GLOBAL COMMISSION ON DRUG POLICY

POSITION PAPER

DRUG POLICY AND THE DEPRIVATION OF LIBERTY

June 2019

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The Global Commission on Drug Policy is an independent body comprising 26 members, including 14 former heads of state or government and four Nobel Prize laureates. Its purpose is to bring to the international level an informed, evidence-based discussion about humane and effective ways to reduce the harms caused by drugs and drug control policies to people and societies.

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FOREWORD

Prison is the most glaring expression of the failures of prohibition-based drug policies: the failure to reduce drug demand, despite 30 years of states punishing consumption; the failure to reduce drug supply and the power of transnational organized crime, despite an international drug control regime that has existed for over a century. Above all, incarceration is the epitome of the human cost of these failed policies.

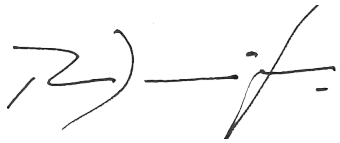
The global prison population has soared in the last three decades, largely because of the repressive system established by the international drug control regime and the national laws that derive from it. In our view, deprivation of liberty is the wrong response to drug use, as well as to non-violent petty crime generated by the illegal market. This is why the Global Commission on Drug Policy has been calling, since its establishment, for the decriminalization of illegal drug consumption, as well as for alternatives to incarceration for offenders who were forced to engage in illegal activities, whether by lack of other options to make a living or coercion by criminal organizations.

Prison is inevitably an ineffective response because it does not take into account the social and psychological root causes of problematic drug consumption, nor does it consider the economic and social marginalization of traditional coca, cannabis or poppy cultivators, nor of women who smuggle small quantities of drugs, street dealers, or spotters. Prison is also the wrong response because people who are incarcerated are vulnerable, exposed to risks for which they are not well-equipped, and are dependent on those who manage their daily lives. Herein lies the paradox of incarceration: the deprivation of liberty inherently means the inability to think for and to support oneself, in an environment where the risk of violence is high, living in promiscuity and isolation from friends and relatives.

Even though they are banned, the reality is that illegal drugs and other psychoactive substances are largely prevalent in prison. Thus, if incarcerated people consuming drugs also lack access to the means that would allow them to reduce the harms associated with use, they will be exposed to health risks that are far greater than they might otherwise be outside of prison. It is therefore essential to offer the full range of treatment options for dependency, including opioid maintenance therapies, and to allow access to harm reduction means. All these measures that have proven to be effective in protecting people against the transmission of HIV, hepatitis and tuberculosis need to be implemented in detention facilities, facilities that are by themselves more "pathogenic," a situation aggravated by overcrowding. Special attention also needs to be given to the risks to which people who use drugs are exposed when released from prison, as the transition towards their previous lives is marked by higher overdose rates than in the general population.

There are a variety of forms of detention: prisons and jails for pre-trial detention or the execution of a sentence, detention centers for refugees and illegal migrants awaiting decision on their asylum status, and compulsory drug treatment centers. Human rights must be upheld as much in these facilities as in the community at large: people who are incarcerated need to be protected from cruel, inhuman, and degrading treatment, and need to have access to care, prevention, and effective treatment, based on patient consent and confi dentiality. To guarantee these rights for incarcerated people is the shared responsibility of health professionals, prison staff, and state authorities – those who legislate, judge, or allocate budgets or provide funding – all share a responsibility to guarantee these rights to people who are incarcerated. No punishment or prison sentence cancels these rights.

The Global Commission, while it calls for more sustainable and far-reaching reforms in drug policy, can no longer ignore the current situation of incarceration and related human rights violations. This situation urgently calls for political, correctional, and medical authorities to face up to their responsibilities.



