



THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (CONTROL) ACT, 2015 AND THE LEGAL REGULATION OF DRUG USE IN UGANDA

Analysing the tension between Criminal Law, Public Health and Human Rights

October 2016

in collaboration with



UGANDA HARM REDUCTION NETWORK (UHRN)

"Our Lives begin to End the Day we Become Silent About things that Concern Us"

With support from:



THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (CONTROL) ACT, 2015 AND THE LEGAL REGULATION OF DRUG USE IN UGANDA

Analysing the tension between Criminal Law, Public Health and Human Rights

A study by Human Rights Awareness and Promotion Forum (HRAPF)

in collaboration with Uganda Harm Reduction Network (UHRN)

and with the support of the Open Society Initiative for Eastern Africa (OSIEA)

Final Version

October 2016

Copyright: Human Rights Awareness and Promotion Forum (HRAPF), 2016

Human Rights Awareness and Promotion Forum (HRAPF)

Plot 390, Professor Apolo Nsibambi Road,
Namirembe, Kampala

P. O. Box 25603, Kampala - Uganda.

Tel: +256-414-530683 or +256-312-530683

Email: info@hrapf.org | Website: www.hrapf.org

ABOUT HUMAN RIGHTS AWARENESS AND PROMOTION FORUM

Human Rights Awareness and Promotion Forum is an independent, non-partisan, non-governmental human rights advocacy organisation. HRAPF creates awareness of human rights and provides legal support to the most marginalised groups as a means of stemming abuse of their fundamental rights. HRAPF envisions a society where the human rights of all persons, including marginalised groups, are valued and respected. This is achieved through promoting respect and observance of human rights of marginalised groups through legal and legislative advocacy; research and documentation; legal and human rights awareness; and capacity building and partnership.

PROJECT TEAM

Lead Researcher

Busingye Kabumba

Researchers

Linette du Toit

Brian Kibirango

Contributors

Edward Mwebaza

Flavia Zalwango

Twaibu Wamala

Editor

Adrian Jjuuko

ACRONYMS

AIDS	Acquired Immune Deficiency Syndrome
AIP	Assistant Inspector of Police
CEHURD	Centre for Health, Human Rights and Development
CSO	Civil Society Organisation
DSB	Drug Supervisory Body
DSP	Detective Superintendent of Police
ECOSOC	Economic and Social Council
HIV	Human Immunodeficiency Virus
HRAPF	Human Rights Awareness and Promotion Forum
IDU	Injecting Drug Use
INCB	International Narcotics Control Board
MARPI	Most at Risk Populations Initiative
MDA	Methylenedioxyamphetamine
NDA	National Drug Authority
NDPA	National Drug Policy and Authority Act, Cap 206
NDPSA	National Drugs and Psychotropic Substances (Control) Act, 2015
NGO	Non-Governmental Organisation
OAC	Opium Advisory Committee
PCOB	Permanent Central Opium Board
PCP	Phencyclidine
PWUD	Persons Who Use Drugs
THC	Tetrahydrocannabinol
UAC	Uganda AIDS Commission

UHRN	Uganda Harm Reduction Network
UNDND	United Nations Division on Narcotic Drugs
UNFDAC	United Nations Fund for Drug Abuse Control
UNGASS	United Nations General Assembly Special Session, 1998
UNODC	United Nations Office on Drugs and Crime
UPF	Uganda Police Force
UPS	Uganda Prisons Service
WHO	World Health Organization

TABLE OF CONTENTS

ABOUT HUMAN RIGHTS AWARENESS AND PROMOTION FORUM	2
PROJECT TEAM	3
ACRONYMS	4
EXECUTIVE SUMMARY	8
SECTION I	16
INTRODUCTION	16
1.1 Introduction	16
1.2 Background to the study	17
1.3 Rationale of the study	19
1.4 Objectives of the study	20
1.5 Methodology	20
1.5.1 Research Design	20
1.5.2 Study Location	21
1.5.3 Study Population	21
1.5.4 Sample and Sample Selection	21
1.5.5 Data analysis	22
1.6 Literature review	22
1.7 Ethical considerations	24
1.8 Overview of sections	25
SECTION II	26
THE HISTORY OF DRUG REGULATION GLOBALLY AND IN UGANDA	26
2.1 Introduction	26
2.2 Early prohibitions	26
2.3 From international liberalism to domestic prohibition: race, class and the start of the ‘war against drugs’	28
2.4 From domestic prohibition to international regulation	29
2.5 The history of drug regulation in Uganda	33
2.6 Conclusion	34
SECTION III	35
ANALYSING THE LEGAL REGULATORY REGIME FOR DRUG USE IN UGANDA	35
3.1 Introduction	35
3.2 The Relevant International, Regional and Domestic Human Rights Standards	35
3.3 The Ugandan legal framework governing the use of narcotic drugs	37

3.3.1 The Narcotic Drugs and Psychotropic Substances (Control) Act, 2015	37
3.3.2 Other laws regulating drugs in Uganda	48
3.4 Conclusion	54
SECTION IV:	55
IMPACT OF THE REGULATORY REGIME ON THE HUMAN RIGHTS, HEALTH AND GENERAL WELFARE OF PERSONS WHO USE DRUGS IN UGANDA	55
4.1 Introduction	55
4.2 Violations of human rights	55
4.2.1 The right to freedom of association and civic participation	55
4.2.2 The right to health	56
4.2.3 The right to liberty	63
4.2.4 The right to a fair trial	65
4.2.5 The right to freedom from torture, inhuman and degrading treatment	65
4.2.6 The right to equality and non-discrimination	67
4.3 Other violations and consequences	70
4.3.1 Additional exposure to drugs through incarceration	70
4.3.2 Physical and psychological trauma as a result of incarceration	70
4.3.3 Loss of employment and employment opportunities	71
4.3.4 Impact on family life and broader community	72
4.3.5 Consequences of incarceration: reintegration or recriminalisation?	72
4.4 Harm Reduction as an alternative approach	73
4.5 Conclusion	76
SECTION V:	77
CONCLUSIONS AND RECOMMENDATIONS	77
5.1 Conclusions	77
5.2 Recommendations	78
REFERENCES	81
APPENDIX: LIST OF INTERVIEWEES	85

EXECUTIVE SUMMARY

i. Introduction and background

The issue of regulation of drug use made headlines with the recent enactment of the Narcotic Drugs and Psychotropic Substances (Control) Act of 2015 (NDPSA) in Uganda. This Act introduces a much more rigorous and criminal law based legal regime governing drug use and clearly domesticates the international ‘war on drugs.’ The war on drugs has negative implications for the individual users of drugs who are harassed, forced to hide, and regarded as unapprehended criminals. In particular, the criminalisation of individual drug use is viewed to increase the vulnerability of this group to numerous negative socio-economic outcomes, including a severely heightened risk of HIV infection. The adoption of the NDPSA proceeded largely without rigorous consideration of the probable human rights implications of this Act on PWUD.

Human Rights Awareness and Promotion Forum provides legal aid services to the most marginalised persons including persons who use drugs. Through its work, HRAPF has come across cases where members of this group are subjected to discrimination in as far as social recognition, service provision and the protection of fundamental rights are concerned. The legal environment is viewed as both a contributing cause as well as reinforcing factor of this stigma. Furthermore, despite the scale of drug use and the imperative public health and human rights issues which its criminalisation presents, there is currently no detailed study on the legal and policy environment relating to PWUD in Uganda.

It is upon this background that HRAPF decided to conduct this study into the enforcement of laws affecting PWUD in Uganda. The study analyses the NDPSA and the other laws currently in place as part of the legal regulation of drug use in Uganda. This is done through assessing both its compliance to relevant domestic, regional and international law, as well as the impact of this regime upon the rights and welfare of PWUD. The study specifically interrogates the NDPSA, in terms both of its provisions and the manner and extent to which they have been enforced thus far, in light of Uganda’s human rights obligations and the existing regulatory climate. The ultimate question posed and answered by this study is whether an appropriate balance has been struck between the State objective to reduce crime and the human rights and public health imperatives implicated by drug use.

ii. Methodology

This study is a critical human rights-based assessment of the NDPSA and other laws affecting PWUD. The study was executed using largely qualitative methods, involving both a review of secondary literature but also in-depth interviews with critical actors. A case-study research design, focusing on Kampala, was adopted

in order to assess the implications of the current regulatory framework for drug use upon key individuals, groups and other actors.

This study method involved in-depth interviews with PWUD, organisations working on issues which affect PWUD, law enforcement agencies and officials, public and private health care providers as well as officials representing the Ministry of Health. Purposive sampling was used in order to select the best placed institutions and individuals to provide information. In order to secure interviews and FDGs with drug users within the repressive regulatory climate, the snowball method of sampling was employed.

The research was conducted in Kampala District and the researchers were guided and assisted by UHRN in terms of accessing PWUD and interacting with them. Other stakeholders who were engaged were also drawn from Kampala, which is the capital city of Uganda and the centre of the country's commercial, political, social and economic life. It is believed that although geographically limited, the insights thus generated are broadly reflective of the bigger country picture, and that the reforms indicated are similarly scalable.

iii. Findings

The criminalisation of the use of drugs is barely a Ugandan affair. It is part of an internationalised system that regards drug use as dangerous and which is willing to suppress it using all means and more so the law. Although States begun with a much more relaxed approach towards drugs, they later started looking at drug use through the lenses of race and immigration, and after the first world war, undertook international commitments to fight drug use. This has resulted into today's 'war on drugs' with all its negative effects especially on the individuals who use drugs. Uganda started criminalising drug use following this international trend and with the enactment of the NDPSA, has made strides towards being part of this global movement to suppress the use of drugs.

The NDPSA came into force in February 2016. However, the Police still largely act as if the Act is not in force and as if the now repealed provisions of the National Drug Policy and Authority Act, Cap 206 (NDPA) remains the applicable legislation. This Act contained a few criminal provisions relating to the possession and usage of drugs as well as the cultivation of certain plants. The study finds that NDPA was viewed by law enforcement officials and a number of other stakeholders as largely inadequate in responding to issues of large scale drug trafficking in Uganda. The perceived weaknesses of the NDPA prompted the enactment of the NDPSA, which deals specifically with narcotic drugs and psychotropic substances.

The NDPSA, has a decided penal focus and does not prioritise the welfare of

persons who use drugs. One of the primary aims of the Act is to give effect to punitive international conventions. Along with the criminalisation of trafficking in narcotic drugs and psychotropic substances, the Act also criminalises the possession of these drugs and prescribes heavy penalties such as a fine of Ugx 10,000,000 (approx. USD 3,000) or three times the market value of the drug, whichever is greater, or imprisonment of a minimum of ten years or both such a fine and imprisonment. The Act also criminalises acts associated with narcotic drugs such as possession of any pipe or utensil for the illicit use of such drugs; 'recruiting' or 'promoting' the smoking, inhaling, sniffing or other use of such substances and owning, occupying or being 'concerned in the management' of any premises used for the cultivation, sale or manufacture of such substances.

The Act makes a measure of provision for the welfare of PWUD by empowering the Minister of Health to establish 'rehabilitation centers' aimed at providing 'care, treatment and rehabilitation of persons addicted to narcotic drugs or psychotropic substances'. The Minister is also empowered to appoint an 'Advisory Committee for the Rehabilitation of Narcotic Addicts' in order to advise the Minister on matters relating to the administration of the centers and the 'care, treatment and rehabilitation of drug addicts'. The Act furthermore provides that a person may be committed to spend a part of their period of imprisonment in such a rehabilitation centre upon conviction of an offence under the Act.

Despite these seemingly progressive provisions, the mechanism for 'rehabilitation' contemplated under the Act can only be accessed after one has been convicted and sentenced. Since the time spent in the 'center' is considered as part of one's custodial sentence, it is feared that the provision may have the direct and adverse effect of triggering custodial sentences where fines would otherwise have been imposed. The fact that the envisioned Advisory Committee's membership does not provide for participation or inclusion of PWUD is also viewed as problematic. Overall, the NDPSA conflates support for PWUD with the criminal law and even the limited health services provided under such a framework are rendered meaningless and effectively inaccessible. It also leaves the judicial officer with broad and unqualified power to determine which PWUD access treatment and who does not, which severely undermines not only the agency and autonomy of such persons but also their rights to health and, ultimately, to life. The essence of the Act is to treat PWUD as criminals who need to be locked up instead of viewing them as human being in need of assistance.

The criminalisation of drug use has had the effect of limiting the range of medical intervention available and accessible to PWUD in both private and public facilities. There is no comprehensive facility for the provision of public health services to PWUD. There is also no treatment available within Uganda for people who overdose on drugs and need critical and urgent medical attention.

The emphasis on criminal approaches to drug use has discouraged many PWUD from seeking even those medical services which might be available in the public and private health systems. This is because of the way they are treated by medical professionals and the threat of being taken to court to answer charges related to their drug use upon their recovery. The study finds a direct link between the criminalisation of drug use and HIV/AIDS as well as mental health challenges. This is so because the criminalisation of drug-use makes it less likely for PWUD to be offered information and services in relation to needle-sharing, which increases transmission of HIV among injecting drug users in particular. Furthermore, the social stigma created in large part by the criminal approach to drug use has further entrenched the isolation and related suffering and depression of PWUD.

The study finds that another consequence of criminalisation has been that the police and other law enforcement agencies make use of a whole range of legal provisions, even beyond those provisions which have a direct link to drug prohibition, to harass, intimidate, blackmail and extort money from PWUD. Laws most frequently used in this respect are offences under the Penal Code including 'being a common nuisance'; 'being idle and disorderly'; 'being a rogue and vagabond'; and carrying on offensive trades. The police often round up groups of youth who are known or suspected PWUD under the guise that they have committed these offences, as a means of extorting money from them. Some PWUD report being arrested under these provisions countless times. Cases were also recorded where PWUD are charged with offences they have not committed, such as murder, for the purpose of having them remanded for extended periods, only for them to be released months later after it had been established by the public prosecutor that there is no reasonable prospects of the alleged offence being successfully prosecuted. Additionally, on occasion, the police have deliberately fabricated evidence against PWUD in order to ensure their successful prosecution and incarceration. It was found that in almost all cases, whether the arrests were in terms of the NDPA offences or Penal Code offences, the arrests are usually brutal and dehumanising.

Criminalisation of drug use is found to cause social stigma and related socio-economic consequences for PWUD who have been convicted and imprisoned or who have even just been arrested and detained. They face disruptions in their family lives and education as well as the loss of employment and decreased chances of obtaining employment. An indirect consequence of the criminalisation of drug use is that, when incarcerated, PWUD are often exposed to a wider range of drug use. The PWUD interviewed recounted suffering both physical and psychological trauma as a result of incarceration. Furthermore, the criminalisation and incarceration of PWUD has been found to cause them to transform into actual criminals through exposure to criminals, such as elite drug traffickers, or due to the denial of opportunities for gainful employment which

they face following incarceration.

An analysis of the current enforcement of the regulatory framework revealed that the drug laws are discriminatory in effect, since lower income individuals disproportionately face arrest, prosecution and conviction when compared to upper or middle class persons who use drugs. From the PWUD interviewed, all who were from underprivileged backgrounds had been arrested by the police at some point and some of them suffered long periods of remand after being charged. On the other hand, not a single one of the upper or middle class PWUD interviewed had ever been the subject of law enforcement. It is clear that the criminalisation of drug use is used to target 'undesirable' classes of society, leaving untouched members of the middle and upper classes engaging in the same conduct. As with those jurisdictions, while the law in Uganda has been facially neutral, this study reveals that, in effect it has had a markedly disparate application, being decidedly biased against low income and underprivileged persons.

Finally, the study finds that due to the regulatory climate, organisations which have sought to work with PWUD have faced delays in registration and have also faced deregistration and threats of deregistration, constituting a violation of the right to freedom of association of PWUD.

In considering the overall effect of criminalisation of drug use, it is suggested that any regulation of drug use should not involve a direct or indirect violation of the rights to life and health of persons who use drugs. It is suggested that the principle of 'harm reduction' should be embraced in order to reduce the negative consequences associated with drug use. Uganda is in need of the adoption of a nation-wide harm reduction policy which would create an enabling legal environment for PWUD to access health services relevant for them to enjoy the highest attainable standard of physical and mental health; and would also involve increased state funding to support the legal and public health needs of the PWUD.

iv. Key recommendations

To the Ministry of Health

- Adopt a harm reduction approach to drug use in Uganda and increase budget support for such efforts.
- Ensure that the harm reduction effort involves the provision of a minimum service package for harm reduction, consistent with World Health Organisation (WHO) standards and that this package is integrated into the national public health interventions, including the

National HIV programme.

- Devote a specific budget to the support and rehabilitation of PWUD in Uganda, as opposed to focusing more on law enforcement.
- Consider establishing regional mental health hospital services, which deal with drug addiction.
- Allocate a medical officer in-charge of PWUD's health services at every district.
- Consider establishing specific treatment facility for PWUD in all public health facilities to enhance access by PWUD to health service.
- Create a statutory body charged with the responsibility of overseeing drug-related issues, fashioned along the lines of the Uganda AIDS Commission (UAC).
- Fund a major epidemiological study on the implications of drug use on the disease burden in Uganda, as a basis for drastic public health interventions for PWUD.
- Sensitise the police, public health officials, communities and other key stakeholders as to the realities of drug use and the need for a public health rather than criminal law approach to drug use in Uganda.

To Parliament

- Decriminalise small-scale, individual drug use.
- Review the NDPSA in as far as it links the provision of rehabilitation and health services to PWUD to the criminal process.
- Repeal overbroad and ambiguous offences, such as the 'Idle and disorderly' laws, which are used to harass, intimidate and extort money from PWUD.

To the Judiciary

- Discourage and dismiss vague charges, which are clear attempts to use overbroad offences in the law which are used to harass, intimidate and extort money from PWUD.
- In cases where a conviction under the current regime is preferred, favour non-custodial sentences in order to avoid the great adverse and multiplier effects of imprisonment on the health and lives of PWUD.
- Train judges and magistrates to be able to handle cases involving PWUD with sensitivity and mindfulness of the advantages of a public health approach to drug use.

To the Uganda Law Reform Commission

- Conduct further research into the impact of the criminalisation of drug use as opposed to other best practices such as harm reduction, and make appropriate proposals to Parliament for reform of the law.
- Repeal overbroad and ambiguous offences, such as the 'Idle and disorderly' laws, which are used to harass, intimidate and extort money from PWUD.

To the DPP

- Refuse to sanction vague charges which are clear attempts to use overbroad offences to harass, intimidate and extort money from PWUD.

To the Uganda Police Force

- Desist from misusing overbroad offences to harass, intimidate and extort money from PWUD.
- Stop using the repealed provisions of the NDPA to charge drug users.
- Desist from abusing the rights of drug users when enforcing the criminal law.

To Persons Who Use Drugs and Civil Society Organisations working with PWUD

- Undertake further studies regarding the general circumstances of PWUD in Uganda.
- Consider a constitutional challenge to the overbroad offences such as 'Idle and disorderly' laws, which are used to harass, intimidate and extort money from PWUD.
- Sensitise the police, public health officials, communities and other key stakeholders as to the realities of drug use and the need for a public health rather than criminal law approach in Uganda.
- Lobby Parliament to decriminalise drug use in Uganda and to focus instead on the harm reduction approach.

To Public and Private Health Facilities

- Adopt a more welcoming and more sensitive approach to PWUD who seek health-care services.
- Consider creating units dedicated to addressing the particular health needs of PWUD.

To the Academia

- Undertake further studies aimed at comprehensively mapping the situation of PWUD in Uganda.
- Conduct a major epidemiological study on the implications of drug use on the disease burden in Uganda which can serve as a basis for urgent public health interventions for PWUD.

SECTION I INTRODUCTION

'It was our silence that allowed police forces to occupy our poorest communities since the start of the so-called war on drugs. It was our silence that opened the door to the militarization of our police forces. It was our silence that allowed them to purchase military grade equipment and to increase surveillance on citizens in the name of the war on drugs. It was our silence that allowed our prisons to swell beyond capacity and our criminal justice budgets to take priority over spending in other key areas, such as education and healthcare' – Nekima Levy-Pounds

1.1 Introduction

Persons who use drugs (both injecting and non-injecting) are at the peripheries of legal recognition and protection, often interfacing with the coercive arm of the State rather than accessing the normal range of service provision enjoyed by the majority of society. This enhances their vulnerability to a range of poor economic and social outcomes, including, in particular being one of the groups most at risk of HIV infection.

