

## **Informal Drug Policy Dialogue**

An initiative by the  
Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ)  
and the Transnational Institute (TNI)

### **Report 2<sup>nd</sup> Southeast Asia Informal Policy Dialogue Bangkok 19-21 April 2010**

#### **Executive Summary**

The discussions during the Second Southeast Asia Dialogue focused on five key themes: the importance of ACCORD; sustainable opium reduction; crop substitution, particularly the massive scale-up of rubber plantations; opportunities for legislative reform; and the need for harm reduction and effective drug treatment. Following these discussions, participants made suggestions and recommendations to improve the regional response as well as the organisers' work in the region. Approximately 35 participants took part in the discussions, which were guided by the Chatham House Rules.

ACCORD is guided by ASEAN and SOMTC to achieve a drug free region by 2015. Though there was general acknowledgement that such mechanisms could be very useful, participants noted concern regarding the ACCORD objectives, which are considered unattainable. This was seen to have a negative impact on the possibility of establishing partnerships with ACCORD and on mobilizing resources to support ACCORD. In addition, concerns were raised regarding the absence of civil society participation in ACCORD. A revision of objectives and operational procedures for ACCORD could revive the mechanism.

In the past two decades, opium cultivation in Southeast Asia has dramatically declined. However, the alternative development projects that have led to such declines have generally not sufficiently benefited community groups and little in the way of viable alternatives to poppy cultivation have been put in place, thus exacerbating challenges in the region. In that sense, the participants recommended advocating for informal tolerance, where precarious households could be allowed to grow poppies under specific conditions defined by authorities. In addition, it was recommended that illicit crop reduction be part of a comprehensive package of interventions to maximize impact.

The massive investments in rubber plantations as an alternative to illicit crops, especially from China, have posed new challenges in the region. The concentration on a single product has placed growers and farmers in a relationship of dependency on their Chinese entrepreneurs. In essence, the demand for rubber is exclusively coming from Chinese businesses, which limits market opportunities. In addition to economic risk, these projects carry significant environmental risks. They also do not significantly benefit local communities.

Legal change in Asia is a slow and time-consuming process. However, some investments in that direction have already led to important results. For example, the Thai government is in process of submitting a proposal to the Ministry of Justice to decriminalize locally occurring illicit drugs and to develop and reinforce community justice structures. In Myanmar, the government is in process of revising old laws and amending where necessary. Such initiatives, coupled with the integration of public health imperatives in drug control legislation and policies, are generally indicative of a paradigm shift across the region.

Though harm reduction has been incorporated in the policy context of the majority of Southeast Asian nations, coverage remains extremely low, funds continue to be externally resourced, and activities often face challenges from the lack of harmonization between public health and drug control objectives, especially at grassroots levels. Drug treatment, usually compulsory, remains the preferred option across the region even though this approach has not been evaluated for effectiveness and it contravenes international human rights commitments. Increasingly, the issues of amphetamine-type stimulants (ATS) and hepatitis C are being discussed in parallel with harm reduction and drug treatment strategies, considering that no effective response has been designed in that respect.

To maximize the impact of the Dialogues, participants recommended that the organisers' link the Dialogues with other platforms and increase dissemination of the discussion results to a wider audience. In addition, a monitoring and evaluation framework (M&E framework) for the Dialogues could further assist organisers' in sourcing funds and provide feedback on future directions.

## ***Introduction***

The second meeting of the GTZ/TNI Southeast Asia Informal Drug Policy Dialogue initiative took place in Bangkok, Thailand, during 19-21 April 2010. Prior to the Dialogue, at the invitation of the Mae Fah Luang Foundation, the TNI/GTZ team was engaged in a study tour to Doi Tung in Northern Thailand to visit the crop substitution and alternative livelihoods projects operated there.

The two-day Dialogue was divided into five sessions: 1- *Developments in the region: Rethinking aims and targets of ACCORD*; 2- *A sustainable opium decline? Challenges for a 'post-opium period'*; 3- *Crop substitution policies and the impact of Chinese agricultural investment*; 4- *Legal reform: Legislative challenges for Southeast Asia and experiences from other regions*; and 5- *Challenges for harm reduction & treatment*.

The meeting was guided by 'the Chatham House Rule' to encourage both a free exchange of thoughts and confidentiality at meetings, therefore individual contributors remain anonymous in this report. The format of the meeting was informal and interactive. For each session a number of people were requested to provide inputs. They were not asked to deliver full speeches but rather to provide introductory remarks to spark off the round table discussion. Most of the time was devoted to an open discussion between all participants. About 35 people attended the meeting, between policy officials and representatives of international development agencies, non-governmental organizations, and academic institutions, coming from five countries in the region (Thailand, China, Laos, Myanmar, India) plus the Netherlands, Germany, UK and the US. This report provides an overview of the views expressed during the meeting that taken together reflect the overall tone of the meeting.

A reception dinner was graciously organised by the Thai Office of Narcotics Control Board (ONCB) and the Mae Fah Luang Foundation on Monday, 19 April 2010. The Dialogue officially kicked off on 20 April 2010.

## ***Tuesday, 20 April***

### *Session I*

#### **Developments in the region: Rethinking aims and targets of ACCORD**

The ACCORD Plan of Action (*ASEAN and China Cooperative Operations in Response to Dangerous Drugs*) was initiated in 2000 and endorsed by 36 countries and 16 international organisations. The main objectives of the Plan are to strengthen regional coordination, monitor regional progress, and provide policy-level commitment to reach the goal of "Drug free ASEAN and China" by 2015. The 2008 status report on progress made "identifies an overall rising trend in the abuse of drugs", however, and acknowledges that "a target of zero drugs for production, trafficking and consumption of illicit drugs in the region by 2015 is obviously unattainable". In this first session key trends in the different countries will be presented in order to start the Dialogue with a clear picture of current developments in the region and the feasibility of the ACCORD aims and targets for 2015.

