

# Arbitrary detention and the criminalisation of people who use drugs in Africa: Report of the virtual expert meeting held on 29th September 2021

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The virtual expert meeting on arbitrary detention and the criminalisation of people who use drugs in Africa was held on 29<sup>th</sup> September 2021, and brought together representatives from the [African Commission on Human and Peoples' Rights](#) (ACHPR), the UN [Working Group on Arbitrary Detention](#) (WGAD), the [Office of the UN High Commissioner for Human Rights](#) (OHCHR), [UNAIDS](#), members of African governments and regional organisations, African human rights experts, drug advocates, and people who use drugs from across the African region. It was co-hosted by the [International Drug Policy Consortium](#) (IDPC) and the [African Policing Civilian Oversight Forum](#) (APCOF).

The main theme of the expert meeting was the link between arbitrary detention and the criminalisation of people who use drugs in the region, and discussions were centred on the ground-breaking WGAD study on '[Arbitrary detention relating to drug policies](#)' issued in June 2021. The WGAD study comes with a list of recommendations on how to align drug policies with the absolute prohibition of arbitrary detention under international law. This study reinforces a global consensus in favour of decriminalisation as a policy that protects and promotes health and human rights, which was also presented by representatives of UNAIDS and OHCHR. Regional civil society organisations (CSOs), advocates and people who use drugs also talked about the impact of criminalisation on

people who use drugs, and presented experiences of decriminalisation in the region.

## Welcome and opening remarks

The welcome address was delivered by **Ms Maria-Goretti Loglo**, IDPC Consultant for the African region. She gave an overview of the situation with regards to the criminalisation of people who use drugs in Africa, recalling that the number of people who use drugs on the continent is projected to rise by 40% by 2030. While at global level 30 countries have adopted some form of decriminalisation, the criminalisation of people who use drugs remains widespread across the continent, including some in Africa where policy changes are on the table. She highlighted some documentation on the subject, namely the [UN Common Position on Drugs](#), as well as the recent WGAD study pertaining to drugs, both recommending the decriminalisation of drugs for personal use.

**Hon. Maria Teresa Manuela, ACHPR Commissioner & Special Rapporteur on Prisons, Conditions of Detentions and Policing in Africa** then delivered opening remarks, highlighting the link between arbitrary arrests of people who use drugs and the arrest of people who are poor, as a high number of people who use drugs that come into contact with criminal justice also experience poverty, or other forms of marginalisation and discrimination. The Commissioner welcomed the WGAD Report, which she stated is in line with the [Principles on the Decriminalisation of Petty](#)

[Offences in Africa](#) released in 2017 by the ACHPR  
– a critical document calling for the  
decriminalisation of a number of minor offences.

As the Commissioner explained, prisons all over Africa are overpopulated, and this has a negative impact on the prison conditions of people deprived of liberty, including on food, health services, etc, while appropriate prison conditions are States' responsibility. These negative impacts could be avoided if policies and practices around arbitrary detention and criminalisation of petty crimes were reformed. As such, as Africans, "we need to look at people who use drugs' behaviour, status, and not merely look at them as a threat and discriminate against them if we want a better Africa to live in".

### **Box 1. Recommending decriminalisation: Commissioner Manuela's Inter-Session Activity Report at the 69<sup>th</sup> Ordinary Session of ACHPR**

At the 69th Ordinary Session of the African Commission Human and Peoples' Rights held in from 15th November to 5th December 2021, Hon. Commissioner Maria Teresa Manuela presented her Inter-Session Activity Report, in which she noted her attendance to the expert meeting on decriminalisation in Africa, and she offered the following recommendation to Member States in para. 31(xi):

*'Work towards initiating legislative review that would allow for the decriminalisation of petty offenses, which typically amount to the incrimination of poverty, including that of soft drug use'.*

## **SESSION 1: Introducing the WGAD study on drug policies and arbitrary detention**

**Dr Elina Steinerte, Chair-Rapporteur of the UN Working Group on Arbitrary Detention**, presented the new WGAD [study on arbitrary detention and drug policies](#), which was published in July 2021 at the [request](#) of the UN Human Rights Council (HRC).