This study analyses the newly enacted Narcotic Drugs and Psychotropic Substances (Control) Act of 2015 (hereinafter the NDPSA) and the current legal and policy environment relevant to drug use in Uganda as a means of assessing both its compliance to relevant domestic, regional and international law, as well the impact of this regime upon the health and welfare of persons who use drugs in Uganda. The adoption of the NDPSA of 2015 largely proceeded without critical interrogation from a human rights perspective, notwithstanding the fact that it stands to have a significant effect on the human rights of a variety of persons, especially people who use drugs (PWUD). It should be noted that, throughout this study, the phrase 'persons who use drugs' is used in its broadest sense, to include even persons who inject drugs.

This report contains a critical human rights-based assessment of the Act, and related legislation, as well as a qualitative study on the effect of the legislative climate it introduces and reinforces, upon the rights and welfare of PWUD. Based upon the insights generated, it recommends specific reforms aimed at creating a more rights-friendly legal atmosphere in which the public health dimensions of drug use are surfaced, and foregrounded.

The study was executed using largely qualitative methods, involving both a review of secondary literature but also in-depth interviews with critical actors, especially organisations that have been active in promoting and protecting the rights of PWUD. The study also engaged with law enforcement agencies to further appreciate the impulse that favours a criminal law approach over a public health focus to the issue of drug use generally and injecting drug use in particular, as a basis for appropriately responding to this impulse in terms of both the legal analysis and reforms suggested.

This report therefore analyses the legislative framework through the lenses of its impact upon the rights of PWUD, and contains specific proposals for legal reform in this regard.

1.2 Background to the study

People who use drugs (PWUD) are a vulnerable and stigmatised group in Ugandan society. They are usually sidelined in and pushed to the margins of society and are offered very little support in terms of rehabilitation from drugs on which they have become dependent.¹ Research suggests that the use of drugs in Uganda is on the increase, even in rural areas.² There is widespread use of 'khat' or 'mira' in Uganda, as well as locally grown cannabis in various forms.³ Cocaine is widely available and heroin is cheap enough to be used daily even by those who earn a very low income.⁴ As an expected symptom of marginalisation, little public attention has been paid to the plight of drug users and the medical and social needs of this fast-expanding, yet invisible, group. The growing drug problem among individuals in Uganda seem to only make headlines on the rare occasion that well-known personalities are involved or when Ugandans are

- 1 G Atwiine & W Twaibu 'Targeting people using and injecting drugs will contribute to reduced HIV prevalence rate in Uganda' *Daily Monitor* 29 April 2016.
- 2 LH Tugume 'The dynamics of intoxicant/drug consumption in contemporary Uganda: A case study of urban Kampala' (2015) 4 *International Journal of Development Societies* 109; Uganda Harm Reduction Network 'UHRN press statement on the drug use situation for people who inject drugs in Uganda' 15 April 2016 available at <https://stoptheharm.org/press/uhrn-press-statement-on-the-drug-use-situation-for-people-who-inject-drugs-in-uganda> (accessed 24 October 2016).
- 3 As above at 110-112; R Kalumba 'How big is Uganda's drug problem?' *Daily Monitor* 26 June 2010 <http://www.monitor.co.ug/News/National/688334-946518-item-01-yasc83z/index.html> (accessed 24 October 2016).
- 4 M Sibiloni 'Uganda's thriving drug scene' *Al Jazeera*, 5 November 2014 available at <http://www.aljazeera.com/indepth/inpictures/2014/10/pictures-uganda-thriving-drug-20141031101312851406.html> (accessed 24 October 2016); S Roosbald 'Heroin, cocaine use increase in Uganda' 20 October 2015 *VOA News*, available at <http://learningenglish.voanews.com/a/heroin-and-cocaine-use-increase-in-uganda/3014915.html> (accessed 14 October 2016) and '45% of Ugandan youths take drugs and alcohol' *New Vision* 7 March 2013, available at http://www.newvision.co.ug/new_vision/news/1315230/-ugandan-youth-drugs-alcohol (accessed 24 October 2016).

arrested for drug trafficking in other countries.⁵ The emergence of drug trafficking crisis in Uganda, with Entebbe airport is a major transit route, has furthermore overshadowed contemplation of the state's relationship with individual drug users.⁶ As a result, Uganda's response to a multifaceted drug problem has not been focused on the urgent need to come up with holistic strategies which contemplate the causes and consequences of individual drug use and provides sustainable solutions to PWUD.⁷ Emerging consensus at the global level is that dependence on drugs is best approached as a public health and human rights issue.⁸ Under such an approach, the focus is on the health rights and needs of PWUD. It has been shown that where public health options are made available, there have been dramatic declines in drug dependence, mortality and overdose along with a measure of prevention of the transmission of HIV.⁹ Contrary to treating drug addiction as a public health issue is the approach that emphasises the criminal justice system as a means of controlling drug use. This approach, which adopts a so-called 'war on drugs', seeks to address the challenge of drug use through the fear and force of the law.¹⁰ Globally, however, it has been demonstrated that the criminalisation of drug use has the effect of creating a massive illicit drug market; increasing the spread of HIV and diminishing the opportunities for drug users to be rehabilitated.¹¹

Uganda, in the main part, appears to have adopted a criminal justice approach to dealing with drug use, most recently reinforced through the enactment of the Narcotic Drugs and Psychotropic Substances (Control) Act 2015 (NDPSA). The Act aims at consolidating and amending the law relating to drug use in Uganda.

-
- 5 S Zinunula 'Inside Jackie Chandiru's drug addictions story' *Chimpreports* 26 February 2016 <http://chimpreports.com/entertainment/exclusive-inside-jackie-chandirus-drug-addiction-tale/> (accessed 24 October 2016); 'Ugandans on death row in China named; parents weep' *New Vision* 7 July 2014 available at http://www.newvision.co.ug/new_vision/news/1342385/ugandans-death-row-china-named-parents-weep (accessed 24 October 2016).
 - 6 Uganda's response to a growing drug problem has been to enact highly punitive legislation which would serve as a greater deterrent to drug traffickers and possessors than the existing regime managed to accomplish. See Sibiloni, n 4 above and Colectivo de Estudios Drogas y Derecho (CEDD) 'In search of rights: Drug users and state responses in Latin America' (2014) 9.
 - 7 Over the past decade, as evidence of Uganda's multi-faceted drug issues emerged, the suggested 'catch-all' solution has been to enact legislation which will forcefully deal with trafficking, in the first place, and individual possession and use of drugs, as secondary matters. See UHRN n 2 above and Sibiloni n 4 above.
 - 8 United Nations Office on Drugs and Crime 'From coercion to cohesion: Treating drug dependence through health care, not punishment' (2010) 1-4.
 - 9 As above.
 - 10 E Wood et al 'The war on drugs: A devastating public-policy disaster (2009) 373 *The Lancet* 989.
 - 11 As above. See also Atwiine and Twaibu (n 1 above) and the United Nations Office on Drugs and Crime '2005 World Drug Report' (2005).

The Act strictly regulates the use of drugs and imposes sentences for drug possession and use, which are substantially more severe than those previously provided under the law. Nonetheless, to date, no comprehensive study on the laws and policies impacting upon PWUD has been undertaken. There is also very little information available on the new NDPSA and its implications for PWUD. The primary aim of this study, therefore, was to comprehensively analyse the NDPSA and other laws relating to drug use in Uganda, in order to understand the implications of the regulatory framework upon the lives and wellbeing of PWUD. Ultimately the study is aimed at supporting and promoting, through an evidence-based approach, the realisation of a regulatory regime for drug use in Uganda that addresses the challenge of drug dependence without adversely impacting the rights and welfare of PWUD in Uganda.

1.3 Rationale of the study

The salient and critical public health and human rights issues notwithstanding, there is currently no detailed study on the legal and policy environment relating to people who use drugs (PWUD) in Uganda. This is consistent with the paucity of both research as well as consultation in the course of the formulation and eventual enactment of the Narcotic Drugs and Psychotropic Substances (Control) Act of 2015 (hereinafter the NDPSA).

At the same time, this absence of rigorous and in-depth evaluation is, even on the face of it, anomalous, given various statistics that indicate the scale of drug use in Uganda.¹² This study was therefore aimed at contributing to the knowledge in this area, to inform the work of policy makers, advocates and other stakeholders.

The stringent regulatory regime imposed by the NDPSA has implications for both the rights of persons who use drugs and the State objectives of curbing drug abuse and crimes related to it.

The immediate question posed by the enactment and enforcement of this new law, alongside the broader legal and policy regime, is as to whether an appropriate balance has been struck between the State objective to reduce crime and the human rights and public health imperatives implicated by drug use. This study interrogates the NDPSA, in terms both of its provisions and the manner and extent to which they have been enforced thus far, as a means of assessing the degree to which this Act and the broader regulatory regime for drug use in Uganda adequately takes into account the rights of persons who use drugs.

¹² See n 4 above.

1.4 Objectives of the study

The study was informed by three broad objectives:

- i) To assess the extent to which the NDPSA and the other laws regulating drug use in Uganda are consistent with relevant domestic, regional and international legal standards;
- ii) To analyse the impact of the current legal and policy regime upon the health and general welfare of persons who use drugs in Uganda;
- iii) Using the insights generated, to inform legal and policy reform in the area of regulation of drug use in Uganda as well as advocacy efforts and related interventions by critical stakeholders.

Specifically, the study sought to achieve the following:

- a) To analyse the Narcotic Drugs and Psychotropic Substances (Control) Act 2015 in light of national, regional and international human rights standards;
- b) To analyse the other laws impacting upon PWUD (including all laws criminalising drug use, vagrancy laws used to arrest PWUD and laws and policies regulating access to treatment, rehabilitation and HIV-related healthcare services); in light of national, regional and international human rights standards;
- c) To make a generalised assessment of how these laws are implemented with particular focus on which laws are used to arrest PWUD, the success rate of prosecution, access to justice for this group and human rights violations while in detention;
- d) To make a preliminary assessment of the links between laws criminalising drug use and access to healthcare and rehabilitation services as well as the spread/prevention of HIV; and
- e) To propose recommendations on how these laws should be amended or enforced in the future.

1.5 Methodology

1.5.1 Research Design

The study employed a qualitative study design to assess the implications of the current regulatory framework for drug use upon key individual, groups and other actors. The study focused on Kampala district as a case study.

This study method involved in-depth interviews and observation, and was chosen in so far as it allowed for a deep interrogation and analysis of both the law as well as its actual impact upon the lived realities of persons who use drugs in Uganda.

The method foregrounded the experiences of affected individuals and groups, while allowing for holistic and objective assessment of cause and effect from which reliable conclusions can be reached.

1.5.2 Study Location

The research was conducted in Kampala District, and the researchers were guided and assisted by UHRN in terms of accessing PWUD and interacting with them. Other stakeholders (including law enforcement agencies and health officials) who were engaged were also drawn from Kampala, which is the capital city of Uganda and the centre of the country's commercial, political, social and economic life.

It is believed that although geographically limited, the insights thus generated are broadly reflective of the bigger country picture, and that the reforms indicated are similarly scalable.

1.5.3 Study Population

The field-work component of the study involved interviews with critical actors, especially organisations that have been active in promoting and protecting the rights of PWUD as well as interactions and discussions with PWUD themselves. It also involved engagement with law enforcement agencies, health professionals and other key State and Non-State actors involved in drug regulation in Uganda.

The study population was 37 persons, both male and female. Of these, 15 were persons who use drugs; 8 were law enforcement officials; 4 were from organisations of persons who use drugs; 2 were from human rights organisations which work with persons who use drugs; 6 were health professionals (from both public health and private facilities) and 2 were from the academia.

1.5.4 Sample and Sample Selection

Both purposive and snowball methods of sample selection were used. Purposive sampling was meant to elicit critical information from persons who would be best placed, either through their personal or professional experiences, to provide it. This method was mainly used to select the institutions to interview for the study. The snowball method was critical especially given the current regulatory climate in which drug use is criminalized and ostracised. It was thus employed to reach out to drug users.

1.5.5 Data analysis

Given the qualitative nature of the data collection to be employed, the researchers similarly employed largely qualitative means of data analysis and interpretation. Throughout the process of the research, an effort was made to triangulate the information received, to ensure the greatest degree of accuracy and reliability of the data collected. The data collected was carefully transcribed and indexed for easier comparison and analysis. Particular attention was given to emerging correlations in the information received from the various respondents.

1.6 Literature review

There is a dearth of literature which interrogates the pillar of Uganda's current regime for regulating the use of drugs – the Narcotic Drugs and Psychotropic Substances (Control) Act 2015 (NDPSA). This is not surprising, given the short period of time since the enactment of the NDPSA.

Nonetheless, a few studies have sought to engage both with the criminal law and public health dimensions of drug regulation in Uganda; prior to the passage of the NDPSA, and during the time it was under consideration. For instance, Basangwa¹³ squarely places drug use within the realm of public health, as essentially a 'brain disease' requiring adequate treatment, which takes into account the complex dynamics between the person who uses drugs and the society within which they live. To him, the approach to drug use must be a graduated treatment regime requiring identification/assessment; detoxification; relapse prevention and finally social reintegration. This work is grounded in public health, and in fact approaches the use of drugs from an 'abuse' perspective in which the desired goal is 'rehabilitation' of the 'patient' in question. This approach is one adopted by a number of other scholars who have considered the question, including the studies by Namayanja¹⁴ and Mutaawe¹⁵ who have approached the issue from a sociological perspective.

Complementary to this approach of prevention and treatment, is the practical approach of 'harm reduction', which recognises the adverse effects which

13 D Basangwa, 'Drug Abuse Treatment and Rehabilitation' presentation made on 30th April 2014, available at [http://www.uom.ac.mu/MedicalUpdate/files/2014/14may2014/drug%20abuse%20treatment%20and%20rehab%20\(%20Mauritius\).pdf](http://www.uom.ac.mu/MedicalUpdate/files/2014/14may2014/drug%20abuse%20treatment%20and%20rehab%20(%20Mauritius).pdf) (accessed 24 October 2016).

14 Unpublished: S Namayanja 'Challenges of Drug Abuse among the youth' Dissertation Submitted to the College of Education and External Studies, Department of Open and Distance Learning in Partial Fulfillment of the Requirements for the Award of the Commonwealth Youth Diploma in Development Work of Makerere University 2011.

15 R Mutaawe, 'Drug and substance abuse prevention: A case of Uganda' Youth Development Link Presentation made at the European Primary Prevention Conference-Estonia, available at <http://eppc.se/wp-content/uploads/2013/04/Rogers.pdf> (accessed 24 October 2016).

criminalisation has had on the lives and welfare of PWUD across the world.¹⁶ 'Harm reduction' aims to limit the negative consequences of drug use, without eliminating legal or illegal drug use.¹⁷ The principle is also in large part 'a movement for social justice built on a belief in, and respect for, the rights of people who use drugs.'¹⁸ According to one conceptualisation, the harm reduction approach is one which accepts, for better and or worse, that licit and illicit drug use is part of our world and chooses to work to minimise its harmful effects rather than simply ignore or condemn them.¹⁹

On the other hand, a number of contributions to the debate have proceeded from a decidedly criminal and punitive paradigm, in which drug use is conceived of as a criminal offence, which should attract stringent penal sanctions, especially in so far as it is linked to the commission of several other offences. The justification for such an approach has been considered by Linklater,²⁰ who argues that the 'war on drugs' is not the cause of global problems with drug use and trafficking and that the negative consequences of legalisation ought to be considered carefully. Weatherburn²¹ argues that the prohibition of drugs goes a long way in mitigating the harms associated with drug use. Some of the justifications for a criminal justice approach which he advocates for is that it limits the opportunity for legitimate drug use and that it makes drugs (sometimes prohibitively) expensive.²² This punitive approach is the one applicable to drug use in Uganda.²³ Indeed, the annual reports of the Uganda Police Force regularly track 'drug abuse' among the crime statistics enumerated, with outlines of efforts being made to decisively deal

16 United Nations Office on Drugs and Crime 'Reducing the harm of drug use and dependence' 2 available at https://www.unodc.org/ddt-training/treatment/VOLUME%20D/Topic%204/1.VolD_Topic4_Harm_Reduction.pdf (accessed 24 October 2016).

17 A Wodak & L McLeod 'The role of harm reduction in controlling HIV infection among injecting drug users' (2008) 22 *AIDS* S82.

18 J Levy 'The harms of drug use: Criminalisation, misinformation and stigma' *International Network of People Who Use Drugs (INPUD)* (2014) 18.

19 Harm Reduction Coalition 'Principles of harm reduction' available at <http://harmreduction.org/about-us/principles-of-harm-reduction/> (accessed 24 October 2016).

20 A Linklater 'Why we shouldn't legalise drugs' (2010) November *Prospect Magazine* available at <http://www.prospectmagazine.co.uk/magazine/against-legalising-marijuana> (accessed 24 October 2016).

21 D Weatherburn 'The pros and cons of prohibiting drugs' (2014) 47(2) *Australia and New Zealand Journal of Criminology* 178.

22 As above.

23 See, for instance, J Kato 'Uganda: Drug Abuse behind Kampala's High Crime Rates' *New Vision* 16 July 2008 available at <http://allafrica.com/stories/200807170172.html> (accessed 24 October 2016); P Kagenda 'How big is Uganda's drug problem?' *The Independent* 20 July 2014 available at <http://allafrica.com/stories/201407211628.html> (accessed 24 October 2016).

with the issue.²⁴ Despite the factual support of the criminal approach to drug use in Uganda, there is a further dearth of research on the actual impact of such a regime. A few studies note that PWUD face arrest along with the violation of their fundamental rights due to the criminalisation of drug use²⁵; yet there is no study which sets out the numbers, circumstances and consequences of arrests under this regime.

A middle approach has been suggested, especially by more recent studies. Tamale,²⁶ for instance, in an analysis of the then Narcotic Drugs and Psychotropic Substances Bill, 2007 found that the Bill was excessively penal in its approach to the issue of drug use, a model which was inconsistent both with contemporary international human rights law and best public health practices. In her view, the Bill should have reflected a greater sensitivity towards public health and, in particular, considered incorporating a harm reduction approach to the issue. Similarly, Tabaro²⁷ briefly compares the implications of a criminal law approach and a more public health oriented approach and, like Tamale, recommends the latter as a more rational approach.

It is evident, from a survey of the literature that insufficient attention has been paid to the issue of drug use in Uganda, especially with a focus on persons who use drugs — that is to say, centering the person rather than the activity in the prism of analysis. In any case, even that limited debate that has taken place has occurred prior to the enactment of the NDPSA. The current study would be informed by the scholarly and policy contributions that exist, and would seek to re-examine the various approaches suggested, using a human rights based approach, in the wake of the passage and enforcement of the NDPSA.

1.7 Ethical considerations

The researchers were keenly aware of the sensitive nature of the research and, especially, the ethical issues implicated therein, given that a number

24 For instance, the 2013 Annual Crime and Road Safety Report noted, among the challenges being faced in the war on drugs, the fact that the National Drug Policy & Authority Act 2000 which was then being used was 'not comprehensive enough' and was 'weak' and expressed hope that the Narcotic Drugs and Psychotropic Substances Control Bill then before Parliament would be quickly enacted. Uganda Police Force 'Annual Crime and Traffic/Road Safety Report 2013' (2013) 15.

25 Tugume (n 2 above) 15.

26 Unpublished: CN Tamale 'Reconciling Criminal Law and Public Health: An analysis of the Narcotics Drugs and Psychotropic Substances Bill, 2007' Dissertation Submitted to the School of Law, in Partial Fulfillment of the Requirements for the Award of the Bachelor of Laws Degree of Makerere University 2015.

27 EK Tabaro (2014), 'Decriminalizing Drug Use in Uganda: Policy benefits and ramifications' available at https://www.academia.edu/11077152/Decriminalizing_Drug_Use_in_Uganda_Policy_Benefits_and_Ramifications (accessed 24 October 2016).

of respondents were PWUD, who are therefore members of an extremely vulnerable population. The researchers adopted the very best practices and highest ethical standards in interacting with the research subjects.²⁸ In this regard, the full and prior informed consent of all respondents was obtained prior to the research, and full confidentiality was assured to all persons who chose not to be identified, and even for those who chose to be identified and who belonged to a marginalised/criminalised group, the researchers employed pseudo names rather than their real names whenever there was need to name them.