Is there a need to rethink aims and targets? What are key criteria and indicators to measure success and impact? What would be the required adaptations, also with regard to approaches and regional coordination? What kind of policy recommendations do you see? In which ways could this be supported?

### Background

ACCORD was established in Bangkok in 2000 with the objective to pursue a 'drug-free ASEAN and China' initially by 2020, revised to 2015. ACCORD efforts have been guided by a plan of action grounded on four pillars: Demand Reduction, Law Enforcement, Alternative Development, and Raising Awareness. Generally, ACCORD activities were implemented and overseen by the ASEAN Senior Officials on Drugs (ASOD) and the ASEAN Senior Officials Meeting on Transnational Crimes (SOMTC). An evaluation and review of the ACCORD plan of action was conducted in 2004, at the end of Phase I. Phase II is scheduled to end in 2010.

### Measuring success against ACCORD targets

Overall, the participants had serious questions regarding the effectiveness of ACCORD and its relevance to the regional response. Having been relatively dormant in recent years, ACCORD is currently 'just another mechanism' positioned at a regional level.

The collective skepticism around ACCORD was firmly anchored in its ultimate objective: a drug free Asia by 2015. Setting such an objective has had several important consequences for the operationalisation of the ACCORD plan and the implementation of its activities. Generally speaking, national drugs control agencies in the region feel the deadline is too ambitious and unattainable, and that the plan has meant from the beginning that success was out of reach – and, therefore, investments from member countries or external donors into ACCORD would have certainly been deterred. The deadline was promoted at the Bangkok meeting in 2000 by The Thai Ministry of Foreign Affairs, the ODCCP (predecessor of UNODC), and the ASEAN Secretariat.

The launch of ACCORD and the 2015 deadline was described as mainly a political maneuver, essentially hijacking the original technical agenda and replacing it with a zero-tolerance approach.

However, the participants agreed that a rethinking of the objectives was well in order. First and foremost, the objective of a drug free Asia could proceed on the basis of minimum thresholds instead of total elimination. In other words, governments participating in ACCORD could measure their success traditionally and accept that a certain amount of illicit crops and drugs will always be present. In parallel, the containment rationale could support a push towards elimination, albeit more cautiously. Indeed, as the region's drug problems have generally shifted from illicit crop cultivation to control of amphetamine-type stimulants (ATS), so too must the response from law enforcement agencies be adapted from eradication to containment.

The regional nature of ACCORD also posed some serious challenges to its operations and successes. The plans that were defined at regional level had little chance to address local and national specificities. The diversity of political systems and institutions, the breadth of the resource disparities, and the different levels of engagement in the drug trade across the countries in the region has meant that a set of regional targets were simply inadequate.

Burma established its 15-year drug control plan in 2000 in line with ACCORD, to make the country opium free (not drugs free) by 2014, one year ahead of the ACCORD deadline. There has been a significant reduction in opium cultivation in the country, but the deadline still seems unattainable.

Brunei on the other hand is a rich country where no serious drug problems have been identified to date and thus plays a very minor role in ACCORD. Similarly, Singapore is also a rich nation that plays a very small role in ACCORD yet takes very strong and polarised positions. Some western donors also feel that rich ASEAN member countries should provide assistance on these issues to poorer members.

Another comparison on illicit crop cultivation in the region points to Thailand's success in almost completely eliminating poppy cultivation. However, some arguments indicate that the cultivation of poppies may simply have shifted to Burma and Laos. In essence, Thailand's gains in illicit crop control have been at Burma's expense. The diversity in the region lends itself awkwardly to a set of common goals.

National plans therefore have to be prepared if ACCORD is to further engage and improve its effectiveness in the region. National plans would complement existing plans – be they HIV, harm reduction, Universal Access or Millennium Development Goals (MDG) plans – and be better adapted to respond to each country's specific situation. Indicators could be aligned on other existing structures and ACCORD play a role of facilitation to coordinate national strategic planning as well as in terms of data analysis and dissemination. It was also noted that ACCORD could play a role in facilitating national level harmonisation of policy and legal responses. However, at the moment there is a lack of data and knowledge in the region. This void needs to be urgently filled.

However, even had objectives been realistic and targets set at national levels, participants raised questions regarding the reliability of data collected through project assessments in general. In effect, governments have little incentive to report data, not just to ACCORD but also to any external agency, including UNODC. Governments report their progress on drug control to UNODC and the Commission on Narcotic Drugs (CND) on a yearly basis through the Annual Reports Questionnaire

(ARQ). However, completed reports are few and, most importantly, if a report should show an increase in drugs use, production, trading, or trafficking, or should controversial harm reduction measures be deployed, then critique from the International Narcotics Control Board (INCB) could follow. In effect, the stick is there but the carrot is missing to encourage governments to report honestly on their drug control efforts.

The situation is generally similar within ACCORD. It was noted that tensions between Asian governments often appear as competition. The 'loss of face' in Asia is a very important cultural concept and in matters of regional 'cooperation' the competition between those governments to avoid losing face could inhibit their interest and motivation in reporting on the drug situation in their country.