The study highlights the fact that arbitrary detention connected to drug policies is prevalent in many States despite its historical ineffectiveness in reducing drug demand and supply. The so called 'war on drugs' has fuelled incarceration, and led to widespread human rights abuses and a waste of public resources, while nurturing a culture of corruption within law enforcement agencies, particularly regarding money being paid to avoid arrest, or to affect outcomes of judicial proceedings. The report thus identified numerous human rights violations with regards to policies and practices pertaining to the 'war on drugs', including amongst many others: the practice of interrogating suspects under the influence and subjecting persons to testing without their consent; the overuse of detention lasting sometimes months or years, and physical and psychological violence to detainees, including withholding of opioid agonist therapy from suspects; the overincarceration of people who use drugs, including through disproportionate sentences for drug-related offences with occasional bans on parole, and mandatory minimum sentences; the use of the death penalty for drug-related offences; the misuse of drug control to target human rights defenders, journalists and political opponents; the targeting of vulnerable and marginalised groups by law enforcement; the criminalisation of indigenous peoples and small-scale farmers cultivating illicit crops for religious, medicinal and customary purposes or subsistence; and the confinement of people who use drugs in state-run or private compulsory drug treatment centres.

The WGAD thus recommends, among other things, that States decriminalise drug use and possession for personal use and drug paraphernalia; that courts discontinue orders of forced drug treatment; and that drug treatment is always based on informed consent and left exclusively to health professionals.

Dr Steinerte concluded by stating that "liberty is the rule, and detention is an exception to that rule".

**Ms Emilie Christie, Senior Human Rights and Law Adviser, UNAIDS**, welcomed the WGAD report, stating that it was in line with UNAIDS and other UN partners recommendations. She highlighted 3 points of the report, namely that criminalisation of drug use and possession deters people from accessing services, including life-saving health and harm reduction services; that intersecting forms of discrimination mean that marginalised populations are disproportionately impacted by drug policies, especially women; and finally, that drug use and possession should be decriminalised. She stressed the importance of decriminalisation in view of ending AIDS by 2030. As we will not put an end to AIDS without drug policy reform, the [UNAIDS 2025 AIDS Targets](#) are now focusing on decriminalisation and on reducing inequalities, and include **societal enabler targets**. She concluded by stating that UNAIDS will be working with governments and CSOs with the objective of seeing law reform, increase in harm reduction and changes in law enforcement practices towards people who use drugs.

**Mr Zaved Mahmood, Advisor on Human Rights and Drug Policy, OHCHR**, reminded all attending experts that the 2018 [UN Common Position on Drugs](#), which is supported by every UN entity, promotes the decriminalisation of drug use and possession for personal use. He also recalled that another document from April 2021, the [UN Common Position on Incarceration](#) also goes in the same direction, stating that commitment to promote decriminalisation is firmly based on existing human rights principles, jurisprudence, and evidence. As such, various special procedures mandate holders are supporting the WGAD recommendations. He concluded with a [short video](#) by OHCHR on the impact of criminalisation on the rights of people who use drugs.

## SESSION 2:

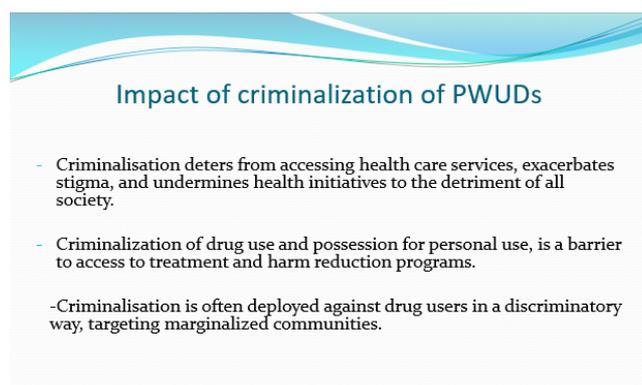
### The impact of criminalization on people who use drugs in Africa

The second session brought a human perspective to the debate, highlighting the impact of

criminalisation on the lives of people who use drugs.

