pdf](http://www.unodc.org/documents/ungass2016/Contributions/Civil/Count-the-Costs-Initiative/AWDR-exec-summary.pdf).
- 117 D Pinnock, A new approach to criminalization could end Cape Town's drug wars, 2019, <https://theconversation.com/a-new-approach-to-criminalisation-could-end-cape-towns-drug-wars-121769>.
- 118 S Haysom, *Hiding in plain sight: Heroin's stealthy takeover of South Africa*, March 2019, 7, <https://enact-africa>.

- s3.amazonaws.com/site/uploads/2019-04-09-heroin-south-africa-policy-brief.pdf.
- 119** J Csete, A Kamarulzaman, M Kazatchkine, E Altice, M Balicki, J Buxton, J Cepeda, M Comfort, E Goosby, J Goulão and C Hart, 2016. Public health and international drug policy, *The Lancet*, 387(10026),2016, 1427-1480.
- 120** Minister of Police, Mr Bheki Cele, gave his SAPS and IPID Budget Speech Vote on 11 July 2019, available from <https://pmg.org.za/briefing/28584/>.
- 121** Ibid.
- 122** See <https://ewn.co.za/2019/05/31/justice-minister-ronald-lamola-to-go-after-drug-dealers-users>.
- 123** Constitutional Court of South Africa, Judgement in Case CCT 108/17, 2018, [www.saflii.org.za/za/cases/ZACC/2018/30.pdf](http://www.saflii.org.za/za/cases/ZACC/2018/30.pdf).
- 124** A Scheibe., S Shelly, J Hugo, M Mohale, S Lalla, W Renkin, and TS Marcus, Harm reduction in practice -The Community Oriented Substance Use Programme in Tshwane, *African Journal of Primary Health Care & Family Medicine*, 12(1), 2020,1-6; TS Marcus, J Heese, A Scheibe, S Shelly, SX Lalla and JF Hugo, Harm reduction in an emergency response to homelessness during South Africa's COVID-19 lockdown, *Harm reduction journal*, 17(1), 2020, 1-8.
- 125** Personal correspondence between author and officials. A programme was established at the Paint City Shelter run by the City of Cape Town.
- 126** Information gathered from: A Scheibe, S Shelly, J Hugo, M Mohale, S Lalla, W Renkin, N Gloeck, S Khambule, L Kroucamp, U Bhoora, TS Marcus, Harm reduction in practice – The Community Oriented Substance Use Programme in Tshwane, 2020, [www.scielo.org.za/scielo.php?script=sci\\_arttext&pid=S2071-29362020000100025](http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S2071-29362020000100025).
- 127** Department of Social Development, National Drug Master Plan (2019 – 2024), June 2020, [www.gov.za/sites/default/files/gcis\\_document/202006/drug-master-plan.pdf](http://www.gov.za/sites/default/files/gcis_document/202006/drug-master-plan.pdf).
- 128** SANPUD, South African Network of People Who Use Drugs Welcomes the Announcement of the National Drug Master Plan by the Department of Social Development on 2020 Global Day of Action, 29 June 2020, <https://allafrica.com/stories/202006290788.html>.
- 129** European Monitoring Centre for Drugs and Drug Addiction, *Drugs policy and the city in Europe*, 2015, EMCDDA Papers, Publications Office of the European Union, Luxembourg.
- 130** Universal care targets the general population and is not directed at a specific risk group; selective care targets those at higher-than-average risk for substance abuse; indicated care targets those already using or engaged in other high-risk behaviours to prevent heavy or chronic use.

# Read more about drug trafficking and counterfeit medicines at [www.enact.africa](http://www.enact.africa)




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Issue 04 | June 2018

## Tackling heroin trafficking on the East African coast

*Simone Hayson, Peter Gastrow and Mark Shaw*

**Summary**

In recent years, the volume of heroin shipped from Afghanistan along a network of maritime routes in East and Southern Africa appears to have increased considerably. An integrated regional criminal market has developed, shaped and shaped by political developments. Africa is now experiencing the sharpest increase in heroin use worldwide, and a spectrum of criminal networks and political elites in East and Southern Africa are substantially enmeshed in the trade. New policy approaches are urgently needed.



**Key points**

- Responses should address the challenge as a cross-border criminal system.
- Progressive action should be targeted in major drug hubs along the southern route, focusing on vulnerable areas and potential sources of regional instability, such as northern Mozambique.
- The relationship between politics, business and organised crime must be adequately researched and addressed.
- Vetted private sector actors should be engaged to prevent or reverse the criminalisation of key ports.
- Support must be increased for community-based initiatives that mitigate the effects of drug use.
- Programming interventions to reduce violence in the most vulnerable communities affected by the heroin trade in Southern and East Africa should be considered.