### Partnerships

Once the objective in place, most national governments showed little interest in owning or participating in the processes that were availed to them. The lack of agreement on concepts and approaches along with widely different starting scenarios between ACCORD members led to a void in terms of shared responsibilities. The regional format and consequent expectations left many of the ACCORD members skeptical and disengaged. Some participants felt there is a lack of real partnership and of commitment to ACCORD.

However, participants had several suggestions for reinforcing ACCORD and supporting its development and potential revival. Essentially, participants suggested different partnerships to support ACCORD. Based on country disparities, it was recommended to scale down the approaches to specific bilateral partnerships. Such nation-to-nation partnerships have taken place as mentioned above in regards to law enforcement cooperation, with success. UNODC also considered the ACCORD framework valuable inasmuch as governments were willing to use it. Facilitating those bilateral partnerships could open up a range of new activities for ACCORD to consider with UNODC's support.

In addition, partnerships with civil society groups have been key in the response to HIV in Asia as elsewhere in the world. There has been growing advocacy work around the need to involve drug users and broader civil society networks in the global response to drugs. However, ACCORD and its parent structures (ASOD, SOMTC) have little or no structures for engagement with civil society groups. Several participants reinforced the point, noting that such structures would fall short or completely miss targets if not aligned on existing needs in each country. It was thus recommended that consultations with civil society groups proceed at the earliest, not only in the context of ACCORD but also in relation of the operations of ASOD and SOMTC.

Given that the issue of drugs is closely tied to organised crime, it stands to reason that trafficking networks that span the region overlap. The trafficking of drugs, weapons, money and even people intersect in obvious hubs of organised crime. It thus stands to reason that responses to trafficking of such illicit 'commodities' would also overlap. It therefore makes sense to establish partnerships with groups responding to trafficking and organised crime to support and infuse ACCORD with new directions.

One obstacle that remains untended is that of resource mobilisation for ACCORD. Though the bilateral partnerships could certainly fill a certain financial gap, it was further suggested that sponsorship from Asian Tiger nations could be considered. By providing incentives to those Tiger

nations to invest in their neighbors by arguing that an improved response in one country could lead to shifts in trafficking routes, production sites and impact on local communities in other countries.

### Moving forward

There are obviously several challenges in using the ACCORD framework. However, with some suggestions above, it could be possible to adapt ACCORD to add value to the response to drugs in Asia. Though UNODC has admittedly dropped the ball on ACCORD, there is interest in reviving the mechanism and infusing it with new life. China's involvement and interest in ACCORD remains steadfast.

The next steps for a revived ACCORD would imply a strong resource mobilisation strategy. Given that ACCORD currently operates on externally donor funded proposals, attracting funding from within seems a critical step. Indeed, one of the discussion points at the upcoming ASOD meeting in Bali, Indonesia in August 2010 will have to do with resource mobilisation for regional drug control efforts. An ACCORD meeting is currently scheduled for November 2010.

That being said, it is important to recognise that the expansion of harm reduction across the region has important implications for ACCORD. Some levels of regional cooperation are essentially possible, judging by the success of methadone and other harm reduction and health services across the region. The networks that have been established and respond to drug use with a public health approach have reinforced essential structure that are now available from groups such as ACCORD, ASOD and SOMTC. Such mechanisms could benefit from engagement in those already established health focused networks and minimise their expenses to reach out to communities and potential partners.

Finally, the evaluation of success of ACCORD should be further discussed. However, some suggestions have been made during the Dialogue, including the preparation of country report cards, similar to UNGASS reporting on HIV. However, those reports should provide some kind of incentive for governments to accurately and truthfully report on their national drug situations. Such report cards should also include qualitative reports from affected communities to provide a balanced national report.

### Conclusions and recommendations

Key conclusions and recommendations from the discussion in Session I include:

- Review the objectives of ACCORD in terms of setting a reachable target through containment or minimum thresholds rationales;
- Encourage ACCORD to consider the development of national plans of actions for each ACCORD country based on existing local situations and needs;
- Develop a set of incentives for national governments to monitor, evaluate and report on their national drug situations, including yearly reports, UNGASS style, through country report cards;
- Encourage ACCORD to arrange for bilateral partnerships between nations instead of only determining regional cross-border activities;
- Encourage ACCORD, ASOD, and SOMTC to engage with civil society through existing platforms within those mechanisms and beyond, including civil society consultations;
- Encourage ACCORD and other key stakeholders to establish new partnerships with organisations working on other aspects of trafficking, including other commodities;

- Recommend ACCORD to develop a strong resource mobilization strategy that includes the development incentives within ACCORD to attract internal funding from members, particularly from Asian Tiger nations;
- Assist ACCORD, as well as ASOD and SOMTC, in linking with public health and harm reduction networks and organisations in the region to expand their range and constituencies.

## *Session II*

### **A sustainable opium decline? Challenges for a ‘post-opium period’**

In Burma/Myanmar as well as Laos, the general impression is that resources and strategies for alternative livelihoods for –former- opium farmers are lagging behind, endangering the sustainability of the reductions in opium cultivation achieved in past years. What has been the current response? What are the challenges for a ‘post-opium’ period, ensuring the promoting of viable and sustainable livelihoods as well as human development for the affected communities? What are lessons learned of the current approaches and efforts? What are strategic recommendations to address these issues?