**Mr Richard Nininahazwe, Programme Coordinator, African Network of People who Use Drugs (AfricaNPUD)**, gave some perspectives on data regarding the increase in drug use and seizures in the region, namely that people who use opioids in Africa nearly tripled from 2016 to 2017, and that the amount of heroin seized in 2017 tripled compared to 2013. He also testified on the realities faced by people who use drugs across Africa due to criminalisation. Criminalisation deters people from accessing health care services, exacerbates stigma, and undermines health initiatives to the detriment of all society. It is also a barrier in accessing treatment and harm reduction programmes, and is often deployed against people who use drugs in a discriminatory way, targeting marginalised communities. He concluded that the only way out was through the decriminalisation of drug use and possession.

Likewise, **Ms Happy Assan, Executive Director, Real Activist Community Tanzania (REACT)**, talked about drug policies in Tanzania, and their impact on people who use drugs. She stressed that a new bill under consideration by the Tanzania legislative would criminalise drugs and



people who use drugs even more, leading to more incarceration. The current situation in Tanzania is causing concern that harm reduction services will be discontinued, as there is no political will to invest in or support harm reduction services or key populations. As more criminalisation of drugs will lead to a higher number of people who use drugs being incarcerated, the lack of legal support for people who use drugs and are deprived of liberty is a serious issue. Ms Assan also talked

about the health issues faced by people who use drugs in prison, as they are more vulnerable to TB and HIV, while no harm reduction interventions are available in prison settings. She concluded by stressing the need for organisations of people who use drugs to be funded by donors, so as to be able to support their community with legal and other types of support.

**Ms Angela McBride, Executive Director, South African Network of People who use Drugs (SANPUD)** gave a powerful presentation about the impact of criminalisation on women who use drugs in South Africa. She explained how criminalisation perpetuates harm, targets women who face intersecting forms of vulnerability (including women living in poverty and sex workers, amongst others), fosters corruption, protects people who exploit or commit violence against women, increases pressure on health care systems, and destroys lives. Ms McBride stressed the fact that there was a dire need to channel resources towards a harm reduction approach, instead of focusing on abstinence. She concluded: “Harm Reduction saves lives, criminalisation harms lives”.

**Mr Kunal Naik, Harm Reduction Policy Advisor, Developpement, Rassemblement, Information et Prévention (DRIP) Mauritius**, explained the impact of criminalisation on people who use drugs with a Mauritian perspective. He started by sharing some thoughts concerning data on drug use and incarceration in Mauritius, namely that out of all people arrested for drug offences, 89% were related to drug use and possession for personal use. He stressed the difficulties of integration/reintegration faced by people who use drugs when they leave prison, as it is very challenging to find a job with a criminal record in Mauritius. Moreover, as many people who use drugs come from poor communities, the cycle of poverty is reinforced with drug criminalisation. He concluded by highlighting the hypocrisy of having people who use drugs being heavily criminalised, while seeing a clear move from the authorities towards the legal regulation of medical cannabis and industrial hemp production.

## SESSION 3: African experiences of decriminalization

Session 3 focused on the growing number of initiatives to decriminalise drug use and possession for personal use in African countries.

Talking from the perspective of the [Model Drug Law for West Africa](#) (MDL), **Mr Adeolu Ogunrombi Adebisi from the West African Commission on Drugs** started by presenting this ground-breaking document published in 2018, and also referred the audience to the [Model Drug Law Explainer 1](#) and the [Model Drug Law Explainer 2](#) published in September 2021<sup>1</sup>. The Model Drug Law provides a template for harmonising national drug law reforms across West Africa and is based on the UN drug control conventions, reflecting commitments from the [2016 UNGASS on Drugs](#), the ECOWAS and the [African Union](#), as well as on best practices. The Model Drug Law is also a bold call on governments to treat drug use as a public health issue rather than a criminal one, and also includes provisions to decriminalise drug use and possession for personal use.

Nigeria’s drug policies and practices were presented as a case study. Mr Ogunrombi Adebisi highlighted that there has not been any legislative reform of drug policies, and therefore arrests of people who use drugs are still prevalent. However, well-informed judges are now using their discretion to dismiss cases related to minor drug offences. Judges using their discretionary powers can thus play an important role in decriminalisation, as minor drug offences are not considered an important issue by some judges. Mr Ogunrombi Adebisi concluded by saying that the advocacy work done by CSOs has to be persistent across time, as it is having a gradual impact on the conversation and actions regarding drug policy reform.

