



**ACCOUNTABILITY
INTERNATIONAL**

holding leaders accountable



2nd Inter-disciplinary and intersectional dialogue on un- policing identity, morality, sexuality and bodily autonomy

May 22nd-24th, 2019.

Cape Town, South Africa

This report is still in draft format. The inclusion of the names of the partners and advisors should in no way be considered as their endorsement of the contents of this report by any of these individuals or organisations. Any opinions, errors, omissions, recommendations are those of Accountability International alone.

Please send corrections, feedback and additions to the current CCG Project Manager , Phillipa Tucker at phillipa@accountability.international and copy our documentation expert Alexandra Ciobîcă at alexandra@accountability.international

Contents

ABBREVIATIONS.....	3
EXECUTIVE SUMMARY.....	4
BACKGROUND.....	5
ABOUT ACCOUNTABILITY INTERNATIONAL.....	5
ABOUT CCG PROJECT.....	5
ABOUT THE 2 ND ID MEETING.....	7
Day 1.....	8
OVERVIEW OF PROGRAMME.....	8
MODERATED PANEL DISCUSSION: COMMUNITY EXPERIENCES IN CHALLENGING CRIMINALISATION	8
PANEL DISCUSSION: ALTERNATIVES TO CRIMINALISATION – REDUCING THE HARM WITHIN THE CRIMINALISATION APPROACH BY USING RESTORATIVE JUSTICE ALTERNATIVES.....	11
OPEN DISCUSSION: THE ROLE OF THE JUDICIARY IN CHALLENGING CRIMINALISATION	15
PANEL AND GROUP DISCUSSION: CHALLENGING CRIMINALISATION IN EMERGENCY SETTINGS.....	17
Day 2.....	22
OVERVIEW OF PROGRAMME.....	22
TALK SHOW AND BREAKOUT SESSION: THE ROLE OF OTHER PARTNERS IN CHALLENGING CRIMINALISATION	22
POSTER PRESENTATIONS AND DISCUSSIONS	28
POSTER PRESENTATIONS AND DISCUSSIONS	32
DAY 3.....	35
OVERVIEW OF PROGRAMME.....	35
PANEL DISCUSSION: THE JURISTS PRINCIPLES.....	35
THEMATIC DISCUSSION & BREAKOUT SESSION	37
CLOSING REMARKS	45

ABBREVIATIONS

DRAFT REPORT

EXECUTIVE SUMMARY

Accountability International, in partnership with the International Commission of Jurists and Amnesty International held the 2nd Inter-disciplinary and Intersectional Dialogue (ID) in Cape Town on XXXXX. This meeting was aimed at mobilizing a critical movement of diverse stakeholders including activists, academics, policymakers, media practitioners, economists, development agencies, multilateral institutions and the private sector and 'unusual suspects' to advance a global discourse on how criminal provisions on identity, morality, sexuality and bodily integrity restrict the successful achievement of global commitments. The commitments targeted by this work are the global commitment to end the AIDS epidemic by 2030 and of the achievement of the Sustainable Development Goals (SDGs), with a particular focus on the Global South. Building on the first Intersectional Dialogue (ID) meeting in 2018, the 2nd ID meeting aimed to further advance the current conversations and the existing collective efforts focused on creating spaces for civil society to engage with several issues regarding the multi-facets and consequences of criminalization, while creating a space for networking with potential new allies in order to build on a collective analysis and advocacy capacity. Similarly, to the first ID meeting, this global gathering brought together a diverse mass of stakeholders whom engaged and discussed in-dept the underlying causes of expanding criminalization. Likewise, beyond the possibility of engaging with new partners, the meeting created an opportunity to discuss and to rethink collective possible scenarios and their implications. **The overall purpose of the ID meeting was to stimulate an interdisciplinary and intersectional dialogue on un-policing identity, morality, sexuality and bodily autonomy, drawing upon global experts and activists in the Global South and the Global North.**

The two-and-a-half-day dialogue was structured around four panel discussions, one open discussion, one group discussion, one talk show, two multi-poster presentation sessions and discussions, one thematic discussion and report back session which have facilitated cross-issue and regional conversations and understandings, bringing together **36 participants**.

