POVERTY AND MARGINALISATION IN CRIMINAL JUSTICE SYSTEMS– THE PROBLEMS AND EFFECTIVE RESPONSES

TRÍONA LENIHAN, 1 DEC 2022
WEBINAR: CRIMINAL JUSTICE REFORM
Drivers of imprisonment are largely unaddressed

01. Punitive drug policies
02. Discrimination
03. Extreme sentences
04. COVID-19 aftermath
05. Underuse of alternatives

#GlobalPrisonTrends
PUNITIVE DRUG LAWS DRIVE IMPRISONMENT AND OVERCROWDING

HOMICIDE

7%

DRUG-RELATED

20%

(0.5 million)

OF THESE FOR POSSESSION FOR PERSONAL USE

20%
WOMEN ARE DISPROPORTIONATELY AFFECTED BY DRUG-RELATED OFFENCES

PROPORTION OF WOMEN IN PRISON FOR A DRUG OFFENCE:

- THAILAND: 82%
- COSTA RICA: 68%
- PERU: 55%
- PHILIPPINES: 53%

IMPACT OF POVERTY AND MARGINALISATION

When poverty and insufficient access to social, health and legal aid services for the disadvantaged are combined with policies aimed at being “tough on crime” and systemic forms of discrimination (e.g., based on race, ethnicity, sex or gender), the result is the overrepresentation of minority and marginalized groups among prisoners, many of whom are charged with petty and nonviolent offences. The time spent in prison is likely to aggravate unemployment, homelessness and poverty, thereby feeding a vicious cycle of deprivation and exclusion.”

United Nations System Common Position on Incarceration, April 2021
IMPACT OF POVERTY AND MARGINALISATION

• Laws in many countries around the world criminalise acts associated with poverty/homelessness, e.g.:
  • Loitering, begging, sleeping in public spaces, shoplifting, informal trading, inability to pay fines, etc.

• These laws disproportionately affect people who experience discrimination and social exclusion, e.g.:
  • Based on race, ethnicity, gender, socio-economic status, people who use drugs, members of the LGBTQ+ community, etc.

• This creates a two-tier justice system
MOVES TOWARDS REFORM:

- Civil society mobilisation
- National law reform
- Multilateral action
ACTION: CIVIL SOCIETY MOBILISATION

- Research to expose issues, raise awareness
- Advocacy for law reform (national, regional, international)
- Strategic litigation to challenge laws
ACTION: TOWARDS LAW REFORM

SUCCESSES

- **African Court on Human and Peoples’ Rights**
  - On 4 December 2020, issued a unanimous Advisory Opinion finding **vagrancy-related laws and by-laws are incompatible** with the African Charter, the African Charter on the Rights and Welfare of the Child and the Maputo Protocol on the Rights of Women

- **African Commission on Human and People’s Rights (ACHPR)**
  - **Principles for the Decriminalisation and Declassification of Petty Offences** (2017) which call on states to decriminalise laws criminalising conduct in broad, vague and ambiguous terms/ criminalise the status of a person or their appearance, in particular, laws that criminalise life-sustaining activities in public places.
ACTION:
TOWARDS LAW REFORM
SUCCESSES

• Litigation:
  • Malawi High Court Declares Mass Arrests (Sweeping Exercises) Unconstitutional
  • South Africa’s Constitutional Court rules children caught using cannabis will no longer be criminally prosecuted
  • Court case filed against Sierra Leone to overturn discriminatory loitering laws

• Decriminalisation of drug possession for personal use:
  • 50 jurisdictions in 30 countries (as of May 2022)
ACTION:
TOWARDS LAW REFORM SUCCESSES

- **Malawi**: the Southern African Litigation Center and the Center for Human Rights Education, Advise and Assistance released *research* highlighting that ‘rogue and vagabond’ and ‘idle and disorderly’ offences were being enforced in an arbitrary and discriminatory manner.
  - >> The findings led to an expert consultation with the Malawi Justice Department, Police Department and Judiciary which produced the *Directives for Prosecutors on the Prosecution of Minor Offences*.

- **Kenya**: in June 2017, the Chief Justice of Kenya gazetted the formation of a National Steering Committee to review the criminal justice system and specifically petty offences.
  - >> In May 2019 the *Director of Public Prosecutions (DPP) in Kenya* issued practice directions on handling the offence of touting.
ACTION:
MULTILATERAL MECHANISMS

• Increasing recognition from international bodies, e.g.:
  • UN Common Position on Incarceration
  • Action at UN Crime Commission
  • Human Rights Council mechanisms / Special procedures

• Increasing moves away from ‘war on drugs’ rhetoric
THANK YOU

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