



## **Identifying Common Ground on Criminal Justice for the United Nations General Assembly Special Session on the World Drug Problem in 2016**

### ***What does a ‘criminal justice approach’ to global drug policy mean today?***

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Permanent Mission of the United States of America to the United Nations  
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#### **Concept Note**

As the UN General Assembly’s Special Session in New York on the World Drug Problem (UNGASS 2016) approaches, there is a need to consider how criminal justice approaches best fit within efforts at creating an integrated and balanced approach for the international drug control regime. Criminal justice and law enforcement-based approaches have been at the centre of global drugs policy for many decades, particularly since the adoption of the 1988 United Nations *Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, which created the basis for the criminalization of the illicit drug trade.

However, in the subsequent quarter century, the pursuit of criminal justice-based approaches to implementation of the global drug control regime has led to some unenvisioned outcomes: the criminalization of whole communities, mass incarceration, and militarized responses to fight cultivation and trafficking. Yet criminal justice has stayed at the heart of the world response to the drug problem. The 2009 *Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem* highlights law enforcement and judicial systems as key elements of the supply reduction pillar, and incorporates an entire pillar focused on criminal justice efforts to counter money-laundering and promote judicial cooperation.<sup>1</sup>

Increasingly, however, some Member States are seeking a ‘rebalancing’ of the implementation of the global drug control regime, through consideration of the public health, human rights and development impacts of current approaches. With the United Nations moving to a ‘universalist’ approach to development (under the proposed post-2015 ‘Sustainable Development Goals’), every country must confront the question of how different uses of criminal justice tools will impact development outcomes. This raises the question whether criminal justice measures also require adjustment or

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<sup>1</sup> High-Level Segment, Commission on Narcotic Drugs, *Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem*, UNODC, Vienna, 11-12 March 2009.

adaptation. At the May 2015 High-Level Thematic Debate of the UN General Assembly in support of UNGASS 2016, UN Deputy-Secretary General Jan Eliasson listed essential elements of a balanced approach, including ‘preventing drug use, treating drug dependence, providing health care and social protection, as well as supporting alternative livelihoods.’<sup>2</sup> The 2009 *Political Declaration and Plan of Action* itself notes that there are ‘alternatives to prosecution and imprisonment for drug-using offenders’ and suggests states consider providing drug dependence treatment, including as an alternative to incarceration; take measures to address corruption and over-crowding in prisons; commit to programming for re-entry and social reintegration; and provide adequate training to staff.<sup>3</sup>

Some states and civil society advocates, however, suggest that further efforts are needed to ensure that criminal justice approaches to implementation of the global drug control regime do not have unintended – and counter-productive – consequences. They argue that criminalization – not just of trafficking but a range of drug-related activities – has, over time, had a range of unintended consequences at the human and social developmental levels, such as:

- unexpectedly high incarceration rates amongst certain, usually young, poor, marginalized populations, with knock-on economic, social and public health impacts;
- stigmatization and perpetuation of socio-economic exclusion and poor health outcomes for people who use drugs;
- high levels of violence in communities affected by the drug trade; and impacts of corruption on governance and political accountability.<sup>4</sup>

These concerns are powerfully reflected, for example, in the draft Common African Position for UNGASS 2016:

*Drug policies which focus entirely or disproportionately in law enforcement, incarceration, punishment and repression have not succeeded in eradicating supply, demand and harm caused by illicit drugs on the Continent. These policies have led to serious unintended consequences and often disproportionately impact upon the poor and marginalised, while creating a rich and powerful criminal market that undermines security of states.<sup>5</sup>*

Over the last two decades, as these concerns have grown, many Member States have sought new approaches to the use of criminal justice tools to address the world drug problem. Thus, while in its 1998 *Joint Declaration on a Drug-Free ASEAN*, the Association of Southeast Asian Nations (ASEAN) called upon its members to review jurisprudence on illicit drug use and trafficking in an effort to move towards ‘the passage

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<sup>2</sup> UN Meeting Coverage and Press Releases, “Multi-Sector Approach, Integrating Public Health into Substance Control Efforts Key to Winning ‘War on Drugs’, Deputy Secretary-General Tells General Assembly,” 7 May 2015.