Ruth Dreifuss
Former President and Minister of Home Affairs of Switzerland
Chair of the Global Commission on Drug Policy

EXECUTIVE SUMMARY

Since its establishment, the Global Commission on Drug Policy has been calling for the decriminalization of illegal drug consumption, as well as for alternatives to incarceration for low-level non-violent offenders. Today, more than 10 mil-lion people are incarcerated worldwide. One in five is incar-cerated for drug-related offenses and of these, 83 per cent serve sentences merely for drug possession for personal use. The commission views incarceration as an expression of the failures of prohibition-based drug policies to achieve their goals, and of the failure to implement policies that would prioritize the health and rights of individuals and communities over criminal justice approaches.

Prison is the consequence of the failures of drug policy: failure to reduce drug demand, drug supply, and the power of transnational organized crime. When a state undertakes a deprivation of liberty, it has a duty of care and special res-ponsibility towards those held in detention. Many states, however, fail to do so in a number of ways.

Over-incarceration occurs when a state's criminal justice policy provides for incarceration for minor non-violent offenses that could otherwise be handled through a fine, probation, administrative penalties, or day parole. Over-incarceration is also a result of disproportionately long sentences for minor non-violent offenses. In fact, most people incarcerated for drug-related offenses are either people who use drugs or low-level dealers. In addition, some states provide for mandatory pre-trial detention for all drug-related offenses, whether the offenses are minor or high-level in character. Ethnic minorities are far more likely to be arrested for drug-related offenses, convicted, and sentenced to prison.

This is closely linked to overcrowding, which occurs in more than half the countries in the world. It creates a significant obstacle to ensuring a minimum standard of treatment for people in detention and the protection of their human rights. These human rights are mandated by international aw and treaties, and which states are obliged to apply to their citizens whether in the community or in prison, in-clude the right to health; the right to be treated humanely and with respect for one's dignity; the right to life; the right to security of the person; the prohibition of torture and other cruel, inhumane, and degrading treatment or punishment; the right to privacy and adequate accommo-dation; and the right to food, water, and sanitation. Prison overcrowding contributes to increased rates of violence, mental health problems, self-harm, and suicide. It creates a high-risk environment for the transmission of HIV, hepatitis C and tuberculosis, entailing wider public health implications for society once people are released from incarceration.

These practices continue, even though imprisonment has been shown to be counterproductive in the rehabilitation and reintegration of those charged with minor offenses. With regard to drugs, detention is not scientifically recognized as an effective way of getting people to discontinue use; in fact, drug use in prison is statistically higher than outside: approximately 20 per cent of people imprisoned world-wide use drugs, compared to 5.3 per cent of the general population. People can be initiated into drug use while in prison, or initiated into the use of different and more harmful types of drugs. It has also been estimated that 56-90 per cent of people who inject drugs have been incarcerated at some point in their lives.

States have the responsibility to protect the right to health of those deprived of liberty, and incarcerated people should enjoy the same standards of health care as those available in the community. This applies to everyone on a non-discriminatory basis, including people who use drugs and drug-dependent people. States have largely failed to meet this standard. For example, in 2016 only 52 countries provided opioid maintenance treatment in prisons. The situation is worse for needle and syringe programs, provided in prisons in only 10 countries, as resistance to their implementation emains high among authorities and prison staff. HIV, hepatitis C, and tuberculosis treatment are also often less available in prison environments.

Prisons are high-risk environments for communicable diseases such as HIV, hepatitis C, and tuberculosis. Tuber-culosis is one of the fastest-growing epidemics among prison populations and one of the main causes of death, particularly in low- and middle-income countries. Incarce-ration rates and tuberculosis incidence in the general popu-lation have been found to be directly correlated. Prisons, drug use, and HIV are all independent risk factors for the development

of tuberculosis and amplify each other into synergistic comorbid phenomena.

A further problem is the continuity of treatment and care, both for people who were receiving treatment when entering prison – including for HIV, tuberculosis and other infectious diseases, and drug dependence – and for those requiring care when they leave.