#### Challenges

Opium cultivation has decreased in the last 15 years in the region. However, since 2006 this trend has reversed, and opium cultivating is increasing. The area has seen changing cultivation patterns, with cultivation in Laos being pushed into more remote mountainous areas, without access to development aid or with security problems. In Myanmar, where the main increase has taken place, there are similar problems, and opium cultivation has moved from the Wa region northern Shan to southern Shan State. Thailand has seen a small increase in absolute terms in three provinces. Sustaining opium reduction is also more difficult than reducing it. Policy makers need to think about this carefully, and take a long-term approach to the issue, focusing on development.

Illicit crop cultivation, particularly opium poppies in Asia, has generally been associated with low income and economic production, few employment opportunities, food insecurity, low education levels, lack of access to health, and rights issues, migration, violence, and of course drug use, all in a context of national insecurity. It is therefore not surprising that a coherent and effective response has been difficult to implement. Generally, the response to illicit crop cultivation in Asia has focused on eradication and strict implementation of opium bans without alternatives being put in place before the campaigns were waged against growers. In effect, the destruction of opium poppy has not proven to be the answer to illicit drugs production. In fact, opium cultivation should be considered as a symptom of increasing overall social vulnerability.

The current investments in alternative development projects have been insufficient, and have had few trickle-down effects into communities in the way of improved quality of life and reducing their economic dependencies. It is important to build up and strengthen civil society and community-based organisations addressing these issues. Apart from national resources, they need cooperation and support – both financial and technical - from international organisations.

Investments have sometimes actually led to the expansion of infrastructures (roads, communications, etc.) while leaving the growers in more precarious positions. Communities that have been forced to stop opium cultivation without access to alternative livelihoods have faced

problems with food security, lack of cash income to buy food, clothing, medicines and access to education. As a result, outward migration has taken place to the towns to find other sources of income.

Following the reduction in poppy cultivation and the decreasing availability of raw opium on the market, opium prices in the region have increased significantly. Coupled with decreasing prices of other cash crops, and outside investment, this has also led to a new increase in opium cultivation in the region. Some areas have also seen multi-cropping, with farmers planting more than one opium crop per year.

Local demand for opium consumption also stimulates local opium cultivation. Without addressing opium use in the region it is hard see how opium cultivation can be reduced in the long run.

The current strategies have had little to do with building the sustainability of growers' livelihoods. This fundamental gap has created an incentive for relapse, because growers are more vulnerable and financial payoffs are greater after eradication. Case in point, after a decade of steady decreases, opium poppy cultivation in Burma, Laos and Thailand has been on the rise in recent years.

Participants stressed it is of great importance to mainstream alternative development strategies into the larger development context in the region. The role played by national governments and international agencies in making this work is also key. Most importantly, communities need to become self reliant and sustainable. This is a long-term process that can only be successful if a broad range of factors and issues are integrated in the overall response.

### Lessons Learned

Unfortunately, in many places, the prevailing response has exacerbated existing challenges. The long-term approach in Thailand, though not without its challenges, provides an example of a successful approach for reducing opium cultivation.

The project operators understood that they needed to create incentives at local level to facilitate behaviour change among growers. A sequential plan was put in place eventually to provide viable livelihoods to growers if they considered switching opium poppies for other crops. That sequential plan addressed by and large phases through which the growers would live – from survival, to subsistence, to sustainability. Each phase was informed by the growers themselves who provided the project operators insight into the needs and challenges growers faced in their transition. As such, the foresight in providing viable opportunities combined with engagement with the growers themselves were essential components in building local ownership of the Doi Tung project.

The lessons from the Doi Tung project corroborate the results of most nations' crop substitution and eradication projects in Asia and around the world. Where little ownership has been fostered, the results have been poor, with short term gains. Where introduction of new technologies was inserted too quickly into the local context, more dependencies emerged. Where projects supplanted local economic structures, communities have been largely cut off from the benefits.

Important policy lessons can also be drawn from experiences from Burma, where local organisations have successfully been implementing community-based programmes in poppy growing regions. These projects stress the need to promote community-based responses and providing farmers with coping strategies.



In essence, the lessons learned indicate that opium reduction strategies must be incorporated in a comprehensive response, an argument used to promote and integrate harm reduction in the development agenda. The comprehensive package, in this case, is composed of poverty alleviation, education, and health strategies and opportunities. By providing support to all aspects of life and improving general livelihoods, growers will become able to grow alternative crops.

The focus on reducing supply at the source has obviously been an attractive response. However, there is also evidence that simple supply-side reductions have a tendency to have little impact on the market. Forces at play require that a reduction in demand must accompany the reduction in supply if the reductions are to be sustainable over the long run.

Market logic puts a limit to supply reduction, raising the question how to manage the remainder. When the cost of elimination of a small proportion of leftover illicit crops is greater than the cost of managing that supply, then alternatives could be considered for small remote villages that have little options but to grow opium. Authorities could apply informal tolerance, simply accepting the reality of a continued level of illicit cultivation. In a more formal approach, government authorities could also agree to dispense special permissions to allow a maximum quantity of opium to be produced in certain areas, and buy the product and control distribution. Another option could be to introduce survival allowances, providing special household permits to allow poppy plantation, similar to the ‘cato’ arrangement (0.16 hectares per household) in Bolivia for coca.

