

Global voice: Criminal justice

Submitted by Andrea Huber, CSTF Representative Global voice: Criminal Justice

As the criminal justice and penal policies group only gained a convenor relatively late (second half of 2015), the consultation was shorter and smaller than many others. The primary activity was an in-person meeting held in Geneva, Switzerland on 28 September 2015, on the occasion of the UN Human Rights Council ‘Panel discussion on the impact of the world drug problem on the enjoyment of human rights’. Input was made by: Amnesty International, Human Rights Watch, CELS (Argentina), Humanas (Chile), Help not Harm Ireland (Ireland), PBPD, Universal Rights Group, The Transnational Institute, Interpeace, Quaker UN Office, International Drug Policy Consortium, Penal Reform International, Protection of Rights without Borders, Fair Trials International and Defence for Children International.

Best practices (non-exhaustive list)

- ✓ Increased use should be made of non-custodial measures and sanctions, in particular for minor, non-violent offences, in line with the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), and be gender-sensitive, in line with the UN Bangkok Rules.
- ✓ Defendants need access to legal representation, and legal aid in line with Principle 3 of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.
- ✓ On the issue of ‘children and drugs’, differentiating between measures to prevent children from using drugs, measures to care for children who do use drugs, and measures in the best interest of children whose parents use drugs.

Main challenges (non-exhaustive list)

- Even where drug use is decriminalised, it may still prompt administrative sanctions that are equally punitive, while lacking access to safeguards of due process.
- The punitive approach to drugs has contributed to an erosion of due process, with drug offences being dealt with under different procedural rules that undermine the rule of law. These include reversal of the burden of proof for drug-related offences, restrictions on access to case material and evidence in criminal procedures involving drug-related offences, and concerns around plea bargaining and pressure on defendants to plead guilty through threat of a severe sentence.
- Criminalisation scares drug dependent people away from community-based health services, and disproportionately targets marginalised communities who play a minor role in the drug trade.
- The ‘war on drugs’ is a major contributing factor to prison overcrowding, and causes congestion of criminal justice systems overall, resulting in a number of violations of human rights, including the right to liberty and due process.

Action-orientated recommendations for the UNGASS roundtables:

Drugs and Health

- ✓ There should be access to drug dependency treatment and opioid substitution therapy (OST) in detention, including prisons.
- ✓ There should be informed consent for any treatment and a prohibition of non-consensual drug dependency treatment under international law.
- ✓ Drug use and possession should be decriminalised; criminalisation has the effect of

scaring people away from accessing health-care as well as measures that would prevent infection.

✓ Where drug use is decriminalised, it should not be replaced by administrative sanctions that are equally punitive, while lacking access to safeguards of due process.

Drugs and Crime

✓ The militarisation of law enforcement under the ‘war on drugs’ is a disproportionate response and should cease.

✓ All criminal justice processes, including for drug-related offences, should strictly observe due process, including a prohibition of mandatory pre-trial detention and mandatory minimum sentences, and no overuse of pre-trial detention for drug-related offences.

✓ Use non-custodial measures to respond to drug-related offending, in order to reduce prison overcrowding and overburdening of criminal justice systems.

✓ Sentencing for drug-related offences should be fair and proportionate, being individualised, taking into account the type of drug, the amount as well as the role played in the drug trade as well as other mitigating or aggravating factors.

✓ Increased use should be made of non-custodial measures and sanctions, in particular for minor, non-violent offences, in line with the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), and be gender-sensitive, in line with the UN Bangkok Rules.

✓ The death penalty should be prohibited for drug-related offences.

✓ Defendants need access to legal representation and legal aid in line with Principle 3 of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.

Cross-cutting issues: drugs and human rights, youth, women, children and communities

✓ The death penalty should be prohibited for drug-related offences.

✓ Proportionality of sentences is and should be considered a human rights issue.

✓ Due attention should be paid to the complexity of the issue of ‘children and drugs’, differentiating between measures to prevent children from using drugs, measures to care for children who do use drugs, and measures in the best interest of children whose parents use drugs.

✓ Punitive responses to drugs are an obstacle to the effective implementation of the UN Convention on the Rights of the Child; the promotion of non-custodial measures should prevail in particular for children. Mandatory pre-trial detention and mandatory minimum sentences prevent the consideration of the best interest of the child as required by the Convention, both if they themselves or a parent is investigated or prosecuted on a drug-related offence.

✓ States need to address the gender disparities in the ‘war on drugs’ and ensure that women prisoners have access to drug dependency treatment and harm reduction programmes at an equal level as male prisoners and in a gender-sensitive way.

✓ Disproportionate responses such as imprisonment and aerial spraying and forced eradication campaigns, targeting rural and marginalised communities, should be prohibited.

Cross-cutting issues: new challenges, threats and realities in preventing and addressing the world drug problem

✓ Other criteria than the number of arrests must be established for measuring the effectiveness of drug policies.