These issues are compounded in countries that detain people for drug-related offenses without registering or charging them, or bringing them promptly before a judge. Some even use compulsory drug detention centers, where individuals who use (or who may only be suspected of using) drugs are confined against their will with the objective of constraining them to abandon drug use. Sources estimate that over 600,000 people are detained in these centers in at least 15 states. Neither detention nor forced labor have been recognized by science as treatments for drug use disorders. Relapse rates for people released from compulsory drug detention centers are very high, and higher than for those who undergo voluntary treatment. Drug treatment should not involve the criminal justice system.

Recommendations

To address the "perfect storm" of prison overcrowding and inadequate health care for a vulnerable group of people who use drugs deprived of their liberty, the Global Commission on Drug Policy recommends that:

- States must end all penalties – both criminal and civil – for the possession and cultivation of drugs for personal consumption.
- States must end disproportionate sentencing and punishment for drug-related offenses, and recognize that over-incarceration impacts negatively on public health and social cohesion.
- States must ensure primary health care is available and the right to health is applicable to all people on a non-discriminatory basis, including people detained against their will.
- Practices that violate human rights of people deprived of liberty must be forbidden, their perpetrators brought to justice, and compensation awarded to victims as provided for in human rights law.

FACTS AND FIGURES

DRUG-RELATED INCARCERATION, SELECTED COUNTRIES

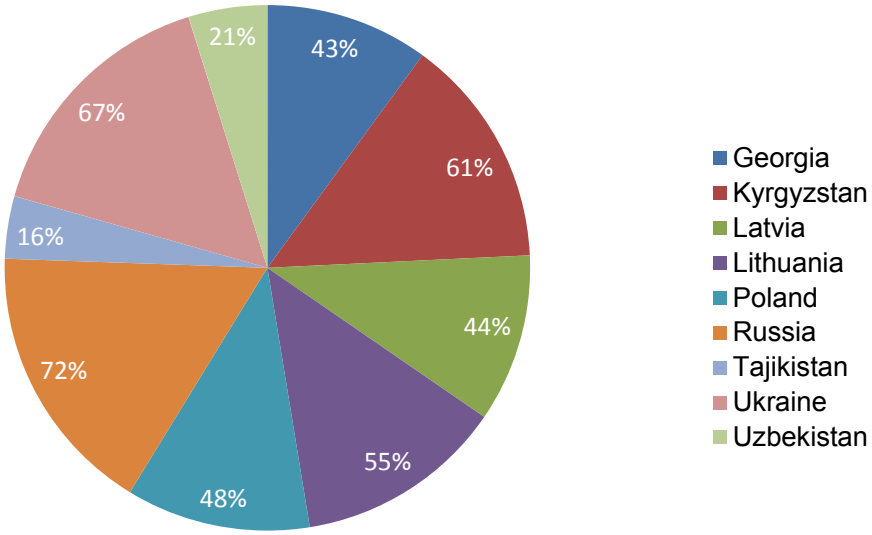
Percentage of prision population whose main offense is a drug offense

EUROPE[16]	
Bulgaria	6.2
Croatia	22.4
Denmark	22.1
France	13.9
Germany	14.1
Iceland	21.4
Ireland	19.6
Italy	38.8
Latvia	14.3
Netherlands	14
Portugal	20.6
Romania	4.2
Russia	–
Spain	25.8
Sweden	20.6
Ukraine	14.9

AMERICAS[17]	
Argentina Federal	33 Federal
Bolivia	45
Brazil	19.2
Canada	16.2 (15.7m, 26.3f)
Colombia	17
Ecuador	34
Peru	23.8
Trinidad and Tobago	35
USA states	16.8 (16.2m, 25.1f)
USA Federal	49
AFRICA[18]	
South Africa	2.9
ASIA-PACIFIC[19]	
Australia	12
Indonesia	–
New Zealand	10
Thailand	65 (82f)

Source: Penal Reform International, *Global Prison Trends 2015 (Special Focus: Drugs and Imprisonment)*