The study was also conducted in collaboration with the Uganda Harm Reduction Network (UHRN), which is a network of PWUD in Uganda, which works directly with PWUD and they were thus able to guide the researchers during the study. In addition, the insights generated from the research will be shared with PWUD, law enforcement agencies, law and policy makers, advocacy groups and other key stakeholders, so as to ensure that the study is of direct and indirect benefit to the vulnerable population whose lives and lived experiences are at the core of the research.

1.8 Overview of sections

This study is presented in five sections. The first section describes the background to the study, outlines its objectives and details the methodology that was employed in the course of the research.

The second section provides a historical account, grounded in political economy, of the global regulation of drug use.

The third section analyses, using the lenses of international and regional human rights law, the legal framework relating to drug use in Uganda.

In the fourth section, an examination is undertaken of the impact of the current legal and policy regime upon the health and general welfare of persons who use drugs in Uganda.

Finally, in the fifth section, the study outlines a number of critical recommendations, relating to both policy and practice, aimed at achieving a better legal and regulatory environment for drug use in Uganda.

28 These issues have been canvassed in a range of sources. See for instance, E Pittaway et al "'Stop stealing our stories': The ethics of research with vulnerable groups' (2010) 2 *Journal of Human Rights Practice* 229-251; C Sherlock 'Research with vulnerable groups: Collaboration as an ethical response' (2010) 7 *Journal of Social Work Values and Ethics* (2010) available at <http://jswve.org/download/f10sherlock-Research%20with%20Vulnerable%20Groups.pdf> (accessed 24 October 2016) and D Henry 'Human subjects research with vulnerable populations' (2012) *Institute for Health Research and Policy, University of Illinois* available at http://www.ihrp.uic.edu/files/Vulnerability_IHRP_041012.pdf (accessed 24 October 2016).

SECTION II THE HISTORY OF DRUG REGULATION GLOBALLY AND IN UGANDA

'... the inclusion of a product in a category of dangerous drugs the use of which is illegal reflects much more a relationship of power than any scientific truth, a relationship of power that sets the group of people using drugs against those attempting to make them illegal' - Zafiropoulos and Pinell

2.1 Introduction

Historically, the cultivation, possession, use and trade in drugs preceded any efforts towards their regulation. This section assesses the history of such regulatory efforts at the international, regional and domestic levels.

2.2 Early prohibitions

One of the earliest prohibitions of drugs is to be found in the Quran, a number of passages of which prohibit a broad category of intoxicants, including alcohol.²⁹

Nevertheless, drug use continued in much of the Muslim world, particularly in terms of the smoking of hashish.³⁰ This was especially so because, while most Islamic scholars resisted any recreational uses of hashish, some interpreted the Quran as permitting the smoking of hashish for medicinal purposes, even where it had adverse health effects.³¹ The contestation and debates – which swung between more radical to more liberal positions – however continued.

A critical feature of later prohibitions – or lack thereof - was the direct link between political and economic power and the level of prohibition of various intoxicants.

In this regard, especially in Europe, before the later part of the seventeenth century, the majority of European States did not prohibit drugs.³² Rather they were viewed as important sources of revenue. As such States permitted and

29 For instance, Quran 5: 90: 'O You who believe! Intoxicants and gambling, (dedication of) stones and (divination by) arrows are an abomination of Satan's handiwork. Avoid (such abominations) that you may prosper' and Quran 5: 91 'Satan's plan is to sow hatred and enmity amongst you with intoxicants and gambling, and to hamper you from the remembrance of Allah and from prayer. Will you not give up?.'

30 See YH Mohd Safian 'An analysis on Islamic rules on drugs' (2013) | *International Journal of Education and Research* 1.

31 As above at 2-6.

32 DT Courtwright 'A short history of drug policy' available at http://www.lse.ac.uk/IDEAS/publications/reports/pdf/SR014/Courtwright_DavidT.pdf at 1.

encouraged the cultivation and trade of these drugs.³³ The major forms of State benefit were in terms of either customs duties on these drugs as well as through the establishment of State monopolies as a means of revenue generation.³⁴ Similarly, in terms of criminal law, those who violated the requisite laws were usually subjected to forfeiture of their stocks rather than imprisonment or any harsher penalties.³⁵ Interestingly, the scant regulations that did exist were only those geared to protection of property, such as those which prohibited smoking in flammable buildings; or those aimed at suppressing revolts from oppressed people, such as laws against the sale of certain spirits to Indian tribes.³⁶ In any case, given the great profit to be made, the second category of prohibitions were routinely flouted.³⁷

Moreover, not only was domestic regulation in Europe almost non-existent, these powers extended this liberal drug policy in their foreign affairs, including the use of force to expand into non-compliant markets. A particular instance in this regard was the reaction to the absolute ban of the opium trade by the Qing dynasty in China in the late eighteenth century. This triggered the so-called 'opium war' between the United Kingdom and China between 1839 and 1842.³⁸ China lost this initial phase of the dispute,³⁹ as well as a second phase that lasted between 1856 and 1858.⁴⁰ In the end, opium produced in India, and sold mainly by British traders, was legalised and imports of opium into China which had stood at GBP 6,000,000 (Six Million Great British Pounds) in 1839 had expanded to GBP 15,000,000 (Fifteen Million Great British Pounds) by 1879.⁴¹

Similarly, long-standing prohibitions in Burma were abolished by the British colonial power starting from 1852, which cleared the way for the entrenchment of monopolies for British traders who sold opium produced in India.⁴²

33 As above.

34 As above.

35 As above.

36 As above.

37 As above.

38 As above.

39 The defeat of China was made official in the Treaty of Nanking, of 29th August 1842, under which foreign opium traders were specifically protected from the application of Chinese law. This is a notable example of a so-called 'unequal treaty' in so far as the United Kingdom obtained exclusive rights under it, while China bore all the obligations it stipulated.

40 Courtwright (n 32 above) I.

41 As above.

42 J Windle 'How the East influenced drug prohibition' (2013) 35(3) *The International History Review* 9 (pre-publication copy).

2.3 From international liberalism to domestic prohibition: Race, class and the start of the ‘war against drugs’

The 1868 Pharmacy Act of the United Kingdom was the perhaps the starting point of the modern regulation of drug use. This law regulated the sale and distribution of certain drugs, including opium. Under the law such drugs could only be sold in clearly marked containers, which included the name and address of the seller. The United States followed suit in 1875 with the enactment, in the State of San Francisco of a law which prohibited the smoking of opium in specific places.⁴³ A year later a similar law was passed in the State of Nevada. At federal level in the United States, the first effort against opium occurred in 1890 with the imposition of heavy import duties and other restrictions on the importation of the drug.⁴⁴ Interestingly, the first actual comprehensive ban of opium by the United States, in 1905, was not in the territory of the United States itself but rather in the Philippines, which was an American colony at the time. In the United States itself, the first federal level ban on the importation of opium for smoking was only enacted in 1909, while the ban on the domestic distribution and sale of opium only occurred in 1914 with the passage of the Harrison Narcotics Act.⁴⁵ In that same year, 1914, the United Kingdom enacted the Defence of the Realm Act (DORA) which was aimed, in the wake of the First World War, at preventing the sale of psychoactive drugs to soldiers, except for medical purposes. These prohibitions were maintained, and extended not only in terms of coverage (to include the general population) but also in terms of the types of drugs prohibited (to include cocaine, ecogonine, heroin, morphine and raw opium) under the Dangerous Drugs Act of 1920.

It is important to note that this shift – from liberalism towards prohibition – occurred in the context of changes in demographics and economic relations. In particular, as opium was consumed less by upper class Europeans and more by working class persons and immigrants in particular, so did the perception of its harmful effects, along with greater efforts towards its prohibition.⁴⁶ Indeed, in a strange twist of fate, the initial prohibitions, in San Francisco and Nevada, appeared to have been targeted at so-called ‘opium dens’ which were invariably ran, and frequented mainly by, Chinese immigrants. For instance, according to one account, the great majority of the American and British public were afraid that:

43 As above at 5.

44 As above.

45 As above. The Supreme Court in *United States v. Doremus* 249 U. S. 86 upheld the constitutionality of the Harrison Narcotic Act. The judgment however was only by a slight majority, with four of the nine Justices dissenting.

46 DT Courtwright, *Dark Paradise: Opiate Addiction in America before 1940* (Cambridge, 1982) cited in Windle (n 42 above) 5.

... opium dens in Chinatowns in Britain and the United States threatened to contaminate the West, with young white girls being ravished by sinister Orientals in these squalid places of sexual depravity and degenerate racial mixing. China was infiltrating the West, taking its revenge on its white persecutors.⁴⁷

Similarly, prohibition of opium in Australia was rooted in racial animus, with the passage of the Aboriginal Protection and Restriction of the Sale of Opium Act of 1897 being targeted specifically towards the use of the drug in that indigenous community. Prohibition of use among the general public in Australia would only be enacted eight years later, in 1905.

This was the same trend in Canada, where suspicion of Chinese users of opium triggered a spate of legislation from 1908 into the 1920s, prohibiting – and criminalising – all uses of opium other than for medical purposes.

2.4 From domestic prohibition to international regulation

The first international effort towards drug prohibition and regulation appears to have been the International Opium Commission, a conference which was convened in Shanghai, China in 1909. The momentum obtained at this meeting resulted in the first multilateral convention on drug prohibition – the International Opium Convention, signed in 1912 in The Hague, Netherlands.⁴⁸ Under this Convention, States Parties were required to regulate and control the manufacture, import, export, sale and distribution of morphine and cocaine.⁴⁹

The internationalisation of drug prohibition was taken a step further by the terms of the Versailles Peace Treaty of 28th June 1919, which concluded the First World War. Article 295 of this Treaty committed States Parties to the Treaty to establish drug regulatory regimes in line with the International Opium Convention.⁵⁰ In addition, in Article 23 (c) of the Versailles Treaty, Member States agreed to entrust the League of Nations with the 'general supervision' over, among others, 'the traffic in opium and other dangerous drugs'. In line with these provisions, in 1920, the League of Nations adopted a resolution establishing an Opium Advisory Committee (OAC), charged with supervising the implementation of the International Opium Convention.⁵¹ The League also created an Opium and Social Questions Section in its secretariat, charged with

47 F Dikötter, LP Laamann & Z Xun *Narcotic Culture: A History of Drugs in China* (Hong Kong, 2004) 94 cited in Windle (n 42 above) at 6.

48 The Convention entered into force in 1915.

49 Tamale (n 26 above) at 62.

50 T Seddon *A history of drugs: Drugs and freedom in the liberal age* (2010) (Routledge, New York) at 69.

51 Tamale (n 26 above) at 62.

providing administrative support to the OAC.⁵² In addition, the League Health Committee would advise the League and Member States on medical aspects of drug control.⁵³

Thus, from 1920, the control and prohibition of drugs was not only normatively internationalised, but it was also institutionally internationalised, based upon an apparent consensus that the prohibition of drugs was essential to the maintenance of international peace and security.

Further layers of normative regulation at the international level were added in 1925 with the conclusion, in Geneva, of two additional international agreements: i) the Agreement Concerning the Manufacture of, Internal Trade in and Use of Prepared Opium,⁵⁴ and ii) the International Convention relating to Dangerous Drugs.⁵⁵ The latter convention, in particular, expanded the international prohibition of drugs to cover cannabis, and further strengthened the international institutional mechanisms for drug control by establishing a Permanent Central Opium Board (PCOB).⁵⁶ The PCOB was aimed at handling statistical information provided by Member States of the League of Nations, relating to drug control.⁵⁷ A further step in the internationalisation of drug prohibition occurred in 1936 with the conclusion of the Geneva Convention for the Suppression of the Illicit Traffic in Dangerous Drugs⁵⁸ which banned illicit trafficking of the named drugs.⁵⁹ The Convention was heavily focused on the use of criminal law and penal sanctions. For instance, in terms of Article 2 of the Convention, States Parties were obligated to use their national criminal law frameworks to '*severely punish, particularly by imprisonment or other penalties of deprivation of liberty*' all acts directly related to illicit traffic in drugs.⁶⁰ Although it was deemed too soft by the United States and many other states which declined to sign it, it marked a significant turn, in the international plane, towards the criminalisation of drug related activities, beyond their regulation and control.⁶¹

52 United Nations Office on Drugs and Crime (UNODC) *A century of international drug control* (2008) available at https://www.unodc.org/documents/data-and-analysis/Studies/100_Years_of_Drug_Control.pdf at 9.

53 As above.

54 Signed on 11 February 1925.

55 Signed on 19 February 1925.

56 Tamale (n 26 above) at 62-63.

57 UNODC (n 52 above) at 9. This would be followed by the establishment, in 1931, of a Drug Supervisory Body (DSB), tasked with monitoring and assessing global drug requirements.

58 Signed on 26 June 1936; entered into force on 26 October 1939.

59 As above.

60 As above.

61 As above.

The internationalisation of drug control and prohibition continued, after 1945, under the auspices of the United Nations, which was the successor to the League of Nations. The United Nations has overseen the conclusion of new extensions to international drug regulations, notably: i) the 1953 Opium Protocol; ii) the Single Convention on Narcotic Drugs, 1961 (subsequently amended by a Protocol in 1972); iii) the Convention on Psychotropic Substances of 1971; and iv) the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.⁶²

Institutionally, the United Nations Commission on Narcotic Drugs (CND) was created in 1946 as a commission under the United Nations Economic and Social Council (ECOSOC).⁶³ It was this CND that assumed the function of the OAC.⁶⁴ The United Nations system also created a Division on Narcotic Drugs (DND), which assumed the functions of the Opium and Social Questions Section under the former League of Nations Secretariat.⁶⁵ In addition, a United Nations Fund for Drug Abuse Control (UNFDAC) was established in 1972 aimed at providing developing countries with technical assistance in their efforts towards drug control.⁶⁶ However, the Permanent Central Opium Board (PCOB) and the Drug Supervisory Body (DSB), which had been established in 1925 and 1931 respectively, were not replaced but instead were permitted to continue their operations under the framework of the United Nations.⁶⁷ After the conclusion of the Single Convention on Narcotic Drugs in 1961, the PCOB and DSB were consolidated into a single body – the International Narcotics Control Board.⁶⁸ In 2002, the United Nations Office on Drugs and Crime (UNODC) was established to coordinate and support the work of these several entities and to improve their efficiency.⁶⁹

It is noteworthy that, as described above, the focus during the development of the normative regime at the international level has mainly been on drug control and prohibition, including, from 1936, a turn towards criminalisation of drug-related activities. Thus far, the 'hard' international law in this area has paid scant regard to reducing demand for drugs or otherwise mitigating adverse effects of drug regulation upon those lives and health of persons who use drugs (PWUD). For instance, the first concern for PWUD appears to have been expressed in

62 UNODC (n 52 above) 7-8.

63 UNODC (n 52 above) 9.

64 As above.

65 As above.

66 As above.

67 As above.

68 As above.

69 As above.

the original Article 38(1) of the 1961 Convention, which required States Parties to 'give special attention to the provision of facilities for the medical treatment, care and rehabilitation of drug addicts.'⁷⁰ A little attention in this regard was also reflected under Article 20 (1) of the Convention on Psychotropic Substances, 1971 which required all States Parties to 'take all practicable measures for the prevention of abuse of psychotropic substances *and for the early identification, treatment, education, after-care, rehabilitation and social reintegration of the persons involved*' and to 'co-ordinate their efforts to these ends'.⁷¹ In addition, the 1972 Protocol which amended the 1961 Convention broadened the coverage of Article 38 from 'Treatment of Drug Addicts' to 'Measures Against the Abuse of Drugs' and provides under paragraph 1 that:

The Parties shall give special attention to and take all practicable measures for the prevention of abuse of drugs and for the early identification, treatment, education, after-care rehabilitation and social reintegration of the persons involved and shall co-ordinate their efforts to these ends.⁷²

Nonetheless, it is reasonably clear that the fundamental approach of the international legal framework – normative and institutional – thus far is heavily biased towards prohibition and criminalisation of drug related activities, with insufficient concern for persons who use drugs.

Moreover, the history of drug regulation is one of the cynical use of military, economic and political power, to push 'undesirable' persons further towards the periphery, through, among other things, the use of law and legal structures. Indeed, reflecting on a century of international drug regulation, the United Nations Office on Drugs and Crime – the very nomenclature of which is itself revealing – acknowledged the adverse implications for the life and health of persons, of the current normative and institutional approach:

The (multilateral) system itself remains a work in progress, continually adapting to address changing global circumstances. While this is a positive aspect of the system it has produced some unintended consequences. The first and most significant of these is the creation of a lucrative and violent black market. Secondly, the focus on law enforcement may have drawn away resources from health approaches to what, ultimately, is a public health problem. Thirdly, enforcement efforts in one geographic area have often resulted in diversion of the problem into other areas. Fourthly, pressure on the market for one particular substance has, on

70 UNODC (n 52 above) 8.

71 As above.

72 UNODC (n 52 above) 8-9.

occasion, inadvertently promoted the use of an alternate drug. Finally, use of the criminal justice system against drug consumers, who often come from marginal groups, has in many instances increased their marginalization, diminishing capacity to offer treatment to those who need it most. These unintended consequences represent serious challenges as the international drug control system faces its next century ...⁷³

2.5 The history of drug regulation in Uganda

There do not appear to have been prohibitions of drug use in precolonial Uganda. Indeed, the first legal regulation of drug use in Uganda appears to have been the application, through the force of the reception clause in the 1902 Order-in-Council, to Uganda of the United Kingdom Dangerous Drugs Act (of 1920) and the United Kingdom Pharmacy and Poisons Act (of 1933).⁷⁴

The next step in drug regulation appears to have been the Pharmacy and Drugs Act, which commenced on 15th June 1971.⁷⁵ According to the Long Title of the Act, it was enacted in order to 'amend and to consolidate the law relating to the control of the profession of pharmacy and trade in and use of drugs and poisons, and other purposes connected therewith'.⁷⁶ This Act basically provided rules proscribing the 'manufacture, export, import, storage, supply and use of drugs and poisons for the pharmacy profession'.⁷⁷

This was followed by the National Drug Policy and Authority Statute of 1993, which is currently known as the National Drug Policy and Authority Act ('the NDPA'). The NDPA was aimed at establishing a national drug policy and a national drug authority 'to ensure the availability, at all times, of essential, efficacious and cost-effective drugs to the entire population of Uganda, as a means of providing satisfactory health care and safeguarding the appropriate use of drugs'.⁷⁸

73 UNODC (n 52 above) 9.

74 Unpublished: S Ossiya 'Drug Abuse and the Law' Dissertation Submitted to the School of Law, in Partial Fulfillment of the Requirements for the Award of the Bachelor of Laws Degree of Makerere University) 1995, cited in Tamale (n 26 above).

75 A copy of this Act is available at <http://www.ulii.org/ug/legislation/consolidated-act/280>.

76 Long Title, Pharmacy and Drugs Act, 1971.

77 Tamale (n 26 above).

78 Long Title, National Drug Policy and Authority Act (NDPA).

The most recent enactment relating to drug use in Uganda is the Narcotic Drugs and Psychotropic Substances (Control) Act ('the NDPSA') which was passed by Parliament in 2015 and assented to by the President of Uganda in April of the same year. The Act came into force by means of a Statutory Instrument published in the *Uganda Gazette* in February 2016.⁷⁹ However, the state officials in charge of implementing the new law have not yet started charging and prosecuting people under the new law and instead use the repealed provisions of the NDPA.⁸⁰

It is evident, from this historical overview of the regulation of drug use in Uganda that, like many other punitive regimes in the country, the criminalization of drug use did not originally arise out of an organic or democratic process, but was rather initially imposed upon the peoples of Uganda by the United Kingdom, which colonised this territory. Nonetheless, at the very least since the passage of the 1971 Pharmacy and Drugs Act, the country ought to have taken stock of the best available evidence in crafting an appropriate legal and policy regime for addressing the challenge of drug use while respecting the rights of PWUD. In particular, the State ought to have been more critical, having regard to the antecedents of drug prohibitions in the United Kingdom and similar countries, to ensure that drug law and policy in Uganda did not unwittingly lead to the illegitimate marginalisation and criminalisation of a significant number of the country's citizens.

2.6 Conclusion

A survey of the history of drug regulation and prohibition reveals that, far from being based upon democratic consensus and rationality, the turn to prohibition and criminalization of drug use in particular has been steeped in prejudice and fear, in which power dynamics have worked to use facially neutral standards to target 'undesirable' populations – based on racial and class considerations. This reality has important implications, revealing as it does the need for continuing interrogation and unpacking of current and developing normative and institutional mechanisms for drug regulation and prohibition, particularly where criminal sanctions are involved, and the life, health and general welfare of human beings are at stake.