<sup>3</sup> High-Level Segment, Commission on Narcotic Drugs, 2009.

<sup>4</sup> For instance, see UNDP, Perspectives on the Development Dimensions of the Drug Problem, 2015; West Africa Commission on Drugs, *Not Just in Transit: Drugs, the State, and Society*, June 2014; Organization of American States General Secretariat, The Drug Problem in the Americas, OEA/Ser.D/XXV.4, 2013.

<sup>5</sup> African Union, Draft ‘Common African Position (CAP) for the UN General Assembly Special Session on the World Drug Problem, April 19-21, 2016’, STC/EXP/DC/3(I), April 2015.

of stricter laws'.<sup>6</sup> Ministerial-level reviews of the *Declaration* have since then steadily incorporated language emphasizing balance, evidence-based treatment and social reintegration.<sup>7</sup> Even as a minority of states continue to apply the death penalty for some drug offenses (primarily, as we explore further below, against foreign citizens), other states, such as Uruguay and some jurisdictions within the United States of America, are experimenting with regulated legal markets for certain substances, while others are replacing criminal sanctions with administrative sanctions for limited possession of banned substances.

Given these shifting and diverse views on how criminal justice tools can best be used to achieve effective implementation of the global drug control regime, and the Commission on Narcotic Drugs (CND)'s decision to prepare 'operational recommendations' for consideration at UNGASS 2016,<sup>8</sup> what does a 'criminal justice approach' realistically look like, today? Given that many states remain in favour of a punitive approach to implementation of the global drug control regime, what 'operational recommendations' can UN Member States realistically make that would strengthen a balanced criminal justice approach to global drug policy?

This concept note identifies some areas where common ground might emerge ahead of UNGASS 2016, and asks what steps would need to be taken to make that happen. It focuses on four areas:

1. incarceration as a question of inequality;
2. alternatives to incarceration: decriminalization and 'drug courts';
3. alternatives to incarceration: proportionality and the death penalty;
4. smart policing of drug markets.

## **1. Incarceration as a question of inequality**

Prison populations have grown significantly over the last 40 years, with drug control policies being a major driver. The US prison population has risen by 700 percent since 1970;<sup>9</sup> today over 50 percent of the United States prison population is incarcerated on drug offences.<sup>10</sup> Nor is it alone: Colombia's prison population is estimated to be at 150 percent of official capacity.<sup>11</sup> The United Nations Office on Drugs and Crime (UNODC) has noted that, from available data, while criminal offences related to drug trafficking have remained relatively stable over time, drug possession offences showed a 13 percent increase since 2003.<sup>12</sup> Metrics such as arrest quotas and conviction rates incentivize

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<sup>6</sup> ASEAN, Joint Declaration for a Drug-Free ASEAN, Manila, Philippines, 25 July 1998.

<sup>7</sup> See for example ASEAN "Chairman's Statement," AMMMD3/MIN/P.008/D.1, The 3<sup>rd</sup> ASEAN Ministerial Meeting on Drug Matters, Jakarta, Indonesia, 3 December 2014.

<sup>8</sup> CND has indicated it will produce a set of operational recommendations to be adopted at UNGASS 2016. CND, *Draft Resolution submitted by Chair, Special session of the General Assembly on the world drug problem to be held in 2016*, E/CN.7/2015/L.11, 17 March 2015.

<sup>9</sup> see ACLU, [The Prison Crisis](#).

<sup>10</sup> Kathleen Miles, "Just How Much The War On Drugs Impacts Our Overcrowded Prisons In One Chart," *The Huffington Post*, 3 April 2014.

<sup>11</sup> Talor Gruenwald, "Colombia court gives government ultimatum to solve prison crisis," *Colombia Reports*, 21 April 2015.