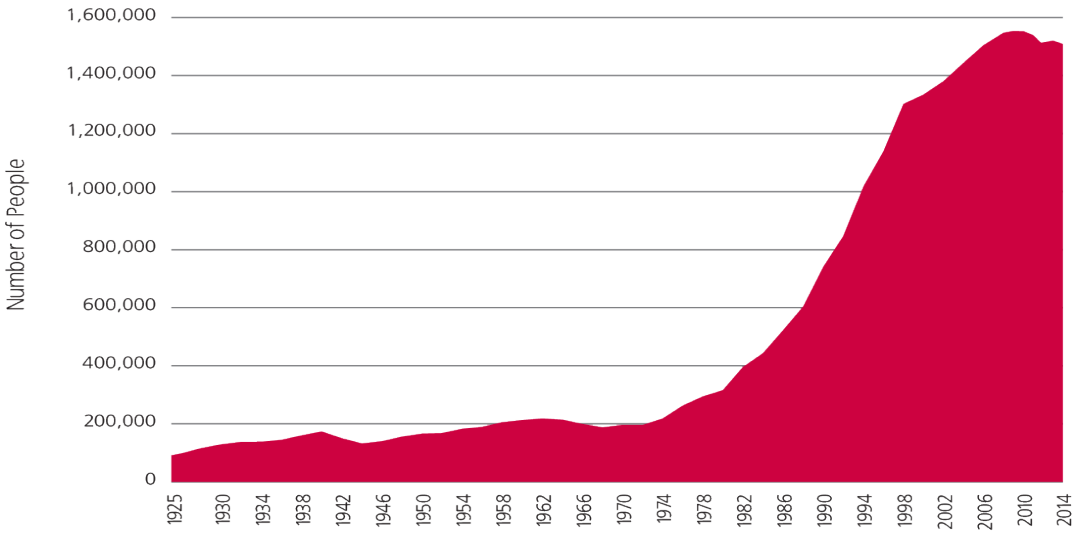
% OF PEOPLE CONVICTED FOR/OR CASES RELATED TO POSSESSION WITHOUT INTENT TO SUPPLY, CENTRAL AND EASTERN EUROPE



Source: Eurasian Harm Reduction Network (EHRN), Sergey Votyagov, 2014

U.S. STATE AND FEDERAL PRISON POPULATION, 1925-2014

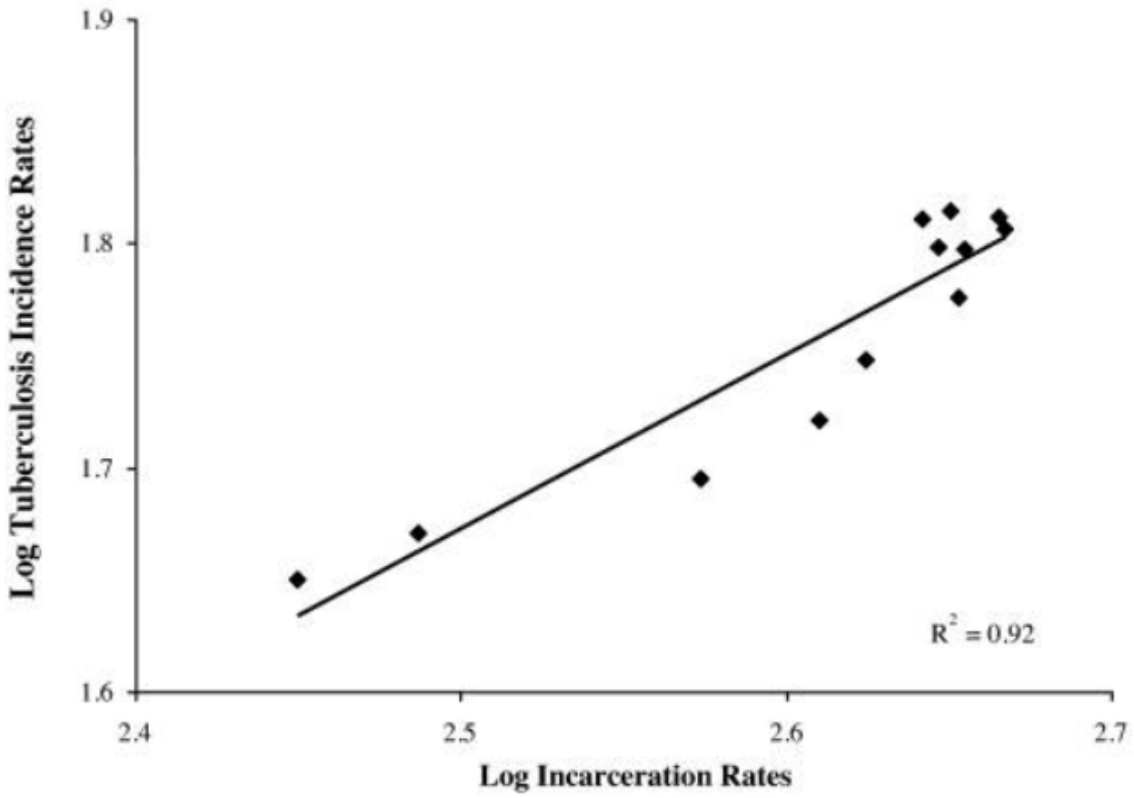
Prison overcrowding due to repressive drug policies