79 Statutory Instrument No. 14 of 2016, *Uganda Gazette* No. 8. Volume CIX, 12th February 2016.

80 Interview with DSP Tinka Zarugaba, Deputy Head of the Anti-Narcotics Unit, CID Headquarters Kibuli (31 August 2016, follow-up interview held on 7th April 2017), interview with AIP Moses Bongo, Head of Anti-Narcotics Unit, Kabalagala Police Station (29th August 2016); and Interview with State Prosecutor (name and duty station withheld on request) (5th September 2016). This approach is actually unconstitutional since Article 28(7) of the Constitution provides that 'No person shall be charged with or convicted of a criminal offence which is founded on an act or omission that did not at the time it took place constitute a criminal offence.' This implies that all the charges and prosecutions under the repealed provisions of the NDPA are unconstitutional.

SECTION III ANALYSING THE LEGAL REGULATORY REGIME FOR DRUG USE IN UGANDA

'The caustic effect of punitive drug policies has slowly eroded the cornerstone of ... democracy. It is no surprise that the court cases that have most destroyed the Bill of Rights, methodically abridging freedom of religion, freedom of speech, freedom from unreasonable searches and seizures, and property rights, have centered on fear of drugs' – Graham Boyd

3.1 Introduction

This Section of the report outlines the legal regime relating to drug use in Uganda through the lenses of relevant international, regional and domestic human rights law. This is done through both a textual analysis of the relevant laws, as well as by the consideration of insights obtained from a variety of stakeholders, especially from law enforcement, PWUD and public health officials.

3.2 The Relevant International, Regional and Domestic Human Rights Standards

Two main human rights issues are implicated by drug use and legal responses thereto: i) the right to health; and ii) rights related to criminal justice. We consider each of these in turn.

The right to health was initially expressed in the Constitution of the World Health Organisation (WHO) in 1946. According to the Preamble of that document, health is 'a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity'. The Constitution went on to affirm that 'the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being'.

Since then, the right has been enshrined in a number of international and regional human rights treaties.⁸¹ An authoritative elaboration of the right has been provided by the Committee on Economic, Social and Cultural Rights, established under the ICESCR. According to the Committee, in its General Comment No.14 on the Right to Health, 'health is a fundamental human right indispensable for the exercise of other human rights'.⁸² The Committee also explained that

81 See, for instance, the Universal Declaration of Human Rights of 1948 (Article 25(1)); the International Convention on the Elimination of All Forms of Racial Discrimination of 1963 (Article 5(e)(iv)); the International Covenant on Economic, Social and Cultural Rights of 1966 (Article 12); the International Convention on the Elimination of All Forms of Discrimination against Women of 1979 (Article 12); the Convention on the Rights of the Child of 1989 (Article 24) and the African Charter on Human and Peoples' Rights (Article 16).

82 CESCR, General Comment No. 14, Para. 1.

healthcare facilities, goods and services must be available, accessible, acceptable and of requisite of good quality if the right to health is to be realized.⁸³

At the domestic level, although the right to health is not expressly provided for, the right can be located within a reading of the relevant portions of the National Objectives and Directive Principles of State Policy (NODPSP),⁸⁴ together with Article 8A of the Constitution (as amended), according to which the country must be governed based on principles of national interest and common good enshrined in the NODPSP.⁸⁵

The State of Uganda is enjoined, under its international, regional and domestic obligations, to ensure the right to health of all persons, including persons who use drugs. A failure to provide appropriate health facilities, goods and services in this respect, would be a violation of this positive obligation.

For rights related to criminal justice, human rights law recognises the need for special protections for an individual encountering the justice system, and the criminal justice system in particular. In this regard, there exist a number of guarantees to ensure equality and fairness throughout any such process.

In the first place, individuals have the right to recognition before the law and to equal protection under the law without discrimination as to, among others, race, sex, religious belief or socio-economic status.⁸⁶ Further, all persons have the right to life, liberty and the security of their person; as well as to be free from arbitrary arrest and detention.⁸⁷ As a general matter therefore, any deprivation of these

83 CESCR, General Comment No. 14, Para.12.

84 According to Objective XIV (b) of the NODPSP, the State must ensure that all Ugandans enjoy rights and opportunities and access to health services, clean and safe water, decent shelter, adequate clothing and food security, among others.

85 This is the subject matter in *CEHURD & Others v Attorney General*, Constitutional Petition No. 16 of 2011, which is currently before the Constitutional Court for determination.

86 See the Universal Declaration of Human Rights (Articles 6 and 7); the Convention on Racial Discrimination (Article 5(a)); the International Covenant on Civil and Political Rights (Articles 16 and 26); the African Charter on Human and Peoples' Rights (Articles 3 and 5); Constitution of Uganda (Articles 20 and 21).

87 See the Universal Declaration of Human Rights (Articles 3 and 9); the Convention on Racial Discrimination (Article 5); the International Covenant on Civil and Political Rights (Articles 6(1) and 9 (1)); the African Charter on Human and Peoples' Rights (Articles 4 and 6); Constitution of Uganda (Articles 22 and 23). It is noteworthy, however, that under Article 23(1)(f) of the Constitution, a person who is 'addicted to drugs or alcohol' may have their liberty restricted for the purpose of their care or treatment or for the protection of the community. This notwithstanding, the breadth of this exception to the right to liberty renders it constitutionally suspect, notwithstanding its inclusion in the Constitution itself. This position has been accepted in a number of decisions, perhaps the most lauded of which is *Attorney General vs. Major General David Tinyefuza*, Supreme Court Const. Appeal No. 1 of 1997.

rights must be strictly limited, in accordance with the law, and accompanied by a range of due process guarantees. In particular, based upon the presumption of innocence, a person arrested must be informed of the reasons for their arrest; provided with a speedy trial and allowed to challenge the legality of their arrest before a judicial body.⁸⁸

Moreover, throughout their interaction with the criminal justice system, no person may be tortured or otherwise subjected to cruel, inhumane or degrading treatment or punishment.⁸⁹

Uganda is similarly obliged to ensure to all persons, including persons who use drugs, the whole range of human rights protections provided for persons interacting with the criminal justice system.

3.3 The Ugandan legal framework governing the use of narcotic drugs

The laws governing the use of narcotic drugs in Uganda are:

3.3.1 The Narcotic Drugs and Psychotropic Substances (Control) Act, 2015

This is the main law that governs the use of narcotic drugs and psychotropic substances in Uganda. It came into force on 12th February 2016.⁹⁰

According to the Long Title to the Act, the Act was intended:

... to consolidate and amend the law relating to narcotic drugs and psychotropic substances in respect to the control of the possession of, trafficking in narcotic drugs and psychotropic substances and cultivation of certain plants; to provide for the forfeiture of property derived from or used in illicit traffic in narcotic drugs and psychotropic substances; to implement the provisions of international conventions on narcotic drugs and psychotropic substances; and for other related matters.

The Act has eight parts: i) Part 1 (with three sections) relates to preliminary matters; ii) Part 2 (with sixteen sections) deals with the prohibition of the possession of, and trafficking in, narcotic drugs and psychotropic substances and

88 See the Universal Declaration of Human Rights (Article 10); the International Covenant on Civil and Political Rights (Article 14); the African Charter on Human and Peoples' Rights (Article 7 (1)); Constitution of Uganda (Article 28).

89 See the Convention Against Torture (Article 1); the Universal Declaration of Human Rights (Article 5); the Convention on Racial Discrimination (Article 5(b)); the International Covenant on Civil and Political Rights (Article 7); the African Charter on Human and Peoples' Rights (Article 5); Constitution of Uganda (Article 24).

90 See n 79 above.

prohibition of cultivation of certain plants; iii) Part 3 (with two sections) provides for the forfeiture of narcotic drugs, psychotropic substances, implements and conveyance; iv) Part 4 (with 29 sections) provides for restraint orders, forfeiture of property and proceeds of crime; v) Part 5 (with 8 sections) provides for rehabilitation; vi) Part 6 (with 6 sections) provides for international assistance in drug investigations and proceedings; vii) Part 7 (with 8 sections) establishes a National Coordination Committee for Drug Control and viii) Part 8 (with 21 sections) dealing with miscellaneous matters.

It is noteworthy, as stipulated in the Long Title to the Act, that the law adopts the largely punitive approach proscribed under the international legal regime and described in Section 2.

Under Section 4 of the Act, any person who has in their possession any narcotic drug or psychotropic substance commits an offence⁹¹ and is liable on conviction: i) in respect of a narcotic drug listed in the Second Schedule to the Act, to a fine of at least Ugx 10,000,000 (approx. USD 3,000) or three times the market value of the drug, whichever is greater, or to imprisonment not less than ten years but not exceeding twenty five years, or both such fine and imprisonment;⁹² and ii) in respect of a prohibited psychotropic substance listed in the Third Schedule to the Act, a fine of not less than Ugx 5,000,000 (approx. USD 1,500) or three times the market value of the prohibited psychotropic substance, whichever is greater or imprisonment not less than five years but not exceeding fifteen years, or both such fine and imprisonment.⁹³

Similarly, any person who traffics in a narcotic drug or psychotropic substance commits an offence and is liable to similarly stiff monetary fines as those indicated for possession of the same, as well as the possibility of imprisonment for life.⁹⁴

The Act also penalises a number of other acts connected to narcotic drugs and psychotropic substances, such as the smoking, inhalation, sniffing, chewing or other use of narcotic drugs or psychotropic substances; owning, occupying or being 'concerned in the management' of any premises used for the cultivation sale or manufacture of such substances; possession of any pipe or utensil for the illicit use of such drugs and 'recruiting' or 'promoting' the smoking, inhaling, sniffing or other use of such substances.⁹⁵

91 Section 4(1), NDPSA.

92 Section 4(2)(a), NDPSA.

93 Section 4(2)(b), NDPSA. However, certain exceptions are carved out, including possession of such substances for medical purposes; under authority from the National Drug Authority or other lawful permission - Section 4(3), NDPSA.

94 Section 5, NDPSA.

95 Section 6, NDPSA.

The Act also seeks to restrain medical doctors from prescribing narcotic drugs or psychotropic substances for any purposes other than for their medical or dental treatment, on pain of deregistration, among other stiff sanctions.⁹⁶

The cultivation of certain plants from which a narcotic drug or psychotropic substance may be extracted is also prohibited without the written authorisation of the Minister of Health;⁹⁷ with police being given power of entry and inspection;⁹⁸ and courts being empowered to order the destruction of such plants.⁹⁹

In addition to the heavy fines, prison sentences and other sanctions contemplated under the Act, provision is made for additional sanctions for offences under the Act. For instance, there is provision of forfeiture to the State of narcotic drugs and psychotropic substances kept or used without authority,¹⁰⁰ as well as of any chemical, machinery, equipment, implement, pipe, utensil and other articles used for the commission of any offence under the Act.¹⁰¹ The State is also granted broad powers to restrain persons suspected of having committed offences under the Act from using any or all of their property;¹⁰² and to trace, confiscate and assume proprietary rights over the property of persons convicted of specified offences.¹⁰³ To this end, provision is also made for a range of measures for international assistance and cooperation in narcotic drugs and psychotropic substances investigations and proceedings.¹⁰⁴

The NDPSA is in some ways progressive, in so far as it pays some attention to the welfare of PWUD. Under Section 51 of the Act, the Minister for Health is empowered to establish 'rehabilitation centers'¹⁰⁵ aimed at providing for the 'care, treatment and rehabilitation of persons addicted to narcotic drugs or psychotropic substances'.¹⁰⁶

The Minister is required to establish a special 'rehabilitation fund' consisting of, among others, sums provided by Parliament, as well as portions of property forfeited to the State under the Act; to be used to meet the capital and current

96 Sections 7-8, NDPSA.

97 Section 11, NDPSA.

98 Section 12, NDPSA.

99 Section 13, NDPSA.

100 Section 20, NDPSA.

101 Section 21, NDPSA.

102 Sections 22-38, NDPSA.

103 Sections 39-49, NDPSA.

104 Sections 59-64, NDPSA.

105 Section 52(1), NDPSA.

106 Section 52(2), NDPSA.

expenditure of the centers.¹⁰⁷

In terms of Section 56 of the Act, the Minister must appoint an 'Advisory Committee for the Rehabilitation of Narcotic Addicts', with at most seven members, appointed from among 'persons who are qualified and have experience, and proven capacity in the care, treatment and rehabilitation of persons addicted to narcotic drugs or psychotropic substances or, administration or finance'. This Committee is to be charged with advising the Minister on such matters, as may be referred to it by the Minister, 'relating to the administration of the centers and the care, treatment and rehabilitation of drug addicts'.¹⁰⁸

Section 58 of the Act provides for the procedure of 'committing' persons to these centers. Under Section 58(1), a court which convicts any person for an offence under the Act may, if it is satisfied that that person is addicted to a narcotic drug or psychotropic substance and that they are in possession of a narcotic drug or psychotropic substance only for their personal consumption, order that a part of the period of imprisonment imposed on them be spent in a rehabilitation center specified by the court. The court may, on the application of the Attorney General, or the convicted person, vary or revoke such an order.¹⁰⁹ In terms of Section 58(3), where on the report of the officer in charge of a rehabilitation center to which a convicted person has been committed, the court which committed them is satisfied that the convicted person has successfully undergone the treatment and rehabilitation programme of that center and that they are no longer an addict, the court may, having regard to all the circumstances of the case, grant remission of the whole or part of the remaining period of imprisonment imposed on the convicted person.

These provisions notwithstanding, it remains clear that the thrust of the Act is deterrent and punitive. For instance, setting aside the derogatory references to 'addicts' and 'convicts' which are by themselves indications of the lenses through which the regulatory framework views drug use, the mechanism for 'rehabilitation' contemplated under the Act can only be accessed after one has been convicted and sentenced. Indeed, the time spent in the 'center' is considered as part of one's custodial sentence, and may have the direct and adverse effect of triggering custodial sentences where fines would otherwise have been imposed, triggered by a paternalistic sensibility that the person before the Court is a danger to themselves, who can only be helped through the imposition of a prison term. The mechanism is also problematic in terms of the composition of the 'Advisory Committee', whose membership neither provides for nor envisages participation

107 Section 53, NDPSA.

108 Section 57, NDPSA.

109 Section 58(2), NDPSA.

or inclusion of persons who use drugs.

The penal focus of the law is even more apparent when one examines the extensive provisions for the establishment of a National Coordination Committee for Narcotic Drugs and Psychotropic Substances. It is instructive, in this regard to set out the terms of Section 66 of the Act:

Section 66: Government obligation to take measures for preventing drug abuse

- (1) Subject to this Act, the Government shall take such measures as it deems necessary or expedient for the purpose of preventing and combating abuse of narcotic drugs and psychotropic substances and the illicit trafficking of narcotic drugs and psychotropic substances.
- (2) In particular, and without prejudice to the general effect of subsection (1), the measures which Government may take under subsection (1) include-
 - (a) co-ordination of actions by various officers and authorities under this Act or any other law for the enforcement of this Act and obligations under the international conventions;
 - (b) assistance to the appropriate authorities in other countries and the appropriate international organisation to facilitate co-ordination and universal action for prevention and suppression of illicit trafficking in narcotic drugs and psychotropic substances;
 - (c) identification, treatment, education, aftercare, rehabilitation and social integration of addicts; and
 - (d) such other matters as the Government may deem necessary or expedient for securing the effective implementation of this Act and preventing and combating the abuse of narcotic drugs and psychotropic substances and illicit trafficking of narcotic drugs and psychotropic substances.

Read together with the Long Title to the Act (in which no mention of the welfare of persons who use drugs is made, except in so far as they may be covered under 'other related matters'), section 66 is a good window into the prioritisation (or lack thereof) of the human element, and that of persons who use drugs in particular, under the Act. Although mention is made of 'identification, treatment, education, aftercare, rehabilitation and social reintegration', these envisaged actions come long after the focus of the Act which is clearly the enforcement of (themselves punitive) international conventions, and international cooperation in suppressing illicit trafficking in drugs. This view is further borne out by the consideration that, if indeed there were a genuine consideration of the welfare

of persons who use drugs, this objective would have been more affirmatively embedded in Part V of the Act (relative to rehabilitation). Instead, that Part of the Act only contemplates 'rehabilitation' following conviction under the Act, which makes it highly unlikely that the 'treatment', 'aftercare' and other services envisaged under Section 66 refer to any interventions other than in the context of the criminal justice system.

The focus on enforcement is further revealed by the terms of Section 67, which establishes the National Coordination Committee for Drug Control. The Committee is required to be nominated by the Permanent Secretary, Ministry of Internal Affairs, and must comprise: i) the Permanent Secretary of the Ministry; ii) the Permanent Secretaries or persons nominated by the permanent secretaries of the ministries responsible for – justice, health, education, foreign affairs, finance as well as youth development and social affairs; iii) the Director, Criminal Investigation Department; iv) the Commissioner of Customs, Uganda Revenue Authority; v) the Executive Secretary, National Drug Authority; vi) the Officer in Charge of the Anti-Narcotics Unit; and the Executive Director of the National Mental Referral Hospital or their representative.¹¹⁰ Although this Committee has a limited mandate regarding the welfare of persons who use drugs,¹¹¹ the thrust of its focus is clearly directed towards criminal law enforcement.

The focus on enforcement is also apparent from the reading of Part VIII of the Act, innocuously titled – 'Miscellaneous', which has extensive provisions for: offences by bodies corporate;¹¹² a lighter burden of proof for the prosecution;¹¹³ the power to question and request production of a wide range of documents;¹¹⁴ as well as powers of inspection,¹¹⁵ search¹¹⁶ and surveillance.¹¹⁷

The challenge with the current conflation of support for PWUD with the criminal law process under the NDPSA is that even the limited health services provided

110 Section 67, NDPSA.

111 The Committee is charged with 'promoting the prevention of drug abuse and public information for youngsters, families, professors, educators and the general public, by supporting initiatives in the field of information and prevention' (Section 68(2)(d), NDPSA); 'developing treatment and rehabilitation programmes for drug addicts' (Section 68(2)(f)) and 'undertaking research on drug addiction' (Section 68(2)(g)).

112 Section 73, NDPSA.

113 Section 75, NDPSA.

114 Section 76, NDPSA.

115 Section 78, NDPSA.

116 Section 79-80, NDPSA.

117 Sections 82 (undercover monitoring by use of any means) and 83 (monitoring of mail), NDPSA.

under such a framework are rendered meaningless and effectively inaccessible.¹¹⁸ It also leaves the judicial officer with broad and unqualified power to determine which PWUD access treatment and who does not, which severely undermines not only the agency and autonomy of such persons but also their rights to health and, ultimately, to life.¹¹⁹ A major recommendation from PWUD was that they need to be recognised as human beings who need assistance, rather than as criminals who need to be locked up.¹²⁰

According to Dr Sheilah Ndyabangi, Principal Medical Officer in charge of Mental Health Action at the Ministry of Health:

*Keeping PWUD in prison cells is very wrong unless in cases where they have committed another offence under the laws of Uganda. They are sick people who need to be attended to through a medical approach failing which is fatal for their lives ... While the current law is not adequately protecting the country from drug use, it is not right for the law to consider imprisonment of PWUD in the cells as a priority without them first having committed another offence. PWUD are sick people who need medical attention. Therefore, they must be handled humanely and as the circumstances around them dictate.*¹²¹

Similarly, Dr David Basangwa, the Executive Director of Butabika National Mental Referral Hospital, is of the view that drug use should be primarily addressed through public health lenses:

*It is important to recall that the traffickers of the drugs are not necessarily the consumers or addicts. It however seems that Uganda's law centralizes the consumers living out the real beneficiaries in the drug trade. The addicts themselves are victims who need to be helped to reform and this is most likely to happen at the hospital as opposed to prison cells. Laws are supposed to help the addicts. So, instead of imprisonment, the law should be such as to see to it that those involved get the necessary medical care from, for example, Butabika.*¹²²

Similarly, Sr. Alice Kabakwenzu, the Head of the Alcohol and Drug Abuse Unit

118 Interview with Mr Twaibu Wamala, Executive Director, UHRN (12th August 2016).

119 As above.

120 Interviews with Jane, John, James, Jack, Thomas, Timothy, Tina, Trevor and Tasha (not real names), all PWUD (12th August 2016).