<sup>12</sup> Report of the Secretary-General, *State of crime and criminal justice worldwide*, 13<sup>th</sup> UN Congress on Crime Prevention and Criminal Justice. A/CONF.222/4, Doha, 12-19 April 2015. 19 January 2015. p. 4.

incarceration, and may encourage law enforcement actors to go after the easiest targets, such as street-level dealers, mules, or people who use drugs.<sup>13</sup> Women are particularly affected. One estimate suggests that the portion of the female inmate population imprisoned on drug related crimes is between 75 and 80 percent in Ecuador; 64 percent in Costa Rica; 60 percent in Brazil; and between 65 and 80 percent in Argentina.<sup>14</sup>

Prison overcrowding reduces access to services for inmates, leads to degradation of prison conditions and may increase opportunities for violence and abuse.<sup>15</sup> Prisoners with communicable diseases such as HIV/AIDS and Hepatitis C are often not afforded access to harm reduction services, increasing immediate health risks from shared needles. Similarly, those with substance abuse problems face increased health risks due to a lack of treatment and support services. Incarceration also has a lasting affect on community and personal development. Knock-on-effects in communities can include:

- detrimental impacts on household income (not only during incarceration, but following it, as a result of stigmatization and reduced income expectancy following incarceration);
- lost labour-force productivity and national economic output;
- impacts on early childhood cognitive development in communities disproportionately affected by incarceration.

Of course, there are also direct economic consequences from running the prisons themselves. In the United States, in 2013, one-third of the Justice Department's budget went to the Bureau of Prisons, while state-level costs for running corrections facilities nearly tripled in three decades.<sup>16</sup>

As with many other policies, the least powerful feel the impacts of incarceration-based drug policy harder than others do. Negative impacts on marginalized groups are felt across the UN regional groups. The West Africa Commission on Drugs has noted that law enforcement efforts in the region have led to a punitive focus on small-scale dealers, users and couriers, rather than high-level, or politically connected, participants in the drug trade.<sup>17</sup> A recent report states that black and Asian communities in England and Wales are the primary targets of drug-related law enforcement.<sup>18</sup> In the US, the Obama Administration has acknowledged 'demographic disparities' in the application of laws relating to drug control, and an 'over-reliance on incarceration', and on that basis has taken a number of steps to reform the role of criminal justice in its drug control policies.<sup>19</sup>

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<sup>13</sup>Pien Metaal and Coletta Youngers eds., *Systems Overload – Drug Laws and Prison in Latin America*, Transnational Institute and Washington Office on Latin America, March 2011. p. 8.

<sup>14</sup> Luciana Pol, "Failed drug policies in Latin America: the impact on prisons and human rights," Penal Reform International, April 24, 2015.

<sup>15</sup>Ibid.

<sup>16</sup> United States Department of Justice, *Smart on Crime: Reforming the Criminal Justice System for the 21<sup>st</sup> Century*, Washington, D.C., August 2013. p. 2.

<sup>17</sup> West Africa Commission on Drugs, 2014, pp. 8-9.

<sup>18</sup> The report provides statistics showing that Black and Asian people are being stopped and searched for drugs at a much higher rate than white people. Black people are also being subject to harsher sanctions for drug possession offences. Release, *The Numbers in Black and White: Ethnic Disparities in the Policing and Prosecution of Drug Offences in England and Wales*.

<sup>19</sup> United States Department of Justice, August 2013. p. 2.

In many other countries, marginalized groups similarly account for high percentages of people cycling through the justice system for drug-related offences.<sup>20</sup> Yet for some communities, involvement in the illicit drug market may be one of few viable livelihood strategies; yet that participation may trap them in cycles of ‘insecurity, criminality, and marginalization’.<sup>21</sup>

Incarceration policy, thus, has implications for countries’ achievement of the proposed Sustainable Development Goals (SDGs), notably those relating to inequality. Proposed SDG target 10.3 calls for member states to ‘reduce inequalities of outcome, including by eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and action in this regard’. Given the evidence now available of the differential impact of drug-related incarceration policies, achievement of this target may require a rethink.