### Conclusions and recommendations

Key conclusions and recommendations from the discussion in Session II include:

- The opportunities to share experiences and learn, from successes and mistakes, from neighbouring countries in the region is important for cross-border exposure and bilateral partnerships in the region;
- Initiate regional consultations with key stakeholders, including civil society, among illicit crop growing countries in the sub-region, with potential support from UN agencies and governments;
- Investigate EU funding mechanisms such as the instrument for stability to access additional resources to support alternative livelihoods projects;
- Project targets should focus on developing sustainable livelihoods and improvements in quality of life among growers, instead of focusing on reduction of quantities of opium;
- Set up a mechanism or a forum by Thailand, Myanmar, Laos and UNODC to share experiences on opium re-cultivation, to understand why it is taking place and how to address it.
- Realise that sustaining opium reduction in Southeast Asia is a long term project, which should focus on addressing the root causes (poverty) rather than the symptom (opium cultivation).

### *Session III*

#### **Crop substitution policies and the impact of Chinese agricultural investment**

Recent years have seen an increase in large-scale agricultural concessions (especially rubber) by Chinese companies in (ex-) poppy growing areas in northern Laos and Burma/Myanmar. The Chinese government has supported this development as part of its opium crop substitution policy. Is this opium crop substitution policy achieving its goals – to reduce opium cultivation and provide sustainable alternative local livelihoods for ex-poppy farmers? What are the socio-economic, political, cultural and environmental impacts of these large-scale investments and concessions? What are possibilities to mitigate negative influences and improve possible positive impacts? What are

### Crop substitution – sponsored by China

Since 2006, Chinese investments in Laos and Myanmar are being promoted as alternative crop substitution projects. Over 198 Chinese businesses have received subsidies, import tax exemptions, and support with finding markets from the Chinese government to initiate large-scale monocultures. Sugar cane, cassava, and especially rubber are key products that have been sponsored by Chinese interests. For Chinese companies the tax exemption, and not the subsidies, is the most important factor in participating in these schemes. Officially the contracts stipulate ‘good practice standards’ set by the Chinese government, with underperforming companies facing non-extension of their contracts.

While recognising that in the long term these plantations may bring benefits for local communities and may fill the investment gap, the situation on the ground in northern Laos and Myanmar show that there are many problems related to the implementation of these investment projects.

A review of Chinese investments indicates that the profits are important but the local growers receive little benefit from such projects. The products are imported by China, tax free, while villagers have to wait at least seven years before their first rubber tree produces any yields at all. Meanwhile, roads are built to support the transport of materials for export to China. It is also doubtful whether these projects have a direct impact on reducing opium cultivation, as most of these plantations are located along main roads in lower altitude areas, while poppy cultivation takes place in isolated mountain areas.

Again, the example of a project that does not immediately relieve the pressure of survival challenges in growers’ lives has little chance of success. In addition to issues reported in Session II, the China-sponsored projects underway in Burma and Laos also carry environmental risks that other similar projects have not necessarily faced. Increasing encroachment on forests and land rights disputes, parallel logging and mining operations, important reduction in biodiversity in catchment areas accompanied by increased risk of diseases, rapid erosion and landslides are all important risks associated with massive and intensive mono-cropping.

The danger of the market collapse is also very real. The recent global economic downturn has reduced the quantities of materials and products China imports, even those tax-free products they sponsored. The rubber belt in Asia is growing alarmingly and the consequences of market saturation could be terrible and dire for growers who, from one day to the next, can see their buyer uninterested in the product on the market. Already, the economic downturn has led to some growers not being able to sell off their rubber or have gotten vastly reduced rates for their harvest. That dependency on a single buyer is clearly unsustainable.

At the end of the day, it seems that the farmer has little to gain from engaging in such projects. However, given the levels of deprivation, they have little recourse when their lands are taken by their government or large companies, when they are relocated and forced to work on these projects, when they have promises of income but no binding or clear contracts with their employers. The skewed development that ensues has therefore reportedly led to a halt of such projects. No new such contracts are apparently being signed at present but prior investments are being maintained.

### Conclusions and recommendations

Key conclusions and recommendations from the discussion in Session III include:

- Promote sustainable agricultural investment models that benefit local communities and not just Chinese companies and local authorities.
- Involve local communities in decision-making processes on these plantations.
- Promote setting up a regional coordination mechanism to share experiences and formulate alternative policy options.
- Invest in infrastructure but spread funds to support access to better schools, provide skills and vocational training, access to skilled employment, develop micro-finance programmes;
- Conduct formal evaluation of such projects and continue monitoring over the next extended period of time.

***Wednesday, 21 April***

*Session IV*

### **Legal Reform: Legislative challenges for Southeast Asia and experiences from other regions**

The Southeast Asia region has some of the world's strictest drug laws and enforcement practices against drug producers, drug users and small traders. The region has seen rapidly escalating prison populations and annual increases in arrests, and most countries maintain schemes for compulsory treatment. Other regions in the world, most notably recently several Latin American countries, are questioning the effectiveness of an overly repressive approach towards drug users and micro-traders and have started to review their legislation in the direction of a decriminalisation of drug use and possession for personal consumption. Some are also introducing the principle of proportionality of sentences, lowering the sentencing levels for low-level drug law offences, also meant to alleviate the crisis in prison overcrowding. This session will look at the current status of drug control legislation in the region and discuss the legislative challenges countries are faced with in the future. Which would be the relevant criteria? In which way can Latin American legislative experiences be helpful? What kind of policy recommendations do you see? Which risks and obstacles do you see? In which ways could this be overcome?

#### Legal environments and the Conventions

The international UN drug Conventions (the Single Convention on Narcotic Drugs of 1961, the Convention on Psychotropic Substances of 1971, and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988) do not specifically impose that signatory countries criminalise drug use and consumption. As such, many countries in Europe and Latin America have started revising their drug laws, especially in regards to possession of small amounts. Positive examples from Spain and Portugal in Europe and Argentina, Brazil, Ecuador and Mexico in Latin America have recently emerged as alternative approaches for other countries to follow suit.