In the 1980s, while the number of arrests for all crimes rose by 28%, the number of arrests for drug offenses rose 126%

Source: Bureau of Justice Statistics *Prisoners Series*

INCARCERATION AND TUBERCULOSIS EPIDEMICS, EUROPE & C. ASIA: NET INCREASE IN INCARCERATION, 2/3 OF INCREASE IN TUBERCULOSIS



Relationships between average TB incidence and incarceration rates, 1991-2002. Incarceration rates are assessed by using sentancing data from UNICEF TransMonee Database, 2005 edition. TB incidence data are from the WHO Global Tuberculosis Database 2007.

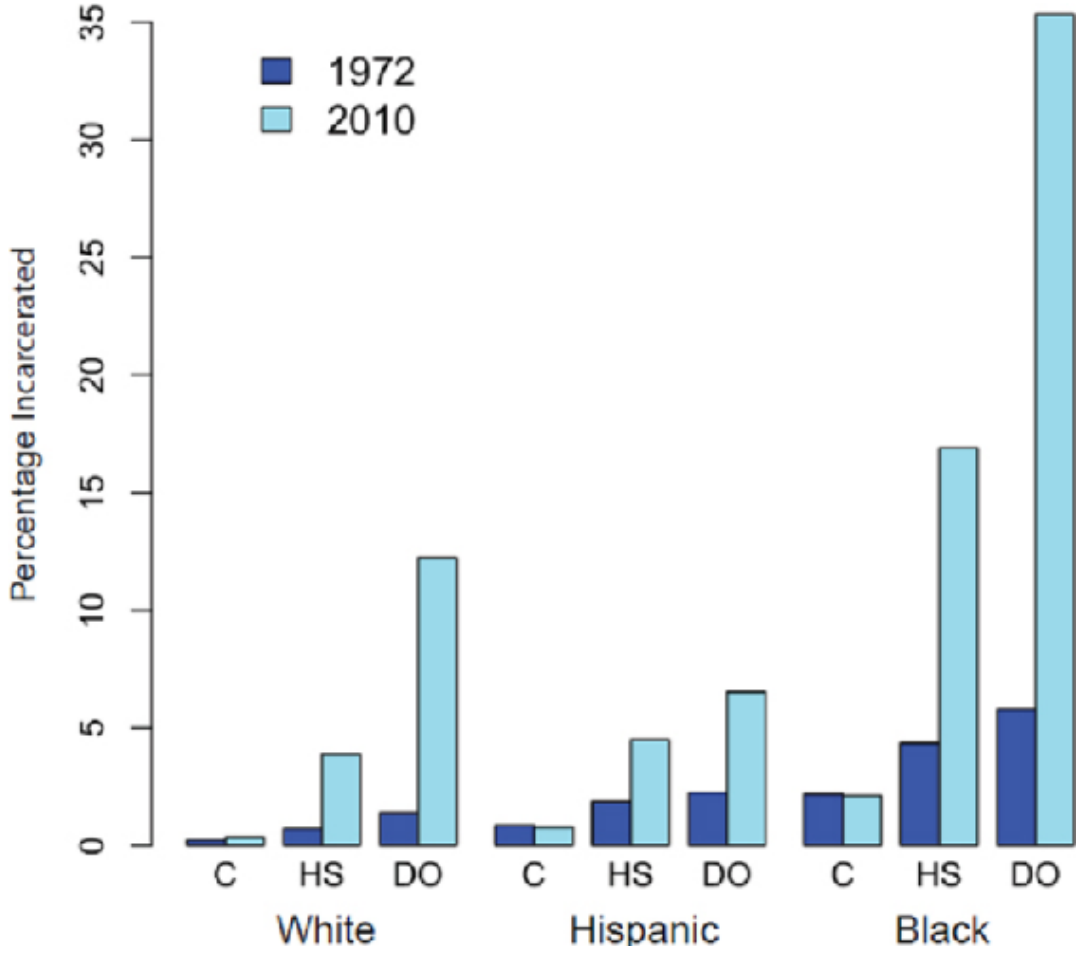
Source: *© 2008 by The National Academy of Sciences of the USA*