121 Interview with Dr. Sheilah Ndyabangi, Principal Medical Officer in charge of Mental Health Action, Ministry of Health (5th September 2016).

122 Interview with Dr. David Basangwa, Executive Director, Butabika National Mental Referral Hospital (1st September 2016).

at Butabika National Referral Hospital, is of the opinion that the law should prioritise rehabilitation rather than criminalisation and imprisonment.¹²³ In her view:

Most of these people have used drugs for so long that their bodies have adapted to surviving by and on drugs, so much so that abrupt withdrawal and putting the patient in harsh conditions of the cells may lead to withdrawal syndrome and death.¹²⁴

In her opinion, addicts should be screened upon arrest and given the liberty to choose between serving the term in question or being put on rehabilitation.¹²⁵ According to her, this is the practice in the United Kingdom, which has worked well in that jurisdiction.¹²⁶ To her, even for those who choose the prison term, they should still be given a chance to access mental health personnel, which requires that the various prisons where these people are detained should have mental health specialists on their staff.¹²⁷

The call for de-emphasising criminal law approaches to drug use is echoed by Dr. Daniel Ruhweza, who in the past has taught criminology and penology at Makerere University's School of Law, and who currently teaches constitutional law at the same School. According to Dr Ruhweza, the tendency to lean more on criminalisation of the conduct of drug use as opposed to centralizing the aspect of the people, who are vulnerable, is wrong.¹²⁸ Instead, the law should emphasise the suppliers and dealers of drugs and move towards blocking the entry points through which drugs are brought into the country.¹²⁹ A similar view is held by Assoc. Prof. Christopher Mbazira, who teaches human rights and international law at Makerere University School of Law. According to Assoc. Prof. Mbazira, the blanket criminalisation of PWUD without having regard to their special circumstances is wrong.¹³⁰ Rather, PWUD should be primarily viewed as patients, who require treatment as opposed to being criminalised and penalised.¹³¹

123 Interview with Sr. Alice Kabakwenuzi, Head of Alcohol and Drug Abuse Unit, Butabika National Mental Referral Hospital (1st September 2016).

124 As above.

125 As above.

126 As above.

127 As above.

128 Interview with Dr. Daniel Ruhweza, Law Lecturer, Makerere University School of Law (28th August 2016).

129 As above.

130 Interview with Assoc. Prof. Christopher Mbazira, Makerere University School of Law (28th August 2016).

131 As above.

The need for the decriminalisation of drug use was also highlighted by Dr Peter Kyambadde, the Executive Director of the Most at Risk Populations Initiative (MARPI), under the Ministry of Health, and who is also National Coordinator of Health Services at the same Ministry. According to Dr Kyambadde, drug use is a health issue which demands attention like any other disease.¹³² In his view:

*The legal perception of PWUD as criminals has to change. Drug use is a disease and so the victims thereof should, instead of being arrested and detained and/or condemned to the periphery of the communities, be given the necessary support to recover.*¹³³

Interestingly, these views were also shared to some extent by law enforcement officials. AIP Moses Bongo of Kabalagala Police Station, for instance, was of the view that PWUD should be looked at as victims rather than criminals, and that the law should instead focus on the suppliers of drugs.¹³⁴ To him:

*Drug users should be looked at as victims – they lose control over themselves. I know a very intelligent and composed lady who has lost control like that.*¹³⁵

At the same time, however, AIP Bongo expressed some ambivalence as to this issue, noting that:

*Drug use is costly for the government in that prisoners have to be maintained. Prisons are 'correctional' in the sense that a habitual drug user has no choice but to abstain from normal consumption. When drug users are sentenced to manual labour they serve some purpose to the community. However, the harm they cause is usually greater. They don't have jobs and are prone to committing crimes like gang rape. We have seen such instances in Kataba and Kansanga areas.*¹³⁶

Similarly, AIP Paul Omara of Katwe Police Station felt that measures should be taken to ensure demand reduction on the one hand, and supply reduction on the other.¹³⁷ The State had to monitor entry and exit points and, in his view,

132 Dr Peter Kyambadde, Executive Director, MARPI and National Coordinator of Health Services, Ministry of Health (27th August 2016).

133 As above.

134 Interview with AIP Moses Bongo, Head of Anti-Narcotics Unit, Kabalagala Police Station (29th August 2017).

135 As above.

136 As above.

137 Interview with AIP Paul Omara, Head of Anti-Narcotics Unit, Katwe Police Station (5th September 2016).

gardens where marijuana is grown ought to be destroyed.¹³⁸ He also preferred harsher punishments for drug users and was happy that the new law punishes possession of drugs with two years' imprisonment.¹³⁹

Criminalisation was also favoured by a CID officer (name and duty station withheld on request), a detective at the Central Police Station, who observed as follows:

*The community believes that these drugs are not as dangerous as they really are. Community members only become concerned about drug use after they have been attacked or robbed by drug users. The laws are weak and not punitive enough, which encourages drug use. Drug use is even worse in the villages – you will find the whole garden full of opium. No-one will mention that a certain person has an opium garden. Drug use is the source of serious crime such as rape, defilement and murder in the villages. Suspects are very young people. Unemployed youth form cliques, they do crime together because they have nothing else to do. In densely populated areas crime is high.*¹⁴⁰

A head of an Anti-Narcotics Unit (name and duty station withheld on request) also had similar concerns:

*The drug laws should be changed, they are very weak in comparison with countries like China and Indonesia. Uganda is a hotspot for drugs. We need harsher laws and harsher sentences. Perhaps if people are sent to prison for longer periods that will ensure that they give up the habit.*¹⁴¹

At the same time, he seemed to acknowledge that the regulation of drug use presented peculiar problems, which might require more nuanced approaches:

*It is a complicated matter to regulate. There was a case of upcountry nuns who were arrested because they were growing marijuana to treat their pigs. What do we do in such cases?*¹⁴²

For his part, Detective Superintendent of Police Tinka Zarugaba, the Deputy Head of the Anti-Narcotics Unit at CID Headquarters Kibuli acknowledges that an effect of the current criminal approach towards PWUD is that 'people who

138 As above.

139 As above.

140 Interview with CID officer (name and duty station withheld on request) (31st August 2016).

141 Interview with Head of an Anti-Narcotics Unit (name and duty station withheld on request) (5th September 2016).

142 As above.

should be rehabilitated end up in prison'.¹⁴³ According to him:

The law should address the issue of drug users. We should look at them as victims and not as suspects. The law does not address what happens to an arrestee at the police. A drug user ought to be rushed to the doctor immediately in order to receive a medical report on whether or not the person in question is a drug addict. If not, then we can continue to prosecute.

¹⁴⁴

Evidently, notwithstanding the heavily criminal approach it favours, the NDPSA is considered a more effective law than the NDPA which it replaced, and a number of law enforcement officials and some public health officials are anxious for it to be implemented by actors within the criminal justice system. In the words of Dr Sheilah Ndyabangi, Principal Medical Officer in charge of Mental Health Action at the Ministry of Health:

*The Narcotic Drugs and Psychotropic Substances (Control) Act, 2015 will help deal with most of the challenges [of the NDPA]. Among others the 2015 Act: i) Covers drugs such as Khat which had hitherto been left out in the old law yet they are abused on a large scale; ii) comprehensively deals with growers of drugs as an offence; and iii) imposes tougher penalties on drug dealers and suppliers as opposed to the old law which imposes a fine of only 1 million and a short imprisonment term usually of a year and yet, in effect, these paltry penalties could not discourage drug dealers from trading in drugs in Uganda. The 2015 Act imposes a fine of up to 3 times the price of the drug. Such a law can effectively guarantee reduced activity. It also has longer imprisonment terms for persons who consistently abuse drugs, including a provision of life imprisonment for regulators (law enforcers) who collude with the drug dealers in smuggling drugs both within and outside into the country. This is unlike the old law which only considered such people from the angle of abuse of office. The new law also provides for a fine part of which will go towards supporting drug regulation in the country.*¹⁴⁵

In summary, the NDPSA is a law that simply entrenches the criminalisation model rather than the public health model. The few provisions on rehabilitation are themselves embedded within the criminalisation model, and are therefore greatly watered down. In essence, the Act treats PWUD as criminals who need to be locked away instead of viewing them as human being in need of assistance,

¹⁴³ Interview with DSP Tinka Zarugaba, Deputy Head of the Anti-Narcotics Unit, CID Headquarters Kibuli (31st August 2016).

¹⁴⁴ As above.

¹⁴⁵ Interview with Dr. Sheilah Ndyabangi, Principal Medical Officer in charge of Mental Health Action, Ministry of Health (5th September 2016).

and in this regard it falls below the international human rights standards and the emerging consensus on how to deal with drug addicts.

3.3.2 Other laws regulating drugs in Uganda

Besides the NDPSA, the other laws regulating drug use are:

The National Drug Policy and Authority Act, Cap 206

The Act has until the coming into force of the NDPSA been main law dealing with drugs in Uganda. It was regarded as weak in controlling narcotic drugs and this is why the NDPSA was put in place. With the coming into force of the NDPSA, its main provisions on narcotics were repealed. Nevertheless, these provisions are still considered to be in force by the law enforcement agencies, something which leads to people being charged under non-existent laws. As such both the provisions in force and the repealed ones are going to be considered:

The provisions still in force are:

Section 27 of the Act provides a list of persons allowed to be in possession of classified drugs, that is to say: i) any person specified in section 14 for the purposes of that section; ii) a licensed person or seller of classified drugs, on premises registered under the Act; iii) a wholesale dealer licensed under the Act for the purposes of the licence and on the premises so licensed; iv) any person, institution or department to whom a classified drug has been lawfully sold in accordance with the Act, for the purpose for which the sale was made; and v) any person for whom the classified drug has been lawfully supplied or dispensed by a duly qualified medical practitioner, dentist or veterinary surgeon or by an approved institution.¹⁴⁶ Under Section 27(2) of the Act, any person who is in possession of a classified drug otherwise than in accordance with that section commits an offence and is liable to a fine not exceeding two million shillings or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

The repealed provisions are:

Section 26 of the NDPA, which restricted the supply of narcotic drugs. Under Section 26(2), no person was allowed to supply any narcotic drugs under international control other than for medical, dental or veterinary purposes.

Further restrictions on these drugs and substances were contained in sections 47 to 49 of the NDPA. Under Section 47(1) of the Act, no person could have in their possession without lawful excuse, the proof of which was on them, any narcotic

¹⁴⁶ Section 27(1), NDPA.

drug or psychotropic substance under international control. The Minister was empowered, by statutory instrument, to make regulations applying subsection (1) to such other narcotic drugs as would be specified in the regulations.¹⁴⁷

Section 48 of the Act dealt with the smoking of opium or 'Indian hemp'. Under that provision, no person could: i) smoke opium or Indian hemp or frequent any place used for the smoking of opium or Indian hemp; ii) permit premises owned or occupied by him or her to be used by persons smoking opium or Indian hemp; or iii) have in their possession pipes or other utensils for use in connection with the smoking of opium or Indian hemp.

In addition, under Section 49 of the NDPA, no person could, without the written consent of the Minister, the proof of which lay on them, cultivate any plant from which a narcotic drug can be extracted.¹⁴⁸ In terms of Section 49(2), the Minister had to, before giving their consent under that section, consult with the authority, and the Minister could give his or her consent subject to such conditions as he or she may specify.

Penalties for various offences under the Act were laid down in Section 60 of the NDPA. Under Section 60(1), a person who contravening a provision of the Act committed an offence and, where no punishment was provided, was liable: i) to a fine not exceeding one million shillings; ii) to withdrawal of the licence or permit for a period not exceeding five years; iii) to cause the items in contravention to be impounded, forfeited, destroyed or disposed of in a manner prescribed by the Minister; iv) to imprisonment not exceeding one year; or v) to any two of the above punishments, and for any subsequent offence under this Act, a person is liable to a fine not exceeding two million shillings or to a term of imprisonment not exceeding five years or to both. In addition, in terms of Section 60(2) of the Act, a person who committed an offence under the Act and no other punishment was provided was liable: i) where the offence related to class A drugs, to a fine not exceeding two million shillings or to a term of imprisonment not exceeding five years or to both; ii) where the offence related to narcotic drugs or psychotropic substances under international control and was a second or more subsequent offence, to a term of life imprisonment; and iii) where the offence related to manufacturing, smoking or having possession of any narcotic drug or psychotropic substance under international control and was a second or more subsequent offence, to a term not exceeding ten years. In addition, under Section 60(3), where no case was proved in respect of any drug or article taken from an accused person, the court had to order reasonable payment to the owner in respect of the drug or article which is not returned to

¹⁴⁷ Section 47(2), NDPA.

¹⁴⁸ Section 49(1), NDPA.

them in good condition.

The NDPA was however viewed by law enforcement officials and a number of other stakeholders as being simply too weak and wholly inadequate to allow for a robust response to the several challenges posed by drug use in Uganda.

According to the Mr Chris Kahigwa, a State Prosecutor stationed at Nabweru Chief Magistrate's Court, the sanctions that were provided under Section 60 of the NDPA were neither sufficiently punitive nor deterrent.¹⁴⁹ This view was echoed by a State Prosecutor (name and duty station withheld on request), who observed as follows:

Section 60 of the NDA provided for general punishments. The sentence would depend on the circumstances of the case. For instance, if someone did not know that the place where they went is used for smoking opium there would be leniency. In my view the penalties are not punitive enough. In courts the usual fine is Ugx 100, 000. The maximum fine I have seen in the past three years is Ugx 200, 000. When an accused has been on remand, they would qualify for community service. The fact that the law provides for fines 'not exceeding' a certain amount means that it is not punitive. A person can be found with a truck of marijuana and be fined for an amount 'not exceeding' one million. The law is not punitive for individual drug abusers either. Those who go through the criminal justice system simply go back to using. It does not deter offenders and would-be offenders.¹⁵⁰

This was echoed by Her Worship Juliet Nakitende, Principal Magistrate Grade I at Makindye Magistrates Court, who was of the view that sanctions in the region of 12 months' imprisonment or a fine of Ugx 1,000,000 were insufficient to deter drug users and traffickers.¹⁵¹

Similar views were expressed by officers of the Uganda Police Force (UPF). For instance, according to Assistant Inspector of Police (AIP) Moses Bongo, the Head of the Anti-Narcotics Unit at Kabalagala Police Station, while the NDPA was sufficient for dealing with persons who use marijuana, it was inadequate for dealing with suppliers and controlling traffickers of drugs like heroin and cocaine.¹⁵²

149 Interview with Mr Chris Kahigwa, State Prosecutor, Nabweru Chief Magistrate's Court (20th September 2016).

150 Interview with State Prosecutor (name and duty station withheld on request) (5th September 2016).

151 Interview with Her Worship Juliet Nakitende, Principal Magistrate Grade I at Makindye Magistrates Court (23rd September 2016).

152 Interview with AIP Moses Bongo, Head of Anti-Narcotics Unit, Kabalagala Police Station (29th August 2016).

In his view, the penalties provided under the Act were not sufficient to deter drug dealers and suppliers.¹⁵³ Where the drugs have a market value running into hundreds of millions of Uganda shillings, a penalty of 1 or 2 million Uganda shillings could not dissuade such persons from committing such offences.¹⁵⁴ For instance, a successfully smuggled kilogramme of cocaine would fetch a price of about USD 60,000 on the market, while it only attracted a penalty of about 1 to 3 million Uganda shillings if the courier was arrested.¹⁵⁵ The result was that drug lords actually budgeted for this risk, as did the couriers.¹⁵⁶

AIP Moses Bongo also felt that the penalties under the NDPA were not sufficient to deter PWUD from continuing such behaviour. For instance, he recalled one case of a person who pleaded guilty to possession of thirty sticks of rolled marijuana but who was eventually sentenced to only 30 hours of community service.¹⁵⁷

A head of one of the Anti-Narcotics Units in Uganda, at Central Police Station, also felt that the current law was not sufficiently deterrent:

*The penalties were very light. A person who pleaded guilty on possession charges and is later convicted could be imprisoned for 9 months. If an accused pleaded guilty for possession, he could get two weeks of community service. We are facing problems with courts and the imposition of light sentences.*¹⁵⁸

For his part, Detective Superintendent of Police Tinka Zarugaba, the Deputy Head of the Anti-Narcotics Unit at CID Headquarters Kibuli, also felt that the NDPA was not sufficient in the fight against drugs.¹⁵⁹ In his view, the law focused on the criminalisation of possession and use of drugs and did not sufficiently focus on traffickers and dealers.¹⁶⁰ To DSP Zarugaba, the law should target drug lords or 'king pins', and offer stiffer punishments for this category of persons.¹⁶¹ In his view, the law should also properly address interstate trafficking and give full

153 As above.

154 As above.

155 As above.

156 As above.

157 As above.

158 Interview with Head of Anti-Narcotics Unit (name and duty station withheld on request) (29th August 2016).

159 Interview with DSP Tinka Zarugaba, Deputy Head of the Anti-Narcotics Unit, CID Headquarters Kibuli (31st August 2016).

160 As above.

161 As above.

effect to the UN trafficking conventions.¹⁶² According to him:

*The Act was not punitive enough. Fines and sentences are lenient and did not discourage trafficking. Typically, a trafficker would be fined Ugx 1 million or imprisonment for 1 year if he or she was unable to pay.*¹⁶³

He, however also felt that the Act was unduly punitive with regard to PWUD:

*The law did not cater for drug users; they are considered suspects and criminalized. The Act did not provide for rehabilitation centres.*¹⁶⁴

It also appears that the NDPA did not cover particular drugs. According to DSP Zarugaba, under the law as is, 'it is not clear whether or not *khat* is legal'.¹⁶⁵ Similarly, according to Dr Sheilah Ndyabangi, Principal Medical Officer in charge of Mental Health Action at the Ministry of Health, '*khat* at the moment is not catered for under the law notwithstanding that it is listed on the international schedule as one of the illegal drugs.'¹⁶⁶

The Penal Code Act, Cap 120

The Penal Code Act, Cap 120 does not contain any provisions directly related to drug use in Uganda. However, it would appear that, in practice, some of its provisions, particularly those relating to vagrancy, are being employed in this respect.

Under Section 167 of the Act, any person who: i) being a prostitute, behaves in a disorderly or indecent manner in any public place; ii) wanders or places himself or herself in any public place to beg or gather alms, or causes or procures or encourages any child to do so; iii) plays at any game of chance for money or money's worth in any public place; iv) publicly conducts himself or herself in a manner likely to cause a breach of the peace; iv) without lawful excuse, publicly does any indecent act; v) in any public place solicits or loiters for immoral purposes; or vi) wanders about and endeavours by the exposure of wounds or deformation to obtain or gather alms is deemed an idle and disorderly person, and is liable on conviction to imprisonment for three months or to a fine not exceeding three thousand shillings or to both such fine and imprisonment. However with regard to those limbs of the section relating to prostitution,

162 As above.

163 As above.

164 As above.

165 As above.

166 Interview with Dr. Sheilah Ndyabangi, Principal Medical Officer in charge of Mental Health Action, Ministry of Health (5th September 2016).

indecentcy, or immorality, a person is liable to imprisonment for seven years.¹⁶⁷

In terms of Section 168 of the Act, every: i) person convicted of an offence under section 167 after having been previously convicted as an idle and disorderly person; ii) person going about as a gatherer or collector of alms, or endeavouring to procure charitable contributions of any nature or kind, under any false or fraudulent pretence; iii) suspected person or reputed thief who has no visible means of subsistence and cannot give a good account of himself or herself; and iv) person found wandering in or upon or near any premises or in any road or highway or any place adjacent thereto or in any public place at such time and under such circumstances as to lead to the conclusion that such person is there for an illegal or disorderly purpose, is deemed to be a rogue and vagabond, commits a misdemeanour and is liable for the first offence to imprisonment for six months, and for every subsequent offence to imprisonment for one year.

Interviews with PWUD revealed that, more often than not, these, rather than the provisions of the NDPA, were the offences under which they were arrested, charged and remanded.