Where such reforms have taken place, decriminalisation of possession has not led to an increase in drug consumption, though it has decreased pressure on the prison system and increased access to health care services for people who use drugs. However, the reform process in those countries is not entirely finalised and more work remains to be done on for example, defining thresholds for determining consumption versus distribution.

Similarly, decriminalisation of subsistence cultivation could be considered (see Conclusions and recommendations in Session II) in parallel with the decriminalisation of simple possession. The proposal here implies that whilst there are no alternatives in place for crop substitution and improved livelihoods, countries could consider relaxing their laws to allow small-scale local subsistence farming of illicit crops. However, the Conventions are quite rigid on these matters and more exploration of potentials for such reform needs to be further explored.

Although there are flexibilities in the Conventions, the 1988 Convention has had a significant impact on tightening and toughening the legal frameworks in many countries across the globe. The result in many places has been an increase in long sentences that are disproportional to the actual offense, leading in turn to massive prison overcrowding. Despite the reinforced criminalisation and prosecution of drug crimes, some countries like Ecuador have actually issued official pardons for drug traffickers charged with less than one kilogram who had spent more than one year in custody in an effort to re-establish proportionality. Similarly, the UK is currently working on revised and significantly reduced sentencing guidelines for courier-level smuggling.

In parallel, there has been a significant international push towards revising the classification of certain substances and the quantity thresholds that lead to specific drug crimes. The current UN schedules are not necessarily rationally devised and not grounded on any kind of evidence. This gives rise to inconsistencies such as that cannabis falls under a stricter control regime (Schedule IV) than cocaine, though cannabis is clearly less harmful than cocaine. Countries such as the Netherlands and the US (at state level) have softened controls on the sale and possession of small amounts of cannabis. Bolivia is seeking a change at the UN level with regard to coca leaf. In the UK and the Netherlands research has been done to establish a more rational listing of drugs according to their harmfulness, based on scientific criteria. There may be sound reasons to revise the scheduling of milder substances, especially for plants (cannabis, coca, ephedra, khat, kratom).

#### Thailand's efforts and the Asian context

Thailand is a signatory to all three UN drug Conventions and Thai officials feel that their country is significantly different from other countries, especially Western countries, in the context of drug control. Thailand's drug control apparatus is vast and complex, with more than 10 legal instruments that require harmonisation. Despite the need for harmonisation, there is growing interest in Thailand to revise the scheduling of kratom (a locally grown mild stimulant) and hemp for industrial purposes. A resolution is in process of being considered by the Cabinet to put in place softer standards for dealing with such substances. Submitted to the Food and Drug Administration of the Ministry of Public Health (MoPH), the resolution would allow growers to apply for permits to cultivate certain quantities and personal consumption of kratom could eventually be exempt from criminal prosecution if the legal apparatus was amended. There are indications that such a process could take up to three or four years.

However, there are concerns among key officials that any move towards decriminalisation of substances will encourage youth – many of whom are already using tobacco and alcohol – to try and use these newly decriminalised drugs.

To complement the existing system, Thailand is also considering the use of community structures to develop and strengthen restorative justice mechanisms and provide legal aid to offenders. Law enforcement officials are being sensitised and encouraged to divert drug offenders to alternative justice structures. However, hardcore cops do not agree and respond by noting with enthusiasm that

they must conform to the spirit of the law, so amendments need to be put in place in order to proceed with alternative justice.

In parallel, there are indications that in Burma some ministries are in process of revising outdated laws, not only in regards to drugs control. Again, it has been suggested that such a process could take several years. This initiative was launched in parallel with exposure tours of Burmese officials to other countries including Australia and Singapore. The overhaul could lead to new prosecution, sentencing and registration procedures with a greater push towards diversion of drug offenders towards treatment facilities. A recent workshop in Myanmar, with support from the HIV/AIDS Asia Regional Project (HAARP) took a first step towards integrating drug laws, harm reduction and human rights in the Burmese legal apparatus.

At present, some laws in Myanmar criminalise the possession of syringes and the growing of poppies though these laws are rarely used to prosecute individuals. In Myanmar, law enforcement officials have been supportive of legal and policy changes in that direction but resistance has emerged from the MoPH.

In India, the criminalisation of drug use, possession, trade and trafficking still carries important penalties. Although there seems to be a will to minimise the legal impact on ‘victims’ of drugs, there is little to show that a paradigm shift is taking place. Legal sanctions have been toughened in 1985 and any changes to the system of drug control as a whole will take several years. India is one of the few Asian countries where community legal aid structures are in place and functioning through groups like the Lawyers’ Collective.

In Indonesia, though the government and civil society groups have made serious and impressive headway in implementing harm reduction structures and services for people who use drugs, recent legislative and policy actions indicate that the drug control apparatus is being reinforced towards more repressive action. This is a great example of how internal national legislative and policy environments require urgent and thoughtful harmonisation in order to have a conducive and balanced response to drugs.

It should also be noted that several countries in the region continue to use the death penalty for certain drug crimes, despite the lack of evidence that such punishments actually deter crime and drug use and trafficking.

#### Evidence for change?

Any amendment to laws and policies should be based on concrete data and evidence. However, in the majority of Asian countries, the monitoring and evaluation of the drug control apparatus has not necessarily taken place. It is therefore compelling to thoroughly review existing structures – from scheduling, to sentencing, to diversion mechanisms, to the prison system and the drug treatment apparatus. Without data on where the strengths, weaknesses, gaps and opportunities are located, changes could be made with little or no benefit.