## 2. Alternatives to incarceration: decriminalization and ‘drug courts’

As concern has risen about the costs of over-reliance on incarceration in drug control efforts, interest in alternatives has grown. The United States submitted a resolution that was adopted at the 58<sup>th</sup> session of the CND which calls for states to consider alternatives to incarceration for drug-related offences of a minor nature, promote collaboration between health and justice departments, and promote rehabilitation and reintegration efforts.<sup>22</sup> The EU’s 2013-2016 Action Plan on Drugs includes the goal that member states provide alternatives to coercive sanctions for drug-using offenders by 2015.<sup>23</sup> The African Union 2013 Plan of Action also call for its member states to institutionalize diversion programmes for people who use drugs, especially alternatives to incarceration for minor offenses,<sup>24</sup> and the 2015 draft Common African Position for UNGASS 2016 states, simply:

*People who use drugs must be offered support, treatment and protection, rather than be faced with punishment and a criminal record. This includes the provision of alternatives to arrest, sentencing and incarceration.*

UN entities have also called for such reforms. The World Health Organization (WHO) has called such reforms ‘critical enablers that can change a hostile environment for key populations to a supportive environment,’ highlighting the fact that barriers caused by criminalizing behaviour may prevent people from seeking healthcare for fear of legal consequences.<sup>25</sup> In 2004, the International Narcotics Control Board (INCIB)

<sup>20</sup> National Association for the Advancement of Colored People, *Criminal Justice Fact Sheet*, 2015. Organization of American States General Secretariat, 2013. pp. 25, 59. OAS and Inter-American Commission on Women, *Women and Drugs in the Americas: A Policy Working Paper*, Washington, D.C., January 2014. p. 31.

<sup>21</sup> Vanda Felbab-Brown, “Designing Pan-Atlantic and International Anti-Crime Cooperation,” in *Dark Networks in the Atlantic Basin: Emerging Trends and Implications for Human Security*, Center for Transatlantic Relations, Washington D.C., January 2015. p. 122.

<sup>22</sup> Commission on Narcotic Drugs, Supporting the collaboration of public health and justice authorities in pursuing alternative measures to conviction or punishment for appropriate drug-related offences of a minor nature, E/CN.7/2015/L.8/Rev.1, 58<sup>th</sup> Session of the CND, Vienna, 9-17 March 2015, 16 March 2015.

<sup>23</sup> Council of the European Union, EU Action Plan on Drugs 2013-2016, 2013/C351/01, Brussels, 2013.

<sup>24</sup> The African Union, *AU Plan of Action on Drug Control 2013-2017*, Adopted by the AU Executive Council, Decision EX.CL/Dec743(XXII) during the January 2013 Assembly of Heads of State.

<sup>25</sup> WHO, *Consolidated guidelines on HIV prevention, diagnosis, treatment and care for key populations*, Geneva, July 2014, p. 90.

stated that alternatives to incarceration can effectively treat ‘health conditions associated with drug abuse’ and reduce crime, and may keep young people who use drugs away from criminal culture in prison.<sup>26</sup> The Office of the High-Commissioner for Human Rights (OHCHR) has argued that compulsory detention and drug rehabilitation centres often offer treatment that is not evidence-based and can include ‘forced labour, corporal punishment, un-medicated withdrawal, sexual abuse, solitary confinement, and experimental treatments’ without permission.<sup>27</sup>

