Submission to the CND Expert Panel

The policing of drug use in South Africa: evidence for changing how the system measures success

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1. Role and experience

For more than a decade, I have been involved in designing, researching, and implementing projects that address drug use, drug policy and the well-being of communities in South Africa. I started the South Africa Drug Policy Week, the South African Network of People Who Use Drugs, and the Policy Division of TB HIV Care. I have worked with CDC, the UNDP, IDPC, UNODC and was briefly the deputy secretary of the Vienna NGO Committee on Narcotic Drugs. At the University of Pretoria, I co-developed the Community Oriented Substance Use Program. My submission draws on my experience and research in South Africa, including police data and court observations through research carried out by people who use drugs, and my published work on how the international conventions are operationalised in South Africa and other countries to sustain structural inequalities.

2. The problem

The apparent success of the international drug control system has relied on arrests and seizures as indicators of effectiveness. South Africa has followed this global model. Between 2005 and 2015, drug arrests increased by 181.5% nationally, reaching 266,902 by 2015. In contrast, treatment rose just 27.5% over the same period, reaching only 10,197 people—a mere 3.8% of the number arrested. Our analysis shows this militarised policing did not reduce the supply or use of drugs. Instead, prevalence rose.

In the Western Cape in 2013, 8,972 of 9,093 drug arrests were for suspected possession. Only 118 were for suspected supply or selling of drugs. Echoing the UN metrics for success, South Africa judges the effectiveness of police actions on the numbers of arrests and sizes of seizures. The metrics used remain entirely silent on the human cost exacted upon the individuals arrested.

This harm is not evenly distributed. It is weaponised along racial lines. In the Western Cape, men classified as Coloured were nearly 2.5 times more likely to be arrested on suspicion of possession or dealing than other groups. The apartheid government engineered these racial classifications. In the context of drug enforcement, race remains a primary marker of suspicion.

South Africa's historical role in global drug prohibition is significant. Cannabis prohibition began as labour control. Natal banned cannabis for Indian labourers in 1870, and the Cape followed in 1891. In 1923, South Africa petitioned the League of Nations to list Indian hemp as a controlled substance and achieved this goal in 1925. This manoeuvre ended the need to justify local, racist prohibition. An international listing now sits atop a domestic enforcement system born of segregation. The international conventions did not invent our oppressive systems, but enabled and justified them through the international conventions. To this day, the UN measures this system's output as "success."

3. Evidence from implementation: Policing and Imperialism.

Enforcement runs on a show of force that undermines domestic autonomy. Police cordon off suburbs at night. They kick in doors during raids, often with military support. Inevitably, those arrested in these operations are people who use drugs. Throughout Africa, police are trained by foreign agencies, including the US Drug Enforcement Administration (DEA). The highly militarised approach of the American-led war on drugs has undermined state autonomy. Jonny Steinberg has documented how this approach has revived the paramilitary policing of the apartheid state.

The judicial system operates as a conveyor belt for systemic marginalisation. In 2017, the Cape Town Network of People Who Use Drugs documented 100 cases at five magistrates' courts. Ninety-seven people were charged with possession; three with intent to distribute. Seventy-six pleaded guilty, received a warning, and left with a permanent criminal record. Of the 24 who pleaded not guilty, 22 were jailed or held on remand. Only one person applied for bail, which was refused. Legal Aid lawyers were provided only to those charged with dealing. Even bail as low as ZAR 50 (US$3.50) remains out of reach. Faced with imprisonment at Pollsmoor, which is 3x overcapacity, the system forces guilty pleas from otherwise innocent people.

Prohibition severely limits our ability to implement rights-centred health responses. In a 2020 review, Andrew Scheibe, Anna Versfeld, and I found that conflicting health and law enforcement policies, local conservatism, and international donor conditionality have prevented expansion of harm reduction in South Africa. This dynamic directly fuels the burden of disease among PWUD.

The most significant recent reform did not originate from the international system. In 2018, the South African Constitutional Court decriminalised private adult cannabis use. This demonstrates that national law can move within the treaties to protect human rights. The current UN reporting framework, however, fails to capture or encourage these vital progressions.

4. Recommendations

My recommendations outline practical, actionable interventions the system can execute within the existing treaties. None requires an amendment.

- **Decolonise Policy Metrics:** Add structural and health-based indicators to the Annual Report Questionnaire (ARQ) and report them yearly alongside seizures. Include arrests for possession compared with supply offences; arrests and outcomes disaggregated by race or ethnicity; the proportion of arrested individuals referred to health services; and the rate of police seizure of sterile injecting equipment.
- **Abolish Arrest Quotas:** The CND should formally recommend that Member States cease using drug arrest numbers as police performance indicators. The UNODC must embed this directive into all technical assistance and law enforcement training.
- **Clarify the Legality of Decriminalisation:** The INCB and UNODC must state consistently—in annual reports and country dialogues—that decriminalising possession for personal use and diverting people to health and social services is fully consistent with the conventions (1961 Convention, Art. 36(1)(b); 1988 Convention, Art. 3(4)(d)) and the UN system common position on drugs (2018).
- **Mandate Civil Society Inclusion:** The CND and INCB must require national reporting and country reviews to include direct input from organisations of people who use drugs and community-based researchers. INCB country missions must be mandated to meet with these groups.
- **Enforce Human Rights Due Diligence:** The UNODC must apply the UN human rights due diligence policy to its support for police and publish these assessments. Furthermore, States providing drug enforcement training or equipment to developing nations (e.g., US DEA training in Africa) must assess and publish the racial and human rights impact of their interventions before implementation. This is necessary to prevent the continued export of imperialist policing tactics

5. Contact details and confidentiality

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I do not request confidentiality.

Sources:

Shelly, Shaun & Howell, Simon. (2019). Perpetuating apartheid:: South African drug policy. 10.2307/j.ctvdmwxn7.11.

Andrew Scheibe, Shaun Shelly and Anna Versfeld, "Prohibitionist Drug Policy in South Africa—Reasons and Effects", Drug Policies and Development 12 (2020), https://doi.org/10.4000/poldev.4007.

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