HIV PREVALENCE OFTEN HIGHER AMONG PRISONERS THAN IN THE GENERAL ADULT POPULATION IN MANY COUNTRIES

Sources (originally taken from UNAIDS, *The Gap Report 2014*):

1. South African national HIV prevalence, incidence and behaviour survey, 2012. Cape Town: Human Sciences Research Council; 2008.
2. HIV in correctional settings. Atlanta: Centers for Disease Control and Prevention; 2012.
3. World report 2011: Events of 2010. New York: Human Rights Watch; 2011.
4. Balakireva OM, Sudakova AV, Salabai NV, Kryvoruk AI. Analysis of HIV/AIDS response in penitentiary system of Ukraine. Summary report on the comprehensive study. Kyiv: Ukrainian Institute for Social Research after Olexander Yaremenko and United Nations Office on Drugs and Crime; 2012.

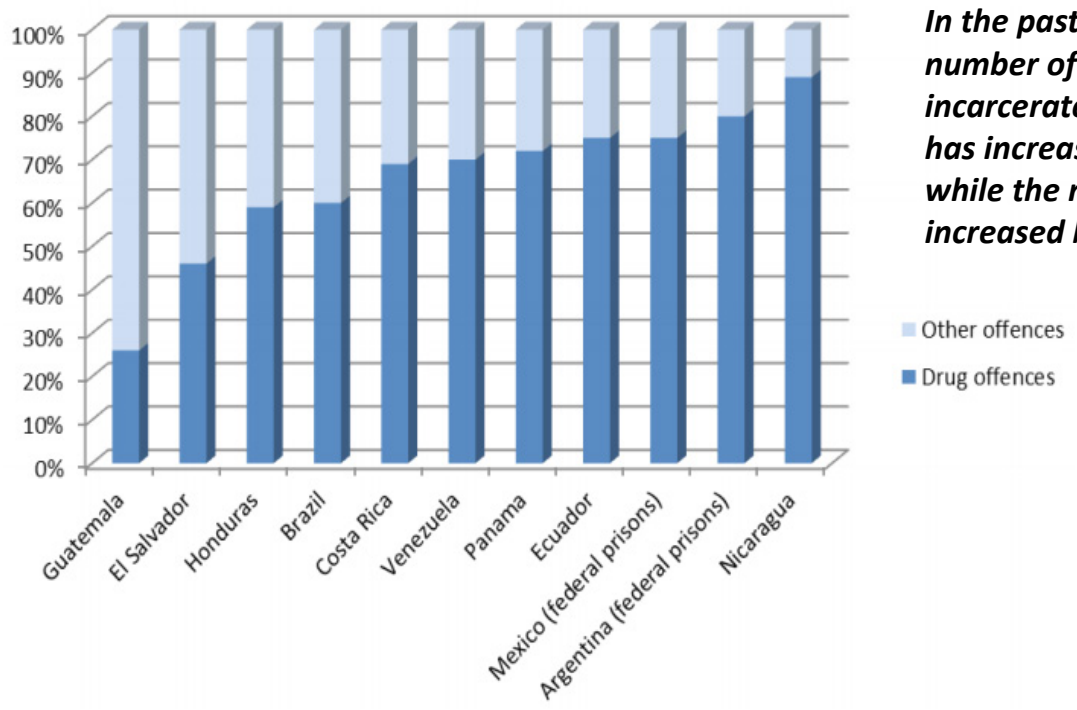
INCARCERATION BY RACE AND EDUCATION IN THE U.S.