Some states are going so far as to explore decriminalization of certain drug-related conduct. While there is more than one model of decriminalization, the term generally connotes the removal or suspension of application of criminal penalties for legal infractions associated with personal drug use. Portugal’s regulatory experimentation in decriminalizing drug use is amongst the better-known precedents. The Portuguese approach includes a strong focus on harm reduction and health services. Portugal has seen positive trends such as a decline in prison populations, reduced problem use and adolescent drug use, a significant decrease in HIV rates among people who use drugs, and reduced social costs, without a significant increase in drug use or drug tourism.<sup>28</sup> But Portugal is by no means alone in moving in this direction: various members of the Eastern European Group, Group of Latin American and Caribbean states (GRULAC), and Western European and Others Group (WEOG) have all adopted decriminalization policies in certain circumstances.<sup>29</sup> At the recent High-Level Thematic Debate in preparation for UNGASS 2016, Senegal also indicated that it was exploring decriminalization.<sup>30</sup> In the United States a range of decriminalizing measures have been passed in eighteen federal states and Washington D.C., including permitting cannabis production and possession for medical purposes; and replacing criminal penalties for possession of small amounts of prohibited cannabis with administrative penalties such as fines or drug education classes. Several U.S. jurisdictions have created legal, regulated cannabis markets or allowed for home-grown cultivation, as Washington D.C. has done in addition to legalizing personal use.

A number of WEOG and GRULAC states, including Chile, Australia, and Trinidad and Tobago, have also begun to create so-called ‘drug courts’: specialized criminal or administrative law bodies that mandate tailored, court-supervised treatment programmes, rather than traditional incarceration. Such programmes typically offer intensive treatment, carry out randomized drug testing, and involve periodic case reviews by a judicial actor. But there are huge variations in the approaches taken. Some drug courts have raised concerns relating to: the limited involvement of medical professionals in treatment design or imposition; the coercive nature of some treatments (which may raise medical ethics and human rights concerns); and poor access to appropriate treatment

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<sup>26</sup> INCB, Report of the International Narcotics Control Board for 2004, E/INCB/2004/1, 2004. p 5.

<sup>27</sup> OHCHR, “Statement by Navi Pillay, High Commissioner of Human Rights,” High-level Review of the Political Declaration and Plan of Action on International Cooperation Towards an Integrated and Balanced Approach to Counter the World Drug Problem, Vienna, March 13-14, 2014.

<sup>28</sup> Drug Policy Alliance, “Drug Decriminalization in Portugal: A Health-Centered Approach,” February 2015.

<sup>29</sup> Ari Rosmarin and Naimh Eastwood, *A Quiet Revolution: Drug Decriminalization Policies in Practice Across the Globe*, Release, London, 2011.

<sup>30</sup> Intervention at the High-level Thematic Debate in support of the process towards the 2016 Special Session of the General Assembly on the World Drug Problem, UN Headquarters, New York, 7 May 2015.

and harm reduction measures.<sup>31</sup> Partly for these reasons, in the US, the White House Office of National Drug Control Policy (ONDCP) is working to strengthen the health impacts of drug courts, for example by revising federal grant language for state institutions to set guidelines for evidence-based treatment, including around the provision of opioid-substitution therapy.<sup>32</sup> This raises the question about whether there is a need for the development of some kind of guidance, at the international level, to help states meet minimum standards and discharge their human rights obligations when implementing ‘drug court’ policies.

### 3. Alternatives to incarceration: proportionality and the death penalty

Short of decriminalization and drug courts, some states are simply seeking to recalibrate the criminal penalties that minor, non-violent drug offenders receive. Several Member States emphasized sentencing proportionality during interventions at CND’s special segment on UNGASS 2016 in March 2015.<sup>33</sup> In 2014, Ecuador revised its sentencing laws for micro-traffickers, reducing a mandatory 8-12 year sentence to between 2-6 months and 1-3 years depending on the amount held. This change largely affects the female prison population, who make up a large portion of small-scale traffickers.<sup>34</sup> England and Wales has changed sentencing guidelines for drug couriers to reduce the number of years in prison, Singapore has exempted couriers from the death penalty, and Costa Rica has reduced the number of years in prison for female drug couriers.<sup>35</sup>