In particular, though diversion and community justice are interesting and potentially conducive ideas for an improved drug control response, without prior investments in developing the structures and building people’s capacity in receiving communities, history has shown that such diversion could cause more problems that it could address. Community decarceration in the US in the late 70s and

early 80s led to severe community problems as important numbers of individuals were diverted from prisons and other custodial institutions and sent into the community for rehabilitation. In that sense, it is critical that operational definitions be reviewed and consensually agreed upon. Definitions of quantities, drugs and substances, sentencing, treatment, rehabilitation and many others need to be further discussed.

### Conclusions and recommendations

Key conclusions and recommendations from the discussion in Session IV include:

- Explore and investigate the Latin American and European examples of drug law reform as models to support similar changes, where appropriate, in Asia;
- Consider recent and upcoming changes in Ecuador and UK to ensure proportional sentencing in countries in the region;
- Advocate for the revision of scheduling and quantities in the context of sentencing;
- Consider developing community and restorative justice structures and mechanisms to facilitate diversion of drug users;
- Advocate within the region towards the implementation of legal aid for drug related offenses;
- Expand work with law enforcement agencies to sensitise key respondents and policymakers on the need to harmonize drug control and public health efforts;
- Advocate and support for the consistent monitoring and evaluation of the drug control apparatus across all countries in the region;
- Ensure that diversion to treatment occurs in the context of increased community mobilization and capacity development along with the infrastructure to ensure community treatment at local levels;
- Review operational definitions in relation to substances, quantities and thresholds, sentencing, treatment and rehabilitation.
- Advocate for tolerance towards subsistence cultivation of illicit crops and investigate opportunities and flexibilities in the Conventions;

### *Session V*

#### **Challenges for Harm Reduction & Treatment**

Quite some challenges remain to be addressed in the field of harm reduction and treatment. The widespread practice of compulsory treatment in the region has drawn the attention from human rights groups. UNODC also published a discussion paper on coerced treatment that circulated at the March CND session. The high number of injecting drug users (IDUs) and the HIV/AIDS epidemic in Southeast Asia presents one of the most serious health threats to the population in the region. Harm reduction programmes are expanding in the region but still only reach a small proportion those in need. Moreover, the rising use of methamphetamines poses new challenges for harm reduction and treatment services, as few experiences exist that have shown promise for effective health care interventions. What are the latest trends in harm reduction policies and treatment experiences? Where are opportunities for improvements and what should be priorities for international cooperation?

#### Harm reduction in South East Asia

Though harm reduction features in the majority of Asian nations' policies (usually in HIV policies), the fact remains that service delivery is still far from adequate. Virtually all countries in the region report extremely low coverage with basic harm reduction services such as opioid substitution therapy and needle and syringe exchange programmes. Few drug users living with HIV have access

to antiretroviral treatment. The vast majority of those services continue to be externally funded.

In parallel, the growing over-reliance of drug treatment centres (usually mandatory or compulsory) and incarceration has led to severe overcrowding in those institutions, providing little chance at rehabilitation for those in custody. Furthermore, those custodial institutions have been reported by some organisations as locations where physical, sexual and psychological abuse is present, in strict contravention with human rights conventions. There is little in the way of health services, much less medically-assisted drug treatment services in place throughout the several thousand prisons and drug treatment facilities.

The persistent gap between government health and drug control officials in-country poses serious challenges to HIV prevention, treatment, care and support and meeting Universal Access targets. That tension between public health and drug control imperatives is mirrored by a significant resource gap to support the implementation of harm reduction. At present the response to HIV among people who use drug in Asia is almost entirely externally resourced.

Although the policy environment is improving, actual action on the ground remains insufficient. Indeed, implementation of harm reduction services has largely been left in the hands of civil society groups like AHRN-Myanmar, MSF-Holland, TAGG and local community organisations. However, with few resources to implement projects and develop local capacity, combined with recurrent crackdowns at service delivery sites by local cops unaware or oblivious to their nation's policies, the sustainability of the response is constantly under pressure.

The situation in Thailand however does provide hope for a more stable response to drugs. With the push for decriminalisation of hemp and kratom and the restructuring of community justice towards more consistent and effective diversion, with work in progress on development of a national harm reduction policy, along with a significant infusion of funds from the Global Fund to support harm reduction service delivery, the Thai authorities seem to have invested time and energy in revising the approach to drugs in the Kingdom. Commitments from the Bureau of AIDS, Tuberculosis and STIs (BATS) of MoPH and ONCB to the response to drugs and HIV show some of the most interesting developments in the region since China (including Hong Kong and Taiwan) made significant strides in HIV prevention among injecting drug users through the implementation of harm reduction measures.

Not to say that other countries in the region have not made important strides towards reaching out to more drug users at risk. Efforts in Myanmar in accessing greater and greater numbers of sites; infusions of funds and increasing numbers of civil society groups in North East India working together; Cambodia's approval and imminent roll-out methadone; China's sustained scale-up, both in terms of quantity and quality of harm reduction services; and Taiwan's spectacular success in harmonising policies leading to effective implementation with demonstrated impacts such as reduced HIV transmission and local crime rates; these are all examples that harm reduction has generally taken hold in the region and that if support is sustained or increased, then present efforts will be sustained or increased.