For instance, Jane (not real name), revealed that she had been arrested four times, each time for being 'idle'.¹⁶⁸ Similarly, John (not real name) revealed that he had been arrested several times, as a minor and now as an adult, and the on all these occasions the word he kept hearing was '*kileelesi*' or 'idle'.¹⁶⁹ James (not real name) also recounted being arrested several times and remanded to different prisons, all the time for the offence of being 'idle'.¹⁷⁰ Jack (not real name) too, had been arrested on a number of occasions for the offence of being 'idle and disorderly'.¹⁷¹ Bruce (not real name) also reported having been arrested on a number of occasions for being 'idle and disorderly' and that at the police stations himself and the persons he had been arrested with were referred to as '*bayaaye*' or idlers.¹⁷²

Other PWUD did report being arrested directly for 'using drugs', in a probable reference to the NDPA, although they were not sure as to the particular Act under which these arrests were made.¹⁷³

167 Section 167, Penal Code Act, Cap 120.

168 Interview with Jane (not real name), a PWUD (12th August 2016).

169 Interview with John (not real name), a PWUD (12th August 2016).

170 Interview with James (not real name), a PWUD (12th August 2016).

171 Interview with Jack (not real name), a PWUD (12th August 2016).

172 Interview with Bruce (not real name), a PWUD (26th August 2016).

173 Interviews with Bob, Brenda, Beatrice, Brian and Bridgette (not real names), all PWUD (26th August 2016).

3.4 Conclusion

The NDPSA substantially changes the law on drugs in Uganda, although it retains the criminalisation model. The NDPSA is thus seen as a new law that is going to comprehensively address the drug use and supply in Uganda. Law enforcement officials particularly commend the stiffer penalties for both drug use and drug supply as well as the fact that it deals with trafficking of drugs, and interstate trafficking in particular. They are thus very anxious for this law to come into operation.

On the whole, the legal regime in Uganda appears to have adopted a mainly criminal stance towards PWUD. Although there is some provision for rehabilitation and support under the NDPSA, which was not present under the NDPA, the envisaged intervention is extremely limited and problematic insofar as it can only be triggered in the context of the criminal law, and can only be accessed by a PWUD upon conviction by a Court.

The criminal approach adopted with regard to drug use does not bode well, in particular for the right to health of PWUD in Uganda since it creates a legal environment in which they are further marginalised and pushed to the periphery in terms of both health programming and actual clinical care. The use of general and vague legal provisions, such as vagrancy laws under the Penal Code Act, also has implications for legality and the rights of PWUD to justice, to a fair trial and to all the human rights that attach to interactions between the citizen and the criminal justice process.

SECTION IV: IMPACT OF THE REGULATORY REGIME ON THE HUMAN RIGHTS, HEALTH AND GENERAL WELFARE OF PERSONS WHO USE DRUGS IN UGANDA

'The widespread criminalization and punishment of people who use drugs, the over-crowded prisons, mean that the war on drugs is, to a significant degree, a war on drug users - a war on people' – Kofi Annan

4.1 Introduction

The previous sections analyse the normative and institutional arrangements at the international and domestic levels for the regulation and prohibition of drug use. This section takes the enquiry further by interrogating the effect of this regulatory framework on the lived realities of persons who use drugs in Uganda. In particular, this section considers human rights violation as well as other violations suffered by PWUD.

4.2 Violations of human rights

From interviews with various stakeholders, it is clear that the regulatory framework has had a number of adverse impacts on the human rights of persons who use drugs in Uganda. The sub-sections below outline and examine these various violations.

4.2.1 The right to freedom of association and civic participation

The right to freedom of association is protected under Article 29(1)(e) of the Constitution while Article 38 protects the right of every Ugandan to participate in peaceful activities to influence the policies of government through civic participation. The related rights to freedom of expression and to demonstrate and assemble with others are protected in Article 29(1)(a) and 29(1)(d) respectively.

The study finds that the regulatory climate has had an adverse impact on organisations who would seek to intervene on behalf of PWUD. A number of organisations which have sought to work with PWUD have either faced delays in registration, been threatened with deregistration and in other cases, actually been deregistered.

According to Mr Twaibu Wamala, the Executive Director of the Uganda Harm Reduction Network (UHRN), the organisation began operations in 2008 as a Community Based Organisation (CBO), although it was only formally registered as such in November 2011.¹⁷⁴ Nevertheless, a few months later, in January 2012,

¹⁷⁴ Interview with Mr Twaibu Wamala, Executive Director, UHRN (12th August 2016).

the organisation was de-registered on grounds that their advocacy dealt with persons whose activities were inherently criminal and therefore not worthy of legal protection.¹⁷⁵ The organisation was only able to obtain legal personality and status by registering later as a company limited by guarantee, which is the structure under which they currently operate.

As it stands, therefore, the legal framework infringes upon the rights of PWUD to the freedoms of assembly, association, expression as well as to participation in civic affairs, as guaranteed under the Constitution by interfering with the operation and existence of organisations advocating for their rights and welfare.

4.2.2 The right to health

While the right to health is not expressly protected under Uganda's Constitution, Objective XIV(b) of the National Objectives and Directive Principles of State Policy does provide that the State must ensure that all Ugandans have access to health services. Article 8A of the Constitution provides that the country must be governed based on principles of national interest and common good as enshrined in the National Objectives and Directive Principles, which creates an avenue to enforce the right to health. Beyond constitutional provisions, Uganda is also party to international and regional instruments which protect the right to the highest attainable standard of health.¹⁷⁶ In the absence of a clear constitutional provision, further discussion of these instruments is warranted.

Article 16 of the African Charter provides that 'Every individual shall have the right to enjoy the best attainable state of physical and mental health' and that 'States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick'. The ICESCR requires of states to take steps to achieve the full realization of the right to health, which step include 'The creation of conditions which would assure to all medical service and medical attention in the event of sickness'.¹⁷⁷

The study finds that Uganda violates the rights of PWUD to health and the highest attainable standard of health due to a lack of a response to the medical needs of PWUD;

¹⁷⁵ As above.

¹⁷⁶ The right to health is protected under Article 12 of the ICESCR and Article 16 of the ACHPR.

¹⁷⁷ Article 12(2)(d) of the ICESCR.

a) Absence of medical response for PWUD

The study has found that the bias towards criminalisation of drug use has had the effect of limiting the range of medical responses for PWUD in both private and public facilities.

For instance, there is currently no referral mechanism for addressing the needs for persons who overdose on drugs and need critical and urgent medical attention.¹⁷⁸ Currently, such persons have to be referred to Kenya, which is the closest jurisdiction in which the required drug, Naloxone, can be obtained.¹⁷⁹

In addition, according to Mr Wamala, save for alcohol response-related kinds of treatment, Uganda does not yet have a comprehensive facility for the provision of public health services to PWUD.¹⁸⁰ This is the case notwithstanding the fact that there are drugs available globally, a prominent example of which is Methadone, which can be of great assistance to PWUD in terms of overcoming their substance-addiction.¹⁸¹ Methadone, and like drugs, are illegal in Uganda, while neighbouring countries like Kenya and Tanzania have adopted more liberal and public health-oriented approaches.¹⁸² Kenya, for instances, has not less than 8 (eight) Methadone clinics where PWUD can access treatment and support.¹⁸³ If a PWUD is started on a course of Methadone treatment, they would need only about 6 months to recover from their addiction to Opium and related substances.¹⁸⁴ On the other hand, Methadone can be fatal where used without medical assistance and prescription.¹⁸⁵ For instance, Mauritius experienced the death of several PWUD due to improper administration of this drug.¹⁸⁶

Bruce (not real name) recounts his near death experience at a public health facility whose medical workers lacked the requisite skills to adequately respond to his crisis:

There is a time I went to hospital for an emergency operation. The medical workers attempted to anaesthetize me without success. Instead, I called my friend who came to hospital and gave me 'weed' to smoke; upon which I was

178 As above.

179 As above.

180 As above.

181 As above.

182 As above.

183 As above.

184 As above.

185 As above.

186 As above.

*able to respond to the injection for the operation.*¹⁸⁷

However, according to Dr. Kyambadde, the Executive Director of the Most at Risk Populations Initiative (MARPI) and National Coordinator of Health Services at the Ministry of Health, that Ministry at the moment is in the process of developing a policy and guidelines to address the public health-related issues of PWUD.¹⁸⁸ According to him, one of the critical areas of focus is the planned provision of Methadone as an addiction-substitution therapy, which he acknowledges is already being provided in Kenya and Tanzania.¹⁸⁹ He further notes that in spite of the current emphasis of the law on the criminalisation of PWUD, health officials, especially those under the Most at Risk Populations Initiative (MARPI) have taken it upon themselves to provide PWUD with the necessary medical assistance.¹⁹⁰ According to him, the view taken by these health workers is that they do not have to wait for the law to change in order for them to start doing something to address the public health challenges posed by drug use.¹⁹¹ Among the services offered to PWUD at MARPI are: i) provision of information on the risks associated with the use of drugs as well as the modes of use; ii) HIV Counseling and testing as well as treatment for those who are found to be positive; iii) screening and treatment for T.B, Hepatitis and other diseases; and iv) the use of community peers to avail more information on the risks that are associated with the use of drugs.¹⁹² Dr. Kyambadde noted that, as a result of these services, a number of PWUD have visited the facility, screened for the various diseases and received treatment.¹⁹³ Further, these PWUD have recommended MARPI to their peers, who had not otherwise known of the initiative.¹⁹⁴ In his view, when PWUD gain confidence in a system, they will always turn up for the services it offers.¹⁹⁵ However, that cannot happen where the environment is hostile.¹⁹⁶ The major challenge faced in this regard is the limited budget support extended to the MARPI and related health services for PWUD.¹⁹⁷

187 Interview with Bruce (not real name), a PWUD (26th August 2016).

188 Dr Peter Kyambadde, Executive Director, MARPI and National Coordinator of Health Services, Ministry of Health (27th August 2016).

189 As above.

190 As above.

191 As above.

192 As above.

193 As above.

194 As above.

195 As above.

196 As above.

197 As above.

The impact of MARPI was attested to by John (not real name) who noted when, due to his drug use, he began to have stomach complications, he was helped by UHRN to visit MARPI, where his condition was diagnosed and treated.¹⁹⁸ While it is commendable that a measure of relief is offered to PWUD in need of healthcare services by the health officials at MARPI and elsewhere, healthcare provision to PWUD ought to be clearly grounded in a guiding policy and the decriminalisation of Methadone is not negotiable.

Apart from MARPI, there is also an alcohol and drug abuse unit established in the Butabika National Medical Referral Hospital. According to Sr. Alice Kabakwenuzi, the Head of the Alcohol and Drug Abuse Unit at Butabika National Medical Referral Hospital, the unit was established in June 2006, and she was appointed to head it at the time it was created.¹⁹⁹ The capacity of this unit is, however, limited and a single unit in the capital city is a far cry from making necessary medical services available to PWUD in health centres across the country. As noted by AIP Moses Bongo, a law enforcement official in the Anti-Narcotics Unit of Kabalagala Police Station, who was of the view that Butabika hospital was probably overwhelmed by the cases it had to handle.²⁰⁰ He acknowledged the dearth of public health services for PWUD and was not aware of any other public health facilities in this respect. He also noted that while there existed certain private institutions offering the same services as Butabika, these were really expensive 'for the common Ugandan' in so far as treatment at such facilities costs about Ugx 1,500,000 per individual per month.²⁰¹ He cited in this respect facilities in Nsambya, Serenity in Entebbe and Recovery Solutions as examples of such institutions.²⁰² Additionally, he pointed out that, in any case, Butabika specifically handles very serious cases, perhaps those involving mental breakdown of a patient and would not be available for more generalised medical support.²⁰³ This view was echoed by AIP Paul Omara of the Anti-Narcotics Unit at Katwe Police Station, who noted that most rehabilitation centres were private and that most PWUD could not go there because they lacked the funds.²⁰⁴ This is especially so since the shortest time one could hope to spend at such a centre for the most effective rehabilitation would be at least three months.²⁰⁵

198 Interview with John (not real name), a PWUD (12th August 2016).

199 Interview with Sr. Alice Kabakwenuzi, Head of Alcohol and Drug Abuse Unit, Butabika National Mental Referral Hospital (1st September 2016).

200 Interview with AIP Moses Bongo, Head of Anti-Narcotics Unit, Kabalagala Police Station (29th August 2016).

201 As above.

202 As above.

203 As above.

204 Interview with AIP Paul Omara, Head of Anti-Narcotics Unit, Katwe Police Station (29th August 2016).

205 As above.

Similarly, Detective Superintendent of Police Tinka Zarugaba, the Deputy Head of the Anti-Narcotics Unit at CID Headquarters Kibuli, acknowledges the dearth of public health services for PWUD and the unsuitability of private alternatives:

Uganda only has one government-sponsored rehabilitation centre for alcohol addiction. There is also a rehabilitation centre focusing on mental illness and which has a small unit concerned with drug use. Rehabilitation is only done by private rehabilitation centres with very little government supervision. They are also very expensive. There is no policy on the rehabilitation of drug addicts.²⁰⁶

Interviews with officials at private health facilities for PWUD affirmed the high costs of treatment at these establishments. According to Ms Olive Mukasa, a Counselor and Research Coordinator at Hope and Beyond, the facility charges Ugx 60,000 per day for the costs of accommodation and food for those admitted.²⁰⁷ This is in addition to Ugx 50,000 charged for assessment of the patient, about Ugx 130,000 for required tests (such as to assess the extent of kidney damage, if any), Ugx 30,000 for reading materials, Ugx 50,000 for a t-shirt, and about Ugx 300,000 to cater for the costs of actual medication (which varies depending on the condition of the patient).²⁰⁸ Ms. Ruth Kikome, a Director at Recovery Solutions Treatment and Counseling Centre also cited a figure of Ugx 50,000 per day to cover the costs of accommodation and feeding, for patients admitted at that centre.²⁰⁹ Given the 90 day period for which patients at these centres are usually admitted, it becomes evident that, at the stated rates, a patient would need at least Ugx 4,500,000 to cover only the costs of their feeding and accommodation, aside from the whole range of additional costs levied. This is evidently a prohibitive figure which puts these facilities far out of the range of the ordinary person who used drugs.

In any case, according to Mr. Syrus Ajuna, the Team Leader, Outreaches and Community Engagements at the Uganda Harm Reduction Network (UHRN), the reality is that even the private health centres have limited capacity, being only able to handle dependence on light rather than 'hard core' drugs like cocaine and heroin:

Unfortunately, what we have in Uganda so far is treatment for the casual

206 Interview with DSP Tinka Zarugaba, Deputy Head of the Anti-Narcotics Unit, CID Headquarters Kibuli (31st August 2016).

207 Interview with Ms Olive Mukasa, a Counselor and Research Coordinator at Hope and Beyond (22nd September 2016).

208 As above.

209 Interview with Ms. Ruth Kikome, Director, Recovery Solutions Treatment and Counseling Centre (22nd September 2016).

drugs. None of the facilities here, whether private or public meets the international standards for dealing with hardcore drugs ... What is true is that any addict in Uganda who desires, or is desired to recover, has to be referred across the border; the closest being neighbouring Kenya. With the help of the UNOCD, the Global Fund and the Kenyan Government itself, a number of Methadone-Assisted Treatment (MAT) centres were established and it is there that treatment properly so called, in respect to the hardcore drugs, can be got.²¹⁰

The foregoing account provides incontrovertible evidence of the negative impact that the present legal regime has had upon the rights of PWUD to access to medicines and services they require. In particular, the state is failing to fulfil its obligations under the ICESCR and have not taken steps to create conditions which would assure medical service and medical attention to *all*.²¹¹

b) Health seeking behaviour of PWUD

Another infringement of the right to health is constituted by the way in which the existing regulatory framework discourages many PWUD from seeking even those medical services which might be available in the public and private health systems.

For instance, many times when PWUD require medical attention and receive such treatment, on recovery, instead of being released they are often taken to court to answer charges related to their drug use.²¹² These instances, together with the general knowledge of the criminal bias of the regulatory framework has meant that PWUD in Uganda are averse to approaching medical facilities for assistance, for fear of being apprehended from such places.²¹³

According to Ms. Patricia Kimera, the Head of Unit, Access to Justice, Human Rights Awareness and Promotion Forum (HRAPF):

Persons who use drugs face stigma and discrimination when they try to access health facilities. Given the emphasis on the criminal approach to drug use in Uganda, they are unable to fully disclose their health needs and concerns to health workers so as to obtain adequate treatment, assuming that they even go to the health facilities in the first place.²¹⁴

210 Interview with Mr. Syrus Ajuna, Team Leader, Outreaches and Community Engagements, Uganda Harm Reduction Network (UHRN) (12th August 2016).

211 Article 12(2)(d) of the ICESCR.

212 Interview with Mr Twaibu Wamala, Executive Director, UHRN (12th August 2016).

213 As above.

214 Interview with Ms Patricia Kimera, Head of Unit, Access to Justice, Human Rights Awareness and Promotion Forum (HRAPF) (20th October 2016).

The attitude of medical professionals as another factor affecting PWUD' health-seeking behaviour was confirmed by Bruce (not real name) who note that:

[o]n the whole, drug users are looked at with a lot of indifference when we go to seek medical attention. The whole environment is fierce, which really discourages us from seeking medical assistance.²¹⁵

Therefore, aside from the lack of essential medicines and services highlighted in the preceding section, it is clear that the regulatory regime, by negatively affecting the health-seeking behaviour of PWUD, further violates their rights to health and, ultimately, to life.

c) The exacerbation of existing public health challenges

In addition, and also related to the above, there seems to be a direct link between the criminalisation of drug use and other public health challenges, notably HIV/AIDS as well as increasing mental health challenges.

In the first place, the criminalisation of drug-use makes it less likely for PWUD to be offered information and support in relation, particularly, to the dangers of needle-sharing, for Injecting Drug Users (IDUs) with the effect that this is becoming an important mode of transmission of HIV in Uganda.²¹⁶ Dr. Kyambadde also notes that a number of PWUD are vulnerable to HIV and related diseases, especially through the window of shared injections for IDUs.²¹⁷ He acknowledges that the Ministry of Health is yet to develop a policy to avail IDUs with needles so that they do not have to share them in groups.²¹⁸

Moreover, the social stigma created in large part by the criminal approach to drug use has further entrenched the isolation and related suffering and depression of PWUD.²¹⁹ Indeed, according to Dr David Basangwa, the Executive Director of Butabika National Referral Mental Hospital, by their estimates, 20% of the patients at that facility have a history of drug abuse.²²⁰

This constitutes a further means by which the legal framework relating to drug

215 Interview with Bruce (not real name), a PWUD (26th August 2016).

216 Interview with Primah Kwagala, Programme Manager, Centre for Health Human Rights and Development (CEHURD) (25th August 2016).

217 Interview with Dr Peter Kyambadde, Executive Director, MARPI and National Coordinator of Health Services, Ministry of Health (27th August 2016).

218 As above.

219 Interview with Primah Kwagala, Programme Manager, Centre for Health, Human Rights and Development (CEHURD) (25th August 2016).

220 Interview with Dr. David Basangwa, Executive Director, Butabika National Mental Referral Hospital (1st September 2016).

use has the effect of violating the rights to health and to life of PWUD in Uganda.

4.2.3 The right to liberty

In terms of Article 23(1)(c) of the Constitution, a person can only be deprived of their liberty for acceptable reasons such as 'bringing that person before a court . . . upon reasonable suspicion that the person has committed or is about to commit a criminal offence'. The study has found that PWUD are often arrested and detained for purposes other than bringing them before a court in order to have a drug-related offence prosecuted. The study revealed that police use a whole range of legal provisions; even beyond those which have a direct link to drug prohibition; to harass, intimidate, blackmail and extort money from PWUD.²²¹

Laws most frequently used in this respect include such ambiguous offences as: being a common nuisance;²²² being idle and disorderly;²²³ being a rogue and vagabond;²²⁴ and carrying on offensive trades.²²⁵ The police often round up groups of youth who are known PWUD or who reside in 'ghettos' which have mushroomed around many suburban areas, under the guise that they have committed these offences, as a means of extorting money from them.²²⁶ Often, after payment of the requisite sum, they are released without charge.²²⁷

Beatrice (not real name) served 4 months on remand, while Brian (not real name) has now been arrested over twenty times, and on none of these occasions has he ever been charged with, let alone convicted of, drug use.²²⁸

Moreover, even the NDPA offences seem to have served more for harassment and intimidation of PWUD than any significant public interest. Bob (not real name) had a similar story to tell regarding the several times he was arrested for drug use:

221 Interview with Ms Patricia Kimera, Head of Unit, Access to Justice, Human Rights Awareness and Promotion Forum (HRAPF) (20th October 2016) and with Mr Twaibu Wamala, Executive Director, UHRN (12th August 2016).