In the US, under the *Smart on Crime Initiative* launched in 2013, the federal government has initiated sentencing reforms for low-level, non-violent convictions, advocating for changes to federal mandatory minimum sentences.<sup>36</sup> This has generated a decline in federal prosecutors seeking the mandatory minimum sentence in drug cases.<sup>37</sup> Recognizing racial disparities in some sentencing guidelines, the United States Congress passed the *Fair Sentencing Act*, reducing sentencing discrepancies for cocaine and crack-cocaine that had placed an undue burden on minorities.<sup>38</sup> President Obama has gone so far as to use federal clemency powers to reduce some existing drug related sentences.<sup>39</sup>

Closely related to questions of sentencing proportionality is the question of whether it is ever valid to apply the death penalty in non-violent drug-related cases. The UN Human Rights Committee and several UN human rights special procedure mandate-

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<sup>31</sup> Joanne Csete and Denise Tomasini-Joshi, “Drug courts: Equivocal Evidence on a Popular Intervention,” Open Society Foundations, New York, 2015.

<sup>32</sup> Ryan Grim and Jason Cherkis, “Federal Government Set To Crack Down On Drug Courts That Fail Addicts,” *The Huffington Post*, 6 February 2015.

<sup>33</sup> Commission on Narcotic Drugs, *Report on the fifty-eighth session (5 December 2014 and 9-17 March 2015)*, Advanced Unedited Version, E/CN.7/2015/15, Vienna, 2015. p. 55.

<sup>34</sup> Simeon Tegel, “Ecuador is Releasing Thousands of Convicted Drug Mules,” *The Global Post*, 6 October 2014.

<sup>35</sup> Jennifer Fleetwood, “Sentencing reform for drug trafficking in England and Wales,” Briefing Paper, International Drug Policy Consortium, April 2015.

<sup>36</sup> United States Department of Justice, August 2013.

<sup>37</sup> Evan Perez, “Attorney General Eric Holder sees success in fewer drug cases,” *CNN*. 17 February, 2015.

<sup>38</sup> Applied retroactively, approximately 12,000 people –85% of whom are African American—can have their cases reviewed for shortened sentences, see ACLU, *Fair Sentencing Act*. African-Americans are also 3.73 times more likely to be arrested for possession of marijuana. American Civil Liberties Union, *The War on Marijuana in Black and White*, 2015.

<sup>39</sup> Drug Policy Alliance, “Obama Plans Clemency for “Hundreds, Perhaps Thousands” of People Sentenced for Drug Law Violations,” April 21, 2014. Ryan J. Reilly, “DOJ Gears Up for Massive Obama Clemency Push,” *Huffington Post*, 23 April 2014.

holders have indicated that it is not.<sup>40</sup> UNODC has backed this position,<sup>41</sup> and INCB President Lochan Naidoo recently stated that Member States retaining the death penalty for drug-related offences should consider abolishing it.<sup>42</sup> UN Secretary General Ban Ki-moon recently appealed to Indonesia, without success, to commute the death sentences of nine foreign and national individuals convicted of drug trafficking.<sup>43</sup> Yet the question remains contentious amongst Member States, notwithstanding the General Assembly's 2007 death penalty moratorium resolution.<sup>44</sup> In March 2015, the European Union described the abolition of the death penalty as an absolute priority.<sup>45</sup> This was reiterated by the EU representative and EU Member States at the General Assembly High-Level Thematic Debate in support of UNGASS 2016 in May 2015. At the CND's 58<sup>th</sup> convening in March 2015, many Member States voiced opposition to the death penalty.<sup>46</sup> As of 2012, 33 countries retained capital punishment laws for drug offences, although only 12 to 14 appear to have carried out an execution in the five years 2007-2012.<sup>47</sup> It is notable that the death penalty in drug-related cases appears to be applied more often to foreign citizens than to states' own citizens.