**This brief focuses on:**



**POLICY BRIEF**

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Issue 04 | June 2018

## The heroin coast

### A political economy along the eastern African seaboard

*Simone Hayson, Peter Gastrow and Mark Shaw*


**Summary**

In recent years, the volume of heroin shipped from Afghanistan along a network of maritime routes in East and southern Africa appears to have increased considerably. Most of this heroin is destined for Western markets, but there is a spin-off trade for local consumption. An integrated regional criminal market has developed, both shaping and shaped by political developments in the region. Africa is now experiencing the sharpest increase in heroin use worldwide and a spectrum of criminal networks and political elites in East and southern Africa are substantially enmeshed in the trade. This report focuses on the characteristics of the heroin trade in the region and how it has become embedded in the societies along this route. It also highlights the features of the criminal-governance systems that facilitate drug trafficking along this coastal route.

**Recommendations**

- The East African heroin market forms an integrated regional criminal economy based on the transit of heroin from Afghanistan to the West.
- The transit economy relies on international ports and other infrastructure, and high levels of political protection.
- There is a rapidly growing consumer drug market in the region – one that is much larger than is commonly acknowledged.
- Despite some positive trends in drug users' ability to access health services in several locations in the region, there are nevertheless gaps in appropriate drug treatment interventions.

**This paper focuses on:**



**RESEARCH PAPER**




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Issue 06 | November 2018

## The rise of counterfeit pharmaceuticals in Africa

*Robin Cartwright and Ana Baric*

**Summary**

Sustainable Development Goal 3 (SDG 3) places significant emphasis on populations' health, and sub-target 3.8 specifies access to safe, effective, quality and affordable essential medicines and vaccines for all. Yet, remarkably missing from the discourse around achieving this goal is the need to address the growing phenomenon of counterfeit medicines, which disproportionately affects developing countries. Counterfeit medicines put people's lives at risk, finance criminal groups and cause profound public health challenges. The full scale of the challenge in Africa is not fully understood, but research suggests that the problem and its impact are severe. If the continent is to make headway in achieving SDG 3, the issue of counterfeit medicines must move higher up on policy agendas. Experience elsewhere suggests that there would be scope for significant positive results.

**Key points**

- Addressing counterfeit medicines in Africa may help prevent widespread loss of life, including an estimated 64 000-158 000 avoidable deaths from malaria alone, as well as mitigating other public health and public safety risks.
- Much greater prioritisation of the issue by African states and continental or regional bodies is needed. The response should include a substantial overhaul of the analytical, legal, educational, regulatory and enforcement systems around medical supply chains. The legal and regulatory frameworks for combating medicine fraud will need strengthening.
- These responses would need to be coordinated within a global effort, including setting up a database of intelligence on counterfeits, and improved awareness-raising and training campaigns. National medicines regulation authorities should investigate mass serialisation forms of track-and-trace.

**This brief focuses on:**



**POLICY BRIEF**




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Issue 05 | June 2018

## Analysing drug trafficking in East Africa

### A media-monitoring approach

*Ciara Aucoin*

**Summary**

By analysing drug-related incidents reported in the media in three key East African nations over the past decade, this paper provides insights into drug trafficking in the region. This includes the different drug types in circulation across Kenya, Tanzania and Uganda; the quantities and trafficking methods used, as well as the origin, transit, and destination hubs. The report also suggests patterns in the actors involved, the nature of state responses and the reporting styles of the African and foreign press. The potential for improved sourcing using this methodology, and for greater public awareness of drug trafficking-related harms, lies in the development of stronger and more capable journalism in the region.

**Key points**

- East Africa plays an increasing role in the continent's illicit drug trade, particularly as a corridor for flows of heroin and cocaine.
- Media monitoring is an innovative way of gathering data to help illustrate trends in transnational organised crime, including drug trafficking trends.
- Findings show interesting patterns in reporting on major harmful drugs in the region, and the many challenges faced by journalists in investigating and publishing drug trafficking stories.
- The paper calls for greater press freedom and increased training and financial support for investigative journalism in East Africa, and across the continent more generally.

**This paper focuses on:**



**RESEARCH PAPER**



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## About ENACT

ENACT builds knowledge and skills to enhance Africa's response to transnational organised crime. ENACT analyses how organised crime affects stability, governance, the rule of law and development in Africa, and works to mitigate its impact. ENACT is implemented by the ISS and INTERPOL, in affiliation with the Global Initiative Against Transnational Organized Crime.

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