Prison and jail incarceration rates for men aged 20-39 by education and race/ethnicity, 1972 and 2010.
NOTES: C = at least some college; HS= all noncollege men; DO = less than 12 years of completed schooling.

Source: *© 2019 National Academy of Sciences*

% OF WOMEN PRISONERS INCARCERATED FOR DRUG OFFENSES: LATIN AMERICA



In the past 15 years the number of women incarcerated worldwide has increased by 50%, while the number of men increased by 20%

THE GLOBAL COMMISSION - MISSION AND HISTORY

In January 2011, a group of personalities from the Americas and Europe established the Global Commission on Drug Policy. Membership grew to encompass Commissioners from around the world. Fourteen former heads of State or Government, as well as other experienced and well-known leaders from the political, economic and cultural arenas, felt, and still feel, that they must advocate for drug policies based on scientific evidence, human rights, public health, and safety, for all segments of the population.

The Global Commission's first report, published in 2011, broke the taboo on the negative consequences of the so-called "war on drugs" and called for a paradigm shift: priority must be given to health and safety, allowing for measures that truly help people and communities. The three reports published in 2012, 2013 and 2015 explored in greater depth how the punitive approach to drugs and the criminalization of people who use drugs are responsible for the spreading of HIV/AIDS and hepatitis C, as well as for the lack of access to palliative care, pain medication, and other controlled essential medicines.

In its 2014 report, Taking Control: Pathways to Drug Policies That Work, the Global Commission on Drug Policy presented five pathways for re- forming drug policies. These are: prioritizing public health; ensuring access to controlled medicines; decriminalizing personal use and possession; relying on alternatives to punishment for non-violent, low-level actors in illicit drug markets, and promoting longer-term socioeconomic development efforts to offer them a legitimate exit strategy; regulating the drug markets, and rolling back organized crime and its corruptive and violent influence. The pathways provide a roadmap for pragmatic policy changes, which will make the drug-related problems that the world faces today much more manageable.

Today, the consensus on which the international drug control regime was established more than fifty years ago is broken. A growing number of national or local authorities are moving away from a prohibitive attitude towards drugs and experimenting with different ways of managing their presence in society. These include ending the criminalization of people who use drugs, and implementing—albeit not enough—harm reduction interventions and a large spectrum of therapies tailored to meet the needs, the will and the potential of everyone (2016 report); base policies on evidence not ideology and counter the prejudices about drugs and the people who use them (2017 report); and ultimately the legal regulation of various substances (2018 report). Crucially, the discussion is based on evidence, and innovations are spreading across the Americas, Africa, Europe, Asia and the Pacific. This fundamental and truly global shift is hugely welcome. What we are witnessing is drug policy reform in action.

Ruth Dreifuss
Former President and Minister of Home Affairs of Switzerland
Chair of the Global Commission on Drug Policy

Fernando Henrique Cardoso
Former President of Brazil
Past Chair of the Global Commission on Drug Policy (2011-2016)