#### 4. Smart policing of drug markets

The high levels of violence in communities affected by drug-related activity have led states to focus attention on the effectiveness of different law enforcement and criminal justice policies. The UN Development Programme recently drew attention to the fact that some drug trafficking organizations are in control of significant territories and populations, often perpetrating significant human rights abuses in the process, and fomenting insecurity for citizens.<sup>48</sup> At the same time, military and police interventions into such spaces can generate high mortality rates.<sup>49</sup> Militarized responses to entrenched drug trafficking organizations risk significant human, economic, physical and social collateral damage, as entire neighborhoods are destabilized and people are forcibly displaced. In some cases, informal collaboration between police or military actors, drug

<sup>40</sup> UN Human Rights Committee, *Concluding observations: Thailand*, UN Doc. CCPR/CO/84/THA (8 July 2005), para. 14; UN Commission on Human Rights, *Extrajudicial, summary or arbitrary executions: report by the Special Rapporteur, submitted pursuant to Commission on Human Rights Resolution 1996/74*, E/CN.4/1997/60, 24 December 1996; UN Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Addendum: Communications to and from governments*, A/HRC/14/24/Add.1, 18 June 2010, pp. 45–46; Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, A/65/255, 6 August 2010, para. 17; UN Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/HRC/10/44, 14 January 2009, para. 66.

<sup>41</sup> UNODC, *Drug control, crime prevention and criminal justice: a human rights perspective. Note by the Executive Director*, Commission on Narcotic Drugs, Fifty-third session, Vienna, 8–12 March, E/CN.7/2010/CRP.6–E/CN.15/2010/CRP.1.

<sup>42</sup> Statement by Dr. Lochan Naidoo, President of the International Narcotics Control Board, 58<sup>th</sup> Session of the Commission on Narcotic Drugs Special segment on preparations for the special session of the General Assembly on the world drug problem (UNGASS) to be held in 2016, Vienna, 9–17 March 2015.

<sup>43</sup> Al Jazeera, “UN chief asks Indonesia not to execute drug convicts,” *Al Jazeera*, 26 April 2015.

<sup>44</sup> Resolution adopted by the General Assembly on 18 December 2007 [on the report of the Third Committee (A/62/439/Add.2)] 62/149. Moratorium on the use of the death penalty. A/RES/62/149. 18 December 2007.

<sup>45</sup> European Union, Statement on the occasion of the Special segment on the preparations for the UNGA Special Session on the World Drug Problem of the 58<sup>th</sup> Session of the Commission on Narcotic Drugs, Vienna, 9–17 March 2015

<sup>46</sup> Commission on Narcotic Drugs, E/CN.7/2015/15, 2015. p. 55.

<sup>47</sup> International Harm Reduction Association, *The Death Penalty for Drug Offences: Global Overview 2012*, 2012.

<sup>48</sup> UN Development Programme, March 2015. p. 8.

<sup>49</sup> For instance, Rio's military police killed 1 out of every 23 people they arrested between 1985 and 2008. Robert Muggah and Ilona Szabó de Carvalho, “Fear and Backsliding in Rio,” *The New York Times*, 15 April 2014.

trafficking organizations and other influential actors, risks giving drug trafficking organizations access to political influence and public policy processes.

In situations where organized criminal groups control the drug trade and trafficking routes, some practitioners suggest law enforcement policies should focus on reducing threats to public safety, the state and society, rather than on suppressing the drug trade itself.<sup>50</sup> In the US, a detailed evidence base has grown up around policing approaches such as Group Violence Intervention (GVI) and Drug Market Intervention (DMI), which promote a holistic community focus to programming in order to reduce violence, improve public safety, minimize arrests and incarceration, and foster police-community reconciliation. When a member of a group commits a violent act, in addition to the violent offender, GVI targets all known members of the group on prior charges, probation violations, and so on, in order to increase accountability for violent acts across the group. Efforts to reduce a group's 'violence-promoting peer dynamic' also include engagement with the community to establish community norms against violence and to offer exit strategies and social services for those interested in alternative paths.<sup>51</sup> Other efforts, such as the celebrated 'Cure Violence' organization, have focused on working with credible messengers to interrupt the transmission of violent norms through criminal networks and organizations, addressing the violence of drug markets through an epidemiological approach.<sup>52</sup> In Seattle, Washington, through a program called Law Enforcement Assisted Diversion (LEAD), police officers divert individuals suspected of minor drug-related offences to harm reduction and social services, which can include public housing, healthcare, job training, treatment and mental health support, rather than the criminal justice system. A recent evaluation has shown that LEAD participants were 58 percent less likely than people in the control group to be arrested.<sup>53</sup>