#### What's next?

Though the challenge of harm reduction is still very much an issue for the region, some important challenges remain. The presence of ATS in Asia has had important impacts on patterns of use as well as trafficking routes. There are reports that up to 50% of ATS users in parts of Thailand are injecting ATS carrying the risk of serious health consequences. At present, the health response to

ATS has been almost exclusively implemented through forced detoxification in compulsory drug treatment centres. This also points to an urgent need to develop harm reduction strategies for ATS use, which currently hardly exist.

Compulsory treatment centres are rapidly multiplying across the region. Though there is no evidence of their effectiveness and cost-effectiveness, governments are pouring important amounts in scaling up these facilities and even exporting their models to neighbouring countries (the Thai government is working with its Laos counterpart; the Vietnamese government is similarly involved with Cambodia). Damning reports from human rights organisations have been recently published that expose abuse, exploitation and violence that could hardly be described as guided by public health, rehabilitative or even ethical standards. Further research is urgently needed to evaluate effectiveness and cost-effectiveness of treatment centres along with investments to support the implementation of international drug treatment guidelines therein.

Though HIV certainly remains a key issue in relation to drugs in Asia, the increasing regional and international advocacy around hepatitis C (HCV) has alerted a wide range of stakeholders that an emergency situation is brewing. With a greater transmission potential than HIV, HCV has infected larger segments of injecting drug users than HIV has. Co-infection of HIV-HCV has important consequences for the treatment of HIV and significantly complicates treatment. At present, many injecting drug users in Asia are dying for lack of access to HCV treatment, a drug that costs several thousand US dollars monthly. Obviously, such a high price is beyond the reach of the majority of people who use drugs in Asia.

### Conclusions and recommendations

Key conclusions and recommendations from the discussion in Session V include:

- Mobilize additional funding for harm reduction implementation, ideally from national governments in the region;
- Work towards improved coverage of harm reduction services including treatment of people living with HIV and HCV;
- Review conditions in prisons and detention centres in the region towards compliance with the Convention on human rights;
- Urgently work towards the development and implementation of a balanced and evidence-based response to ATS, including harm reduction measures;
- Conduct research to evaluate the effectiveness and cost-effectiveness of drug treatment centres;
- Urgently work towards the development and implementation of a balanced and evidence-based response to HCV.

### **Conclusion and the way forward**

This is the second Southeast Asia Informal Drug Policy Dialogue. What would be the main topics and questions GTZ and TNI should focus on in the future? What are potential follow-up activities for participating organisations for the topics discussed in this meeting? Which recommendations do you have for international cooperation? How could mainstreaming be improved to achieve better impact on project level? What are the main priorities for the upcoming months?



### Dialogue process

The Southeast Asia dialogues form part of a larger TNI initiative with similar series of informal dialogues already running for several years in Europe and Latin America. This has been the second informal Dialogue organized by TNI and GTZ. The purpose is not to reach consensus or to agree to take certain actions in the name of the dialogue group. Instead, it aims to create an informal setting where also government officials can feel free to express doubts and policy dilemmas and openly discuss possible policy alternatives, and thus contribute to building a certain level of support for certain proposals for drug policy improvements within an informal network of experts, officials and NGOs. Individual participants can then take home the information and insights from the meetings, use those in their daily work and ensure follow-up where they think it is needed.

Measuring the impact on actual policy making is not always easy, though participants offered several examples of how the informal dialogues have influenced the course and outcome of policy debates as well as their own work. Generally, the participants all agreed that the dialogue was useful and presented opportunities for important discussions to take place. Hesitation was quickly replaced with open and frank discussions about sensitive issues around themes that were well selected and conducive to discussion. This was also due to the fact that some participants had attended the first Southeast Asia Dialogue in 2009 and were familiar with the format of the event. The Chatham House Rule, as a *modus operandi* for the dialogue process and the report was greatly appreciated and was reportedly important in building that trust between strangers sitting at the same table. The participants also agreed that it was a good forum for regional networking as well as to get to know the work and challenges of participants working in other areas of drug policy.

### Follow-up

However, the Dialogues could use some improvement to maximise their impact. In particular, it was recognised that some key stakeholders, especially donors and policy makers higher up the chain, were missing from these two days of discussion. Participants also suggested that the Dialogues be connected to other platforms for influencing broader segments by inviting experts from related non-drug policy areas.

The Dialogues could lead to the production of regional action plans informed by participants, living document revised and updated through each regional discussion. This could include the publication of specific briefing papers targeted where the regional community feels the organizers' support could best contribute to an improved response.

Topics to consider for discussion in future Dialogues and potential working groups include fundraising and regional funding flows; effective policy advocacy tools and skills; the review and future of the ACCORD mechanism; and the situation on the border of North East India and Burma.

Participants noted they would welcome the organisers' support in mobilising interest for a regional summit on drug control laws and reform options in the region.

The organisers' expanded regional agenda could also be supported by electing participants to contribute through their involvement, beyond the Dialogues, in regional working groups.

### Conclusions and recommendations

Key conclusions and recommendations from the discussion in this Closing Session include:

- Investigate the development of an M&E framework to track the impact of the Dialogues. As

a first step, an evaluation questionnaire could be submitted next time to each participant to fill out and provide anonymous feedback on the Dialogue and skills development oriented evaluation of what participants gained from the discussions.

- Participants should be included in the identification of key persons in the Dialogues using their own networks.
- Review the organisers' information dissemination strategy in the region to better tap into existing networks to distribute the Dialogue reports, and influence regional processes through media, government agencies, civil society and academia;

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