The four major interconnected themes arising from the second ID meeting are: 1) the multiple and intersecting underlying cause of criminalization; 2) community-led actions are key; 3) the importance of context-specific approaches and strategies in challenging criminalization and in relation to alternatives to criminalization; 4) crucial role of identifying and understanding the role of all the stakeholders involved, including of partners and allies, new potential partners, funding partners, 'unusual suspects' and of the 'opposing forces'.

The first day of the ID meeting was structured around three panel discussions, one open discussion and one group discussion focused to facilitate an in-depth understanding of what are the communities experience in challenging criminalisation, what are the alternatives to criminalisation, what is the role of judiciary in terms of challenging criminalisation. Additionally, the last session guided by a set of key questions aimed to unpack various experiences and strategies related to criminalisation in emergency settings.

The second day of the ID meeting was structured around one talk show and a breakout session, and two multi-poster presentations sessions followed by in-depth discussions. While the talk show focused on unpacking the role of other partners in challenging criminalisation globally, the poster session aimed at sharing research and evidence while stimulated dialogue around possible next steps of action.

The third day of the ID meeting has been entirely focused on the development behind and the process of elaborating a set of principles aimed to address the detrimental impact on health, equality and human rights of criminalization with a focus on select conduct in the areas of sexuality, reproduction, drug use and HIV. While the panel discussion focused on the background of the principles, the thematic discussion aimed to stimulate in-depth conversations aimed to contribute to process model.

Over the course of the two and half days, participants engaged in a dialogue that provide an opportunity to share evidence-based research that can be further used for advocacy, conduct a stakeholder's mapping analysis and identify and explore alternatives to criminalisation and strategies for going forward.

BACKGROUND

ABOUT ACCOUNTABILITY INTERNATIONAL

Accountability International is an African-led civil society organisation that works to improve accountability to the most marginalised. From our head office in South Africa, we conduct research and advocacy that allows us to do our work as a watchdog and hold various leaders accountable.

We conceptualise and implement innovatively designed projects that are led by our collaboration with marginalised communities. We put huge emphasis on needs-based research and community-led advocacy. We have developed more than a dozen scorecards since we began in 2005, all as a means to contribute to the demand for accountability from all leaders, whether at global, regional, national or community level.

We provide technical advice in many spaces, and yet remain committed to ensuring that our spaces, communications and products are all highly accessible to all people.

We play a watchdog role and work to enhance the capacity of other civil society actors to also take up their role as watchdogs, for sustainable, resilient and inclusive human rights for all.

We use the Participatory Action Research (PAR) model, a best practice in which communities co- develop and lead the methodology, development of research tools, conduct the research and produce the final analysis & context-specific and advocacy-focused reports.

Partnerships are a fundamental element in our work. Over the years, we have developed excellent partnerships with hundreds of organisations, from major implementing partners to community-based organisations with national or local bases.

ABOUT CCG PROJECT

In 2016, Accountability International began a new initiative, Challenging Criminalization Globally (CCG), to accelerate the work that was being done on the issue, and ultimately to eliminate the human rights abuses of marginalized people. This work was born in the global South and, as with all our work, the voices of the affected community are considered pivotal to success.

The **CCG Project objectives** are:

Objective 1: Mobilise a critical mass of stakeholders to advance a global discourse and increase space for civil society to advocate on the impact of penal provisions on the achievement of the end of the AIDS epidemic and the achievement of the SDGs.

Objective 2: Support communities and activists in Africa, Asia, Latin America, and the Caribbean taking actions to challenge criminal provisions on identity, morality, sexuality and bodily autonomy.