Other countries have also been testing alternative policies and approaches. Some European states, such as Finland and Switzerland, have joint initiatives that focus on strengthening cooperation between health, law enforcement and judicial agencies, among others, to support a public-health approach to illicit drug-related activity.<sup>54</sup> In Brazil, Pacification Police Units (UPP) aim to establish longer-lasting connections to *favelas* where state authority is contested, social services are few, and violence levels are high. The intention is that new recruits, free from corrupt police practices, enter a *favela* after a military incursion and remain embedded there to build relationships with the community as social services become available. UPPs have contributed to a 65 percent reduction in lethal violence in pacified areas and it has been shown that students in pacified areas perform twice as well as students in public schools.<sup>55</sup> While it is meeting with some

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<sup>50</sup> Felbab-Brown, January 2015. p. 123.

<sup>51</sup> National Network for Safe Communities, *Group Violence Intervention: An Implementation Guide*, Washington, DC: U.S. Department of Justice, Office of Community Oriented Policing Services, 2013.

<sup>52</sup> Charles Ransford, Candice Kane and Gary Slutkin, 'Cure Violence: A disease control approach to reduce violence and change behavior', in Eve Waltermauer and Timothy Akers, eds., *Epidemiological Criminology: Theory to Practice*. Abingdon: Routledge, 2012. pp. 232-242.

<sup>53</sup> Susan E. Collins, Seema L. Clifasefi & Heather S. Lonczak, "Summary of LEAD Program Evaluation: Recidivism Report," 7 April 2015.

<sup>54</sup> Implementing the Balanced Approach in Practice through Cooperation between Government Agencies, Side-event organized by the Governments of Finland and Switzerland, at Commission on Narcotic Drugs Special Segment on the preparation for the special session of the General Assembly on the World Drug Problem to be held in 2016, 9-12 March 2015, 10 March 2014.

<sup>55</sup> Muggah and Szabó de Carvalho, 15 April 2014.

success, challenges remain such as establishing lasting social services, gang resettlement in other favelas, connecting *favelas* to public utilities, providing meaningful employment opportunities, and the limited numbers of UPP officers.<sup>56</sup>

### **Key questions for discussion**

- How might Member States use UNGASS 2016 to promote a more effective criminal justice approach to implementing the global drug control regime?
- Is the disproportionate impact of drug-related incarceration on minority and marginalized communities a question of inequality relevant to the post-2015 discussion? If so, should an UNGASS 2016 outcome document include references to SDG target 10.3?
- Should UNGASS 2016 provide normative or programming guidance on alternatives to incarceration, either for people who use drugs (i.e., on drug treatment programming, or drug courts), or for those who commit minor drug-related offences (i.e., on proportionality in sentencing)? Alternatively, could UNGASS 2016 establish a process (such as an International Expert Advisory Group) to develop such guidance by 2019?
- What can UNGASS 2016 do on the question of the application of the death penalty in drug-related cases?
- How can Member States adapt lessons learned from policing and criminal justice in one context to another? Could UNGASS 2016 establish a mechanism for inter-regional, South-South or triangular cooperation to promote good practices?

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May 2015

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<sup>56</sup> Adam Isaacson, “Rio de Janeiro’s Pacification Program,” Washington Office on Latin America, 5 January 2011; Muggah and Szabó de Carvalho, 2014.