222 Section 160, Penal Code Act, Cap 120. Interview with Mr Twaibu Wamala, Executive Director, UHRN (12th August 2016).

223 Section 167, Penal Code Act, Cap 120. Interview with Mr Twaibu Wamala, Executive Director, UHRN, and interviews with Jane, John, James, Jack and Bruce (not real names), all PWUD (12th August 2016).

224 Section 168, Penal Code Act, Cap 120. Interview with Mr Twaibu Wamala, Executive Director, UHRN and interviews with Jane, John, James, Jack and Bruce (not real names), all PWUD (12th August 2016).

225 Section 178, Penal Code Act, Cap 120. Interview with Mr Twaibu Wamala, Executive Director, UHRN (12th August 2016).

226 Interview with Mr Twaibu Wamala, Executive Director, UHRN (12th August 2016).

227 As above.

228 Interviews with Beatrice and Brian (not real names), both PWUD (26th August 2016).

*Whenever I was arrested, I was able to bribe my way out as the officers are always willing to release a drug user who can offer them money. But for other users who are not able to bribe, they are taken to Court where they are remanded for a period of up to 6 months.*²²⁹

Jane (not real name) has also been remanded for a total of six months following an arrest for being 'idle'.²³⁰ She was only released with the help of lawyers procured by UHRN.²³¹

These views were affirmed by Ms. Patricia Kimera, the Head of Unit, Access to Justice at the Human Rights Awareness and Promotion Forum (HRAPF), who noted that most of the PWUD to whom HRAPF has extended legal aid were charged with either being 'idle and disorderly' or with being 'rogues and vagabonds'.²³² In HRAPF's experience, the majority of such cases which have gone to court have usually been eventually dismissed for want of prosecution.²³³

The study also found that the offences that were repealed by the NDPSA are still being used to charge and prosecute drug users. Arresting someone and charging them under a repealed law would constitute a violation of the right to liberty.

In other more extreme cases, such persons are charged with offences they have not committed, such as murder, for the purpose of having them remanded for extended periods, only for them to be released months later, it having been established by the public prosecutor that there is no reasonable or tenable connection between the persons on remand and the alleged offences.²³⁴

Additionally, on occasion, the police have deliberately planted drugs on the person or property of PWUD, as well as other persons who do not use drugs, as a means of fabricating evidence against them and ensuring their successful prosecution and incarceration.²³⁵

229 Interview with Bob (not real name), a PWUD (26th August 2016).

230 Interview with Jane (not real name), a PWUD (26th August 2016).

231 As above.

232 Interview with Ms Patricia Kimera, Head of Unit, Access to Justice, Human Rights Awareness and Promotion Forum (HRAPF) (20th October 2016).

233 As above.

234 Interview with Mr Twaibu Wamala, Executive Director, (Uganda Harm Reduction Network) UHRN (12th August 2016).

235 As above. Also, interviews with Ms Daisy Nakato Namakula, Executive Director, Women's Organisation for Human Rights Advocacy (WONETHA) (19th October 2016) and with Ms Maclean Kyomya, Executive Director, Alliance of Women Advocating for Change (AWAC) (20th October 2016).

For her part, Brenda (not real name) told of law enforcement officers planting evidence so as to effect drug possession arrests.²³⁶ She also recounted the high price she had to pay to secure her freedom:

*I was previously on remand at Kabasanda and Luzira prisons. I only got out by paying a bribe to the arresting officers as well as having to respond to sexual demands in return for my liberty.*²³⁷

It goes without saying that arbitrarily arresting a person for the purposes of extorting bribes and without having the intention to lay charges and bring the person before a court; as well as using extra-legal means such as false charges and the planting of evidence; amounts to a severe violation of the right to liberty of PWUD.

4.2.4 Right to a fair trial

The right to a fair trial is one of the non-derogable rights protected under Article 44 of the Constitution. Article 28(7) of the Constitution provides that 'No person shall be charged with or convicted of a criminal offence which is founded on an act or omission that did not at the time it took place constitute a criminal offence.' This implies that all the charges and prosecutions under the repealed provisions of the NDPA are unconstitutional, and are a violation of the right to a fair trial.

4.2.5 Right to freedom from torture, inhuman and degrading treatment

The Constitution in Article 24 requires respect for human dignity and provides that 'no person shall be subjected to any form of torture or cruel, inhuman or degrading treatment or punishment'. This provision finds particular application in the context of arrests of PWUD.

In all cases, whether for the NDPA offences or the more vague offences under the Penal Code Act, the arrests are usually brutal and dehumanising. For instance Jane (not real name), reported that during one of her arrests for being 'idle' she was beaten with a baton so severely that she still occasionally feels pain from that incident.²³⁸ John (not real name) was beaten so severely while being arrested for 'idleness' that it took him a number of days to completely recover.²³⁹ He says he was beaten 'everywhere and anyhow'.²⁴⁰ Similarly Jack (not real name)

236 Interview with Brenda (not real name), a PWUD (26th August 2016).

237 As above.

238 Interview with Jane (not real name), a PWUD (12th August 2016).

239 Interview with John (not real name), a PWUD (12th August 2016).

240 As above.

recalls that once, while being arrested for being 'idle and disorderly' he was hit by the police officers and obtained severe injuries to his fingers, which became paralyzed.²⁴¹

For instance, James (not real name), recounts the harassment he has suffered:

*On a number of occasions I and my colleagues have been surrounded by police abruptly and taken to the stations where we are detained for a number of days. At times we are remanded to prison for an average of 6 months. We were told that we had been idle. I have so far been arrested countless times and I have been remanded four times; each time spending about 6 months in Kigo, Muduuma, Nkozi and Kasanda prisons respectively. I have never been convicted on any single occasion. During the remand period, I was subjected to manual work. This work was not for my benefit but it only benefited the officers who were paid by those who needed our labour.*²⁴²

The fact that James and other PWUD are subjected to forced work, in the absence of a conviction and a sentence to community service (which could include manual labour), amounts to degrading punishment and an infringement of their right to dignity. Likewise, the patterns of physical violence, intimidation and harassment illustrated with other examples in this section amounts to a violation of the rights of PWUD to be free from torture and cruel, inhuman and degrading treatment or punishment.

One response adopted by Human Rights Awareness and Promotion Forum has been to enhance the capacity of PWUD coming into conflict with the law, by sensitising them about the relevant provisions of the law, advising them as to how to respond if arrested or charged with any offence related to drug use, the basics of the rights to police bond and to bail and how to apply for them as well as providing emergency contacts through which legal aid may be obtained in such situations.²⁴³

4.2.6 Right to equality and non-discrimination

The right to equality and non-discrimination is protected under Article 21 of the Constitution. Article 21(1) provides that all people are equal before the law and shall enjoy equal protection of the law. Article 21(2) prohibits discrimination on a number of grounds, including social and economic standing.

241 Interview with Jack (not real name), a PWUD (12th August 2016).

242 Interview with James (not real name), a PWUD (12th August 2016).

243 Interview with Ms Patricia Kimera, Head of Unit, Access to Justice, Human Rights Awareness and Promotion Forum (HRAPF) (20th October 2016).

As has been demonstrated in this section, PWUD do not enjoy the right to protection of the law, but are subjected to persecution by means of the law and this had adverse implications for a range of other rights they should otherwise enjoy, including the rights to liberty, health, freedom from torture as well as to human dignity.

An analysis of the current enforcement of the regulatory framework also reveals that the law in this area is discriminatory in effect, if not on its face, given the disproportionate arrests, prosecution and conviction of persons of a lower social and economic standing rather than upper or middle class persons who use drugs.

Of the 15 PWUD interviewed, 10 (Jane, John, James, Jack, Bob, Brenda, Beatrice, Brian, Bruce and Bridgette) could distinctly be said to be low income and underprivileged, while 5 (Thomas, Timothy, Tina, Trevor and Tasha) were from clearly middle to upper income backgrounds.

A description of the two distinct groups is instructive.

These are brief profiles of the low income PWUD who were interviewed for this study:

The PWUD from middle to upper class backgrounds who were interviewed for this study are briefly profiled below:

Thomas is a male aged 24 years. He is currently a student of Information Technology at Makerere University.

Timothy is a male aged 22 years. He is studying Electrical Engineering at Makerere University. He stays at Makerere, Mitchell Hall.

Tina is a female, aged 22. She completed a Bachelor's Degree in Industrial Art two years ago. She hails from Lweza and is currently staying in Nansana.

Trevor is an adult male aged 22. He is a student of law at Makerere University and is about to finish his course.

Tasha is a female aged 25. She is a university graduate and currently resides in Stays in Makerere University.

It was immediately striking that, from their responses, all 10 PWUD or **100%** of those who were from low income or underprivileged background had ever been arrested by the police, with several having been charged and remanded at various times ranging from 4 to 6 months and more. Often these arrests were brutal and had resulted in loss of employment and other trauma. On the other hand, none of the 5 PWUD or **0%** from middle or upper class backgrounds had ever had any kind of engagement or conflict with law enforcement. The closest experience in this regard was that by Tina whose brother had ever been detained in police cells for a week. Even then, this was at the instance of her mother who insisted on the same and personally delivered him up to the police.

These statistics are extremely telling. They suggest that in Uganda, the application of drug laws targeting users, like their forerunners in the United States, United Kingdom, Australia, Canada and other jurisdictions referred to in Section 2 of this report, has been to target 'undesirable' classes of society, leaving untouched members of the middle and upper classes engaging in the same conduct. As with those jurisdictions, while the law in Uganda has been facially neutral, this study reveals that, in effect it has had a markedly disparate application, being decidedly biased against low income and underprivileged persons.

An interesting dynamic in this respect was also evident from interviews with certain law enforcement officials. For instance, AIP Paul Omara, the Head of the Anti-Narcotics desk at Katwe police station recounted the story of an evidently elite drug user in terms that did not reflect that the person had come into conflict with the law in any real sense:

There was a lady who studied up to Senoir 6 but did not pass very well. She met a Nigerian abroad and started taking cocaine. Her family sent money for a plane ticket to get her back home. She continued taking the drug back in Uganda. Her mother took her to rehabilitation, there was no change and she continued with the drug use. Her mother came up with the plan to take her to prison. The mother then lost more than Ugx 100,000,000 in this process.²⁴⁴

In another case, it appeared that the only means by which such a more upper class drug user had engaged with the law was by means of referral by their own parent who was at their wits' end:

We have a case of a boy who was brought here by his own father at the beginning of August. The boy is currently in prison and the case is coming up for hearing on 16 September. We are yet to see if this works.²⁴⁵

Moreover, as one PWUD, Brenda (not real name) noted, perhaps the ultimate hypocrisy relates to police officers who themselves use drugs but who routinely abuse their authority by intimidating and harassing other PWUD, especially those lower down in the socio-economic ladder:

The law should be applied equally. The fact is that there are a number of police officers who also use drugs and yet for them they are not touched.²⁴⁶

This information was corroborated by an unlikely source, His Worship Kercan Prosper, Magistrate Grade II at Nabweru Chief Magistrate's Court, who recalled a case of a Chief Magistrate in one of the magisterial areas in Uganda who was addicted to opium and marijuana.²⁴⁷ That individual apparently did not face any criminal sanctions for their conduct, although they were eventually dismissed from the judiciary because of poor performance.

244 Interview with AIP Paul Omara, Head of Anti-Narcotics Unit, Katwe Police Station.

245 As above.

246 Interview with Brenda (not real name), a PWUD (26th August 2016).

247 Interview with His Worship Kercan Prosper, Magistrate Grade II at Nabweru Chief Magistrate's Court (20th September 2016).

The foregoing section reveals a pattern of discrimination, in effect if not on the face of the law, in which lower income PWUD clearly experience the full brunt of the criminal law relating to drug use, while the same legal framework barely reaches those PWUD who have privileged backgrounds. This is a violation of the rights to freedom from discrimination and to equality before and under the law as enshrined in international, regional and domestic law.

4.3 Other violations and consequences

The other violations are:

4.3.1 Additional exposure to drugs through incarceration

Another indirect consequence of this criminalisation, flowing from the legal persecution endured by PWUD, is that when incarcerated, they are often exposed to further, and in some cases, potentially more lethal forms of drug use.²⁴⁸

For instance, there is an emerging trend of injecting drug use in police cells and prisons, which means that instead of the envisaged 'reform', the prison environment rather aggravates the rate and mode of drug use.²⁴⁹

According to Dr. Sheilah Ndyabangi, Principal Medical Officer in charge of Mental Health Action at the Ministry of Health, through incarceration 'hardcore drug addicts could recruit more people (detainees) into abusing drugs hence expanding the problem'.²⁵⁰

This constitutes a further violation of the right to health of PWUD in so far as, being already dependent on drugs, and requiring access to treatment by which such dependence can be overcome, the criminal approach to drug use pushes these persons even further into the clutches of dependence through exposure to stronger and more lethal drugs.

4.3.2 Physical and psychological trauma as a result of incarceration

The preference for criminal approaches and the possibility of incarceration, whether in police cells or in prisons, also has a number of other consequences, many of which PWUD who have suffered them may be unwilling to disclose.

James (not real name), for instance, revealed that he was very bitter that while

248 Interview with Assoc. Prof. Christopher Mbazira, Makerere University School of Law (28th August 2016).

249 Interview with Mr Twaibu Wamala, Executive Director, UHRN (12th August 2016).

250 Interview with Dr. Sheilah Ndyabangi, Principal Medical Officer in charge of Mental Health Action, Ministry of Health (5th September 2016).

on remand for being idle, he was put together with hardcore criminals and almost suffered rape:

Drug users are mixed with wrongdoers which has the potential to teach them other wrong tendencies that they would not have had before the arrests. One day I was almost sodomized by a fellow inmate, but I was only saved by the leader of the prisoners who knew me as a good man.²⁵¹

Tina (not real name), a PWUD, also recounts the psychological trauma suffered by her brother, also a PWUD when he was incarcerated:

One year ago, my mother took my younger brother, an addict, to police where he was detained for about a week. At the time he was taken, my brother was using his weed normally and had no trouble with anyone, and was not violent. My mother must be having a mental problem because of what she did. During the time he spent in detention, my brother went through a lot of hardship which caused him sickness. During the night lights in the cell would be switched off and someone would come into his cell and start beating him up. This was torture. As a result of what he went through, my brother has now immensely changed in the way he relates with the family members. He is now more laid back and does not want to talk to anyone and he sees almost everybody as a complicit in his betrayal.²⁵²

The foregoing section reveals a further impact of the current regulatory framework as being the violation of the rights to health, and in particular mental health, of PWUD, as well as their right to freedom from torture and inhumane or degrading treatment or punishment.

4.3.3 Loss of employment and employment opportunities

The focus on criminalisation has also meant that PWUD are often viewed as social misfits, especially where they are arrested and have been detained at certain times. The situation is even worse where they have been convicted and served prison time. Upon their release, it is often extremely difficult for them to obtain employment, as they are seen as criminals, who cannot be trusted with any form of responsibility.²⁵³ The long absence as a result of incarceration may also result in disruptions in education, including discontinuation from schools, as well as loss of employment due to the absence which cannot be accounted for.²⁵⁴

251 Interview with James (not real name), a PWUD (12th August 2016).

252 Interview with Tina (not real names), a PWUD (26th August 2016).

253 Interview with Mr Twaibu Wamala, Executive Director, (Uganda Harm Reduction Network) UHRN (12th August 2016).

254 As above.

In his case, Jack (not real name) who was severely beaten in the course of his arrest for being 'idle and disorderly', lost the use of his fingers as a result of his beating and lost his job as a taxi conductor.²⁵⁵ He is still unable to work and has lost the ability to provide for himself and his family.²⁵⁶ He is now dependent, for his survival, on the generosity and assistance of his relatives and friends, which he says, cannot be guaranteed to last much longer.²⁵⁷ Beatrice (not real name) too, lost her job at a restaurant, where she worked as a waitress, after spending 4 months on remand for using drugs.²⁵⁸

4.3.4 Impact on family life and broader community

The adverse impacts of the criminalisation of drug use are also felt by the broader family and community of the persons arrested or detained who often have to bear the social and economic costs of the incarceration. For instance, it is often the families who have to gather the money required to pay off officers and other officers of the law so as to secure the release of their relatives in police cells or prisons.²⁵⁹

For instance, James (not real name) noted that while serving one of his several remand terms, for being 'idle' his wife, who had been pregnant at the time of his arrest, suffered a miscarriage, in part due to his inability to provide for her basic needs including to afford the required antenatal care.²⁶⁰

4.3.5 Consequences of incarceration: reintegration or recriminalisation

Upon the release of PWUD after a period of incarceration, reintegration into society proves to pose challenges. According to Dr. Sheilah Ndyabangi, Principal Medical Officer in charge of Mental Health Action at the Ministry of Health:

A good number of patients have been able to return to their normal lifestyles and/or reform and become even better persons. In case of young persons at the school going level, the Ministry has, through outreaches, encouraged them to return to school and complete their studies and some of them are now advocates against drug abuse. The challenge here is that at times the families and or communities where the patients live are not willing to accept

255 Interview with Jack (not real name), a PWUD (12th August 2016).

256 As above.

257 As above.

258 Interview with Beatrice (not real names), a PWUD (26th August 2016).

259 Interview with Mr Twaibu Wamala, Executive Director, (Uganda Harm Reduction Network) UHRN (12th August 2016).

260 Interview with James (not real name), a PWUD (12th August 2016).

*them as changed persons. So that usually causes relapses.*²⁶¹

Some PWUD, however, will never reintegrate into society after their incarceration experience. It was found that after a period of incarceration, some PWUD transform into actual criminals either through exposure to criminals during incarceration or in terms of their denial of opportunities for gainful employment after their release.

These conditions make such PWUD vulnerable to joining gangs of drug traffickers.²⁶² They are easily lured by elite drug traffickers into being used as drug mules to smuggle drugs to a number of countries in the world.²⁶³ A case that may be cited in this respect relates to the Ugandans who were apprehended in China and executed after a perfunctory court process.²⁶⁴

According to Dr. Sheilah Ndyabangi, Principal Medical Officer in charge of Mental Health Action at the Ministry of Health, in the prisons PWUD are mixed with other detainees who are usually criminals and chances are high that such a person learns other wrong criminal behaviour from colleagues in the cells.²⁶⁵

This effect of the current regulatory approach constitutes a violation of the right of PWUD to human dignity, having as it does the effect of pushing otherwise law abiding persons into a maze of criminality from which they are seldom able to extricate themselves.

4.4 Harm Reduction as an alternative approach

The adverse impacts of the current regulatory climate, elaborated at some length in the preceding Section, make it clear that an alternative approach is required if a rational response to drug use in Uganda is to be achieved. In particular, it is imperative that any regulation of drug use not involve a direct or indirect violation of the rights to life and health of persons who use drugs, or in any other way constitute a violation of any other human rights secured to them as a necessary prerequisite for their enjoying a dignified existence.

The Harm Reduction approach, according to one conceptualisation, is one

261 Interview with Dr. Sheilah Ndyabangi, Principal Medical Officer in charge of Mental Health Action, Ministry of Health (5th September 2016).

262 As above.

263 As above.

264 A Bagala 'China executes Ugandans over drugs' *Daily Monitor* 2 July 2014 available at <http://www.monitor.co.ug/News/National/China-executes-Ugandans-over-drugs/688334-2368672-vmwau/index.html> (accessed 24 October 2016).