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<sup>1</sup> The Model Drug Law Explainers are accessible resources that seek to summarise the Model Drug Law, and to

provide guidance on how to use it for drug policy reform advocacy.

**Ms Charity Monareng, Parliamentary and Policy Research Officer, TB/HIV Care**, started by giving broad definitions to highlight the differences between decriminalisation and legal regulation, i.e. decriminalisation refers to situations where legislation removes all penalties for possession and personal use of all drugs but drug use continues to be an illegal activity, whereas legal regulation consists of the creation of a legal and state-regulated market for certain drugs – typically cannabis.

The cases of **Mauritius and South Africa** were used to showcase decriminalisation models. In Mauritius, a legal framework based on the [Portuguese model](#) has been validated by the Attorney General, and will be sent to the Cabinet. This would decriminalise possession of small amounts of drugs for personal use, and the Drug Offenders Administrative Panel would deal with minor drug offenders to divert them away from the judiciary system. With regards to cannabis, the Mauritian Government is also discussing the creation of legally regulated markets of medical cannabis, and has also recently approved trials of industrial hemp production.

In South Africa, private possession and use by adults of cannabis was decriminalised in 2018 following a Constitutional Court judgment, and decriminalisation is now applied while waiting for the draft *Cannabis for Private Purposes Bill* to be passed to create a decriminalisation model. However, this only relates to cannabis, and to its use in a private place. As such, some vulnerable populations such as homeless people are still targeted for search and arrest as they do not have a private space to use drugs. There are also concerns that the creation of a regulated industry of cannabis for non-medicinal purposes will negatively impact small scale farmers who rely on the cultivation of cannabis for their livelihood, if regulations do not include them in the process.

## Recommendations

Reflecting on the presentations and Q&A discussions held during the expert meeting, and the most recent publications on the subject, IDPC

and APCOF provide the following recommendations.

### Recommendations for African state actors and African regional/sub-regional stakeholders

- Regional bodies and authorities, including the African Commission on Human and Peoples' Rights, should explicitly endorse the decriminalisation of drug use and possession for personal use, and provide guidance to states on how to implement it in line with the African Charter on Human and Peoples' Rights and other international human rights principles.
- National authorities should promote, and where applicable adopt, initiatives to decriminalise drug use and drug possession for personal use of all drugs. These initiatives should also increase legal support and funding for harm reduction services.
- All actors should ensure that civil society and people who use drugs are adequately funded, and meaningfully involved in the design, drafting, implementation and evaluation of such initiatives.
- The following documents should be disseminated and included in the national/sub-regional/regional conversations and documents, as well as implemented on the ground:
  - Study on [arbitrary detention relating to drug policies](#), Working Group on Arbitrary Detention.
  - [Principles on the Decriminalisation of Petty Offences in Africa](#), African Commission on Human and Peoples' Rights (ACHPR).
  - [UN Common Position on Drugs](#), UN System Chief Executives Board for Coordination (CEB).

- [UN Common Position on Incarceration](#), UNODC, OHCHR & Department of Peace Operations (DPO).
- [Model Drug Law for West Africa](#) (MDL), West African Commission on Drugs.

### Recommendations/way forward for African civil society organisations

- Incorporate the decriminalisation of drug use and possession for personal use on reporting and advocacy concerning petty offences in Africa, particularly on issues relating to decriminalisation and access to alternatives to incarceration.<sup>2</sup>.
- Use, promote and share among CSO partners the following critical documents on drug law reform:
  - Study on [arbitrary detention relating to drug policies](#) Working Group on Arbitrary Detention.
  - The West African Commission on Drugs' [Model Drug Law, as well as](#) the Model Drug Law [Explainer 1](#) and [Explainer 2](#).
  - [UN Common Position on Drugs](#), UN System Chief Executives Board for Coordination (CEB).
  - The [African Union Plan of action on Drugs](#), which is the document where AU member States commit to Harm Reduction
- Ensure that efforts on documentation and advocacy concerning petty offences in Africa include the meaningful participation of people who use drugs and other communities affected by criminalisation.

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<sup>2</sup> Civil society advocates who are less familiar with decriminalisation implementation and advocacy can build their capacity by accessing IDPC's [e]-Course on Drug

Decriminalisation, available here: <https://idpc.healthfoundation.eu/>