265 Interview with Dr. Sheilah Ndyabangi, Principal Medical Officer in charge of Mental Health Action, Ministry of Health (5th September 2016).

which accepts, for better and or worse, that licit and illicit drug use is part of our world and chooses to work to minimise its harmful effects rather than simply ignore or condemn them; understands drug use as a complex, multi-faceted phenomenon that encompasses a continuum of behaviour from severe abuse to total abstinence, and acknowledges that some ways of using drugs are clearly safer than others; establishes quality of individual and community life and well-being – not necessarily cessation of all drug use – as the criteria for successful interventions and policies; calls for the non-judgmental, non-coercive provision of services and resources to people who use drugs and the communities in which they live in order to assist them in reducing attendant harm; ensures that drug users and those with a history of drug use routinely have a real voice in the creation of programs and policies designed to serve them; affirms drugs users themselves as the primary agents of reducing the harms of their drug use, and seeks to empower users to share information and support each other in strategies which meet their actual conditions of use; recognizes that the realities of poverty, class, racism, social isolation, past trauma, sex-based discrimination and other social inequalities affect both people's vulnerability to and capacity for effectively dealing with drug-related harm; and does not attempt to minimise or ignore the real and tragic harm and danger associated with licit and illicit drug use.²⁶⁶

The need for a turn towards harm reduction approach surfaced strongly in the interviews with key informants and other stakeholders. According to Mr Twaibu Wamala, the Executive Director of the Uganda Harm Reduction Network, Uganda would do well to adopt the harm reduction principle, which would allow PWUD with avenues to access medical services and other support rather than criminalising and further marginalising them.²⁶⁷

This view was reiterated by Ms. Patricia Kimera, the Head of the Access to Justice Unit at the Human Rights Awareness and Promotion Forum (HRAPF), who stressed that the law should emphasise rehabilitation and reduction of drug dependence as a means of addressing the challenge of drug use, rather than pursuing the punitive criminal approach which was invariably futile.²⁶⁸ Similarly, Ms. Primah Kwagala, felt that the promotion of harm reduction should be based on a specific policy and legal framework that provides an enabling legal environment for PWUD to access health services relevant for them to enjoy

266 Harm Reduction Coalition 'Principles of harm reduction' available at <http://harmreduction.org/about-us/principles-of-harm-reduction/> (accessed 24 October 2016).

267 Interview with Mr Twaibu Wamala, Executive Director, (Uganda Harm Reduction Network) UHRN (12th August 2016).

268 Interview with Ms. Patricia Kimera, Head of Unit, Access to Justice, Human Rights Awareness and Promotion Forum (HRAPF) (20th October 2016).

the highest attainable standard of physical and mental health.²⁶⁹ Further, in Mr Wamala's view, harm reduction should be accompanied by increased funding to support the legal and public health needs of the PWUD.²⁷⁰

From the interview with Dr. Kyambadde, the Executive Director of the Most at Risk Populations Initiative (MARPI) and National Coordinator of Health Services at the Ministry of Health, in Section 4.2.2 (above) it is evident that there is a move, albeit unofficially, towards a harm reduction approach in Uganda. Moreover, the experiences of PWUD reflected in that Section also are a testament to the potentially positive effects such an approach would provide. Nevertheless, without a specific, comprehensive and public policy upon which interventions like MARPI can be grounded, these tentative interventions will remain largely ineffective, and any gains they provide may likely be wiped away by the broader pervasive criminal law and its enforcement, whose effects this report details in Section 4.2. As such, there is an urgent need for the adoption, implementation and funding of an affirmative nation-wide harm reduction policy.

Such a policy has to be accompanied by sensitisation of wide sections of the public. Indeed, most PWUD interviewed stressed the need for sensitisation of the police, public health officials and communities as to the realities of drug use and the need for empathy for PWUD.²⁷¹ In addition, according to Sr. Kabakwenuzi, there is a need for law enforcement officers to be sensitised regarding substance abuse in order to appreciate proper or better ways of managing PWUD.²⁷² In her view, similarly, communities need to be sensitised in order to be able to accept the former addicts when they recover.²⁷³ In her view, if treated with love and care, it is less likely that they will resume use of and reliance on drugs.²⁷⁴ These views are echoed by Dr. Kyambadde, who notes that there is a need for sensitisation to help the community, law enforcers and health services providers become aware of the real issues faced by PWUD.²⁷⁵ In his view, such awareness and sensitisation will make it easier for PWUD to heal psychologically when they are treated with love by the members of the communities in which they

269 Interview with Primah Kwagala, Programme Manager, CEHURD (25th August 2016).

270 Interview with Mr Twaibu Wamala, Executive Director, (Uganda Harm Reduction Network) UHRN (12th August 2016).

271 Interviews with Jane, John, James, Jack, Brenda, Bruce and Bridgette (not real names), all PWUD (12th and 26th August 2016).

272 Interview with Sr. Alice Kabakwenuzi, Head of Alcohol and Drug Abuse Unit, Butabika National Mental Referral Hospital (1st September 2016).

273 As above.

274 As above.

275 Dr Peter Kyambadde, Executive Director, MARPI and National Coordinator of Health Services, Ministry of Health (27th August 2016).

live, and who currently reject PWUD.²⁷⁶ Where the communities participate in rehabilitation and reintegration of PWUD, this has the double effect of both assisting addicts to recover, but also with regard to sensitising younger members of the community of the dangers of drug use.²⁷⁷

4.5 Conclusion

It is evident that the current criminal law approach which is a prominent feature of the legal framework regulating drug use in Uganda is extremely problematic in terms of its adverse impacts on the fundamental rights, health, lives and general welfare of PWUD in Uganda. The criminal law approach has also had additional effects in terms of creating a climate within which PWUD can be harassed, intimidated, socially ostracised, denied medical services and attention, blackmailed and generally humiliated. Moreover, it is evident that the brunt of these harsh effects of the present legal framework has been borne by lower income individuals, which reveals the discriminatory effect of the law.

276 As above.

277 As above.

SECTION V: CONCLUSIONS AND RECOMMENDATIONS

'The production, trafficking and consumption of illicit drugs can only be understood properly if they are seen in their many different dimensions: the political, the social, the economic and the cultural. The drugs issue thus intersects many different domains: law, criminal justice, human rights, development, international humanitarian law, public health and the environment' – United Nations Office on Drugs and Crime

5.1 Conclusions

The preceding sections reveal that the current regulatory framework for drug use in Uganda has adopted a primarily criminal approach rather than a public health approach to the issue of drug use in Uganda. PWUD are thus viewed primarily as criminals whose conduct has to be severely penalized if the use of drugs is to be deterred and eventually eliminated.

Even where the law recognises and reflects the need for health services for PWUD, this is not only insufficiently elaborated, but also firmly placed within the broader structure of criminal and penal law. For instance, for a PWUD to access the rehabilitation services envisaged under the NDPSA, they must have been convicted of an offence under that Act. Even then, access to those services is not automatic, but depends on the discretion of the judicial officer in question.

This approach is problematic in a number of respects. In the first place, the current approach to drug use has criminalised persons who should otherwise have been provided with access to essential services necessary for them to achieve the highest standard of physical and mental health. In this way, the law as it is has had a direct adverse impact on the lives and health of PWUD in Uganda, and constitutes a violation of the right to health of these persons.

Secondly, the enforcement of the current criminal law regime has been harsh and excessive both in terms of the legal provisions upon which prosecutions and convictions have been predicated, but also in terms of the manner in which arrests have been carried out. Law enforcement officials have mainly relied on nuisance and vagrancy laws to harass and intimidate PWUD, and have also been brutal in their treatment of PWUD in the criminal justice process. This approach has had significant adverse implications for a range of human rights of PWUD, including the rights to life; freedom from torture; liberty; access to justice; to a fair trial and related rights. The enforcement of the current legal framework, therefore, is inconsistent with Uganda's international, regional and domestic

human rights obligations.

Finally, although the regulatory regime appears neutral on its face, the reality is that in effect, it has operated mainly against lower income individuals, who have borne the brunt of harassment, intimidation, beatings, arrests, convictions and general humiliations under the law. PWUD from middle and upper income brackets have, on the other hand, had very limited interaction with the criminal justice system, and even in those cases, have been treated substantially better than lower income PWUD. This reality reveals that, as was the case with the historical prohibition and criminalization of drug use in other jurisdictions, the criminal law against drug use in Uganda essentially serves the purpose of social control, in which classes of persons deemed 'undesirable' are targeted and brutalised using the agency of facially-neutral law. This constitutes discrimination based on socio-economic status and is a violation of Uganda's domestic, regional and international human rights obligations in this regard.

5.2 Recommendations

To the Ministry of Health

- Adopt a harm reduction approach to drug use in Uganda and increase budget support for such efforts.
- Ensure that the harm reduction efforts involve the provision of a minimum service package for harm reduction, consistent with World Health Organisation (WHO) standards and that this package is integrated into the national public health interventions, including within the National HIV programme.
- Devote a specific budget to the support and rehabilitation of PWUD in Uganda, as opposed to focusing more on law enforcement.
- Consider establishing regional mental health hospital services which deal with drug addiction.
- Allocate a medical officer in-charge of PWUD' health services at every district.
- Consider establishing a specific treatment facility for PWUD in all public health facilities to enhance access by PWUD to health service. This is because PWUD have particular health needs which may not be adequately addressed by the mainstream health sector.
- Fund a major epidemiological study on the implications of drug use on the disease burden in Uganda, as a basis for major public health interventions for PWUD which are consistent with human rights principles.
- Sensitise the police, public health officials, communities and other key stakeholders as to the realities of drug use and the need for a public

health rather than criminal law approach to drug use in Uganda.

To Parliament

- Decriminalise drug use.
- De-link rehabilitation and health services to PWUD from the criminal process under the NDPSA.
- Repeal overbroad offences in the law, such as nuisance and vagrancy laws, which are used to harass, intimidate and extort money from PWUD.

To the Judiciary

- Dismiss vague charges which are clear attempts to use overbroad offences in the law to harass, intimidate and extort money from PWUD.
- Where minded to convict PWUD under the current legal regime, favour non-custodial sentences such as community service, over imprisonment, which has great adverse and multiplier effects on the health and lives of these persons.
- Train Judges and Magistrates to be able to handle cases involving PWUD with greater sensitivity and especially a greater emphasis on public health rather than criminal law.

To the Uganda Law Reform Commission

- Conduct further research into the impact of the criminalisation of drug use as opposed to other best practices such as harm reduction, and make appropriate proposals to Parliament for reform of the law.
- Repeal overbroad offences in the law, such as nuisance and vagrancy laws, which are used to harass, intimidate and extort money from PWUD.

To the DPP

- Refuse to sanction vague charges which are clear attempts to use overbroad offences in the law which are used to harass, intimidate and extort money from PWUD.

To the Uganda Police Force

- Desist from misusing overbroad offences in the law to harass, intimidate and extort money from PWUD.
- Stop using the repealed provisions of the NDPA to charge drug users.

- Desist from abusing the rights of drug users when enforcing the criminal law.

To Persons who Use Drugs and Civil Society Organisations working with PWUD

- Undertake further studies regarding the situation of PWUD in Uganda.
- Consider a constitutional challenge to the overbroad offences in the law, such as nuisance and vagrancy laws, which are used to harass, intimidate and extort money from PWUD.
- Sensitise the police, public health officials, communities and other key stakeholders as to the realities of drug use and the need for a public health rather than criminal law approach to drug use in Uganda.
- Lobby Parliament to decriminalise drug use in Uganda and to focus instead on the harm reduction approach.

To Public and Private Health Facilities

- Adopt a more welcoming and more sensitive approach to PWUD who seek health care services.
- Consider creating units dedicated to addressing the health needs of PWUD.

To the Academia

- Undertake further studies aimed at mapping the situation of PWUD in Uganda.
- Conduct a major epidemiological study on the implications of drug use on the disease burden in Uganda, as a basis for major public health interventions for PWUD which are consistent with human rights principles.

REFERENCES

Books

Courtwright, DT (1982) *Dark Paradise: Opiate Addiction in America before 1940* Cambridge.

Dikötter, F et al (2004) *Narcotic Culture: A History of Drugs in China Hong Kong*.

Journals

Pittaway, E "'Stop stealing our stories': The ethics of research with vulnerable groups' (2010) 2 *Journal of Human Rights Practice* 229-251.

Sherlock, C 'Research with vulnerable groups: Collaboration as an ethical response' (2010) 7 *Journal of Social Work Values and Ethics* 1-11.

Tugume, LH 'The dynamics of intoxicant/drug consumption in contemporary Uganda: A case study of urban Kampala' (2015) 4 *International Journal of Development Societies* 109-120.

Weatherburn, D 'The pros and cons of prohibiting drugs' (2014) 47(2) *Australia and New Zealand Journal of Criminology* 176-189.

Windle, J 'How the East influenced drug prohibition' (2013) 35(3) *The International History Review* 9 (pre-publication copy).

Wodak, A & McLeod, L 'The role of harm reduction in controlling HIV infection among injecting drug users' (2008) 22 *AIDS* S81 – S97.

Wood, E; Marshall, BD; Montaner, BD & Kerr, T 'The war on drugs: A devastating public-policy disaster (2009) 373 *The Lancet* 989.

Mohd Safian, YH 'An analysis on Islamic rules on drugs' (2013) 1 *International Journal of Education and Research* 1-16.

Reports

Colectivo de Estudios Drogas y Derecho (CEDD) 'In search of rights: Drug users and state responses in Latin America' (2014).

Levy, J 'The harms of drug use: Criminalisation, misinformation and stigma' *International Network of People Who Use Drugs (INPUD)* (2014).

Uganda Police Force 'Annual Crime and Traffic/Road Safety Report 2013' (2013).

United Nations Office on Drugs and Crime 'From coercion to cohesion: Treating drug dependence through health care, not punishment' (2010).

United Nations Office on Drugs and Crime (UNODC) 'A century of international drug control' (2008).

Theses and dissertations

Unpublished: Namayanja, S 'Challenges of Drug Abuse among the youth' Dissertation Submitted to the College of Education and External Studies, Department of Open and Distance Learning in Partial Fulfillment of the Requirements for the Award of the Commonwealth Youth Diploma in Development Work of Makerere University 2011.

Unpublished: Ossiya, S 'Drug Abuse and the Law' Dissertation Submitted to the School of Law, in Partial Fulfillment of the Requirements for the Award of the Bachelor of Laws Degree of Makerere University) 1995.

Unpublished: Tamale, CN 'Reconciling Criminal Law and Public Health: An analysis of the Narcotics Drugs and Psychotropic Substances Bill, 2007' Dissertation Submitted to the School of Law, in Partial Fulfillment of the Requirements for the Award of the Bachelor of Laws Degree of Makerere University 2015.

Conference papers and presentations

Basangwa, D 'Drug Abuse Treatment and Rehabilitation' presentation made on 30th April 2014, available at [http://www.uom.ac.mu/MedicalUpdate/files/2014/14may2014/drug%20abuse%20treatment%20and%20rehab%20\(%20Mauritius\).pdf](http://www.uom.ac.mu/MedicalUpdate/files/2014/14may2014/drug%20abuse%20treatment%20and%20rehab%20(%20Mauritius).pdf) (accessed 24 October 2016).

Mutaawe, R 'Drug and substance abuse prevention: A case of Uganda' Youth Development Link Presentation made at the European Primary Prevention Conference-Estonia, available at <http://eppc.se/wp-content/uploads/2013/04/Rogers.pdf> (accessed 24 October 2016).

Case law

Attorney General v Major General David Tinyefuza, Supreme Court Const. Appeal No. 1 of 1997.

CEHURD & Others v Attorney General, Constitutional Petition No. 16 of 2011.

United States v Doremus 249 U. S. 86.

Newspaper and magazine articles

Atwiine, G & Twaibu, W 'Targeting people using and injecting drugs will contribute to reduced HIV prevalence rate in Uganda' *Daily Monitor* 29 April 2016.

Bagala, A 'China executes Ugandans over drugs' *Daily Monitor* 2 July 2014.

Kagenda, P 'How big is Uganda's drug problem?' *The Independent* 20th July 2014.

Kalumba, R 'How big is Uganda's drug problem?' *Daily Monitor* 26 June 2010.

Kato, J 'Uganda: Drug Abuse behind Kampala's High Crime Rates' *New Vision* 16 July 2008.

Linklater, A 'Why we shouldn't legalise drugs' (2010) November *Prospect Magazine* available at <http://www.prospectmagazine.co.uk/magazine/against-legalising-marijuana> (accessed 24 October 2016).

Roosbald, S 'Heroin, cocaine use increase in Uganda' *VOA News* 20 October 2015.

Sibiloni, M 'Uganda's thriving drug scene' *Al Jazeera*, 5 November 2014.

Zinunula, S 'Inside Jackie Chandiru's drug addictions story' *Chimpreports* 26 February 2016.

'Ugandans on death row in China named; parents weep' *New Vision* 7 July 2014.

'45% of Ugandan youths take drugs and alcohol' *New Vision* 7 March 2013.

Websites

Courtwright, DT 'A short history of drug policy' available at http://www.lse.ac.uk/IDEAS/publications/reports/pdf/SR014/Courtwright_DavidT.pdf (accessed 24 October 2016).

Harm Reduction Coalition 'Principles of harm reduction' available at <http://harmreduction.org/about-us/principles-of-harm-reduction/> (accessed 24 October 2016).

Henry, D 'Human subjects research with vulnerable populations' (2012) *Institute for Health Research and Policy, University of Illinois* available at http://www.ihrp.uic.edu/files/Vulnerability_IHRP_041012.pdf (accessed 24 October 2016).

Tabaro, EK (2014), 'Decriminalizing Drug Use in Uganda: Policy benefits and ramifications' available at https://www.academia.edu/11077152/Decriminalizing_Drug_Use_in_Uganda_Policy_Benefits_and_Ramifications (accessed 24 October 2016).

Uganda Harm Reduction Network 'UHRN press statement on the drug use situation for people who inject drugs in Uganda' 15 April 2016 available at <https://stoptheharm.org/press/uhrn-press-statement-on-the-drug-use-situation-for-people-who-inject-drugs-in-uganda> (accessed 24 October 2016).

United Nations Office on Drugs and Crime 'Reducing the harm of drug use and dependence' 2 available at https://www.unodc.org/ddt-training/treatment/VOLUME%20D/Topic%204/1.VoID_Topic4_Ham_Reduction.pdf (accessed 24 October 2016).

APPENDIX: LIST OF INTERVIEWEES

1. Jane (not real name), a person who uses drugs.
2. John (not real name), a person who uses drugs.
3. James (not real name), a person who uses drugs.
4. Jack (not real name), a person who uses drugs.
5. Bob (not real name), a person who uses drugs.
6. Brenda (not real name), a person who uses drugs.
7. Beatrice (not real name), a person who uses drugs.
8. Brian (not real name), a person who uses drugs.
9. Bruce (not real name), a person who uses drugs.
10. Bridgette (not real name), a person who uses drugs.
11. Thomas (not real name), a person who uses drugs.
12. Timothy (not real name), a person who uses drugs.
13. Tina (not real name), a person who uses drugs.
14. Trevor (not real name), a person who uses drugs.
15. Tasha (not real name), a person who uses drugs.
16. Mr. Wamala Twaibu, Executive Director, Uganda Harm Reduction Network.
17. Mr. Syrus Ajuna, Team Leader, Outreaches and Community Engagements, Uganda Harm Reduction Network.
18. Ms. Daisy Nakato Namakula, Executive Director, Women's Organisation for Human Rights Advocacy.
19. Ms. Maclean Kyomya, Executive Director, Alliance of Women Advocating for Change.
20. AIP Moses Bongo, Kabalagala Police Station.
21. AIP Paul Omara, Head Drug unit, Katwe Police Station.
22. CID Officer (name and duty station withheld on request).
23. Head of Drug Unit (name and duty station withheld on request).
24. State Prosecutor (name and duty station withheld on request).
25. Her Worship Juliet Nakitende, Principal Magistrate Grade I, Makindye Magistrates Court.
26. Mr Chris Kahigwa, State Prosecutor, Nabweru Chief Magistrate's Court.
27. His Worship Kercan Prosper, Magistrate Grade II at Nabweru Chief Magistrate's Court.
28. Sister Alice Kabakwenuzi, Head, Alcohol and Drug Abuse Unit, Butabika Hospital.
29. Dr. David Basangwa, Executive Director, Butabika National Mental Referral Hospital.
30. Dr. Peter Kyambadde, ED, MARPI.
31. Dr. Sheilah Ndyabangi, Principal Officer in Charge of mental Health and Drug abuse, Ministry of Health.
32. Ms Olive Mukasa, a Counselor and Research Coordinator, Hope and Beyond.

33. Ms. Ruth Kikome, Director, Recovery Solutions Treatment and Counseling Centre.
34. Ms. Patricia Kimera, Head of Unit, Access to Justice, Human Rights Awareness and Promotion Forum.
35. Ms. Primah Kwagala, Programme Manager with the Centre for Health, Human Rights and Development.
36. Dr. Daniel Ruhweza, Lecturer School of Law, Makerere University.
37. Assoc. Prof. Christopher Mbazira, School of Law, Makerere University.



For further details, contact:
Plot 390, Professor Apolo Nsibambi Road,
(20 meters off Balintuma Road, Namirembe)
P. O. Box 25603, Kampala - Uganda.
Tel: +256-414-530683 or +256-312-530683
Email: info@hrapf.org
Website: www.hrapf.org