Objective 3: Provide platforms for evidence-based engagement and dialogue between government representatives, policymakers and civil society organisations using regional inter-governmental mechanisms

This initiative responds, in particular, to the global clampdown on people who are perceived to be “criminal”. States, often driven by pressure from society, religious groups, police, and the judicial services, are morally policing, all forms of oppression and intimidation civilians, activists and organisations that challenge accepted social norms through their behavior, beliefs, expression, and/or identity. This discrimination takes the form of harassment, coercion, detention (without trial in many cases), illegal arrests, physical and sexual abuse and even murder. The consequence of repressive and discriminatory state action, as well as state-sponsored human rights violations, is multi-faceted: impacting on individuals and society as a whole manifesting in the closure of space for civil society to freely work and express their demands and hold governments accountable.

This project focuses on contesting and mobilizing against laws, policies and practices that penalize identity, morality, sexuality, and bodily autonomy, and sexual and reproductive health and rights. Examples include criminalisation of consensual same-sex conduct, expressions of trans diverse or transgender identities, access to safe and legal abortions, sex work, sex outside marriage, sex before marriage, close-in-age sex among adolescents, possession of pornographic materials, possession of drugs for personal use, sodomy, and non-disclosure, exposure and unintentional transmission of HIV.

This misuse or overreach of the criminal law affects the least powerful and most marginalized amongst us. Women, LGBT people, people of colour, the under or unemployed, those in rural areas, people with less formal education, young people, people with fewer financial resources, and those living in societies with less equality are the most affected. We acknowledge that this is not a complete list and never can be, because criminalization is about comparative power, and it is those who have less who are criminalized by systems and structures designed to benefit those who have more, laws, policies and practices always work to the advantage of those with power and resources.

It is important to consider what alternatives exist to the current system which leads to high arrests and high incarceration rates, among other breaches of human rights and threats to wellbeing for people who are marginalised and who challenge heteronormativity.

Accountability International’s Challenging Criminalisation Globally project is grounded in the fact that neither the global commitment to end AIDS as an epidemic by 2030, nor the sustainable development goals (SDGs) will be achieved unless the misuse and over-reach of criminal law is addressed.

The 1st Inter-disciplinary and Intersectional Dialogue (ID) meeting held in the month of April 2018 at Yale University deepened the discourse and understanding of the different impacts of criminalization across diverse communities and groups. It also engendered invaluable discussions around how innovation is vital for success, highlighted linkages across issues and movements, and focused on the much-needed next steps of action to successfully

challenge criminalisation. The key themes arising from that meeting included: the importance of understanding the impact of human rights abuses on individuals and their organizing; the impact of the existing political context especially in the ways that criminal laws are increasingly seen as the appropriate response to social problems; the increased pushbacks against civil society programming for SRHR and litigation access; the significance of developing sustainable strategies to counter criminalization; and the key factor of collaboration amongst diverse stakeholders.

ABOUT THE 2ND ID MEETING

Accountability International hosted the 2nd Inter-disciplinary and Intersectional Dialogue (ID meeting) on un-policing identity, morality, sexuality, and bodily autonomy to add to the pool of on-going work aimed at challenging criminalisation globally. This meeting built on the 2018 ID Meeting and on the incredible diversity of work that is being done by hundreds of stakeholders globally.

The overall objective of the 2nd Inter-disciplinary and Intersectional Dialogue meeting was to advance the global movement to challenge criminalization and continue to mobilise a critical mass of diverse stakeholders including activists, academics, policymakers, media practitioners, data and tech experts, economists, development agencies, multilateral institutions and the private sector to evolve the global discourse on the impact of criminal provisions.

SPECIFIC OBJECTIVES

Given the above, the 2nd Inter-disciplinary and Intersectional Dialogue meeting had the following specific objectives:

1. Significantly broaden the range of stakeholders working to challenge criminalisation of non-hegemonic expression of identity, morality, sexuality and bodily autonomy to:
 - identify the underlying causes of ongoing or expanding criminalisation
 - develop and expand areas for potential collaboration, especially through bringing new players and “unusual suspects” like business, tech and data experts and the media into the movement.
2. Share research, evidence, strategies, best practices and successes from around the globe on challenging criminalisation.
3. Facilitate stakeholder discussions on the possible alternatives to criminalisation such as restorative and community justice systems and discuss effective advocacy approaches with law enforcement actors, including the police, administrative and prosecutorial authorities, judges and lawyers.
 - Identify and discuss strategies around the obstacles created by globally institutionalised criminalisation, including the role of the UN in challenging criminalisation
4. Discuss the link between criminalisation and the achievement of the targets of the 2030 Agenda for Sustainable Development and discuss the efficacy of various tools for engaging governments to better understand and act to address how criminal law impedes achieving the SDGs.
5. Conduct stakeholder mapping on various ongoing efforts to challenge criminalization, to develop a better understanding of current on-going work on criminalisation globally, including:

- identifying opportunities for collaboration.
 - Uncovering other existing platforms and processes that can be utilised in various spheres, and cross-movement/multi-sectoral work sharing.
6. Discuss the needs and opportunities presented around human rights crises, such as mass arrests, disappearances, and negative law reform and how various stakeholders can work together in such situations.

Day 1

OVERVIEW OF PROGRAMME

The first day of the ID meeting was structured around three panel discussions, one open discussion and one group discussion focused to facilitate an in-depth understanding of what are the communities experience in challenging criminalisation, what are the alternatives to criminalisation, what is the role of judiciary in terms of challenging criminalisation. Additionally, the last session guided by a set of key questions aimed to unpack various experiences and strategies related to criminalisation in emergency settings. As it follows, the report will segment the discussions for each session in the thematic areas that have been brought up.

MODERATED PANEL DISCUSSION: COMMUNITY EXPERIENCES IN CHALLENGING CRIMINALISATION

Objective: Discuss the links between criminalisation and the achievement of the targets of the 2030 Agenda for Sustainable Development through case studies of community experiences.

Moderator: Louise Carmody, Amnesty International

Presenters: Sai Jyothir Mai Racherla, ARROW [\[add link to pres\]](#); María Verónica Vera Sánchez, Vecinas Feministas por la Justicia Sexual y Reproductiva en América Latina [\[add link to pres\]](#);

DISCUSSION

The discussion highlighted several crucial issues and aspects regarding the structural causes of criminalization and its impact on various persons and communities, which are categorized in four thematic areas. As well, the conversation pointed out various crucial questions that must be considered in the strategies going forward.

SILENCING & AMBIGUITY OF LAW AND POLICY

The conversation under this thematic area acknowledged the existence of several contexts and instances where the laws and policies are ambiguous and/or silence people, which leads to negative consequences. This situation creates a chilling effect, and it is a cruel paradox around the criminal laws and their implementation, especially that they rarely protect people. Given that in the Global South, many laws are colonial laws, they are *de facto* used to target marginalized groups. For example, in South Africa many colonial laws are used to criminalize and target identity, morality, sexuality, and bodily autonomy. Another example is the recent process in Zimbabwe intended to reform the Public Health Act from 1984. The reform aimed to make significant changes which resulted in a mostly copy/pasted section that became a 2018 piece of legislation, which has negative consequences. For example, putting in place the legal age for accessing Sexual Reproductive Health (SRH) services as 18 years old, resulted in legal inconsistencies. Moreover, the reflection on the Sustainable Development Goals (SDGs) and the challenges with the Millennium Development Goals (MDGs) pointed out that they failed to prioritize human rights and did not address issues that affect marginalized communities. For example, it was noted that in Malawi, despite working on developing a strategy, the government highlighted that on all the progress, the SDGs underpinned by gender are lacking behind.

INTERROGATING THE AGE OF CONSENT / NEED FOR CLARITY: WITHIN & CROSS-MOVEMENTS

Firstly, in relation to child marriage and Sexual and Reproductive Health and Rights (SRHR) movements, the discussion showcased that when it comes to reviewing legislation on these issues, there is a lack of clarity around what is the aforementioned movements' position on challenging criminalisation. This situation raises concerns given the different messages from a variety of actors representing these movements, which questions how the right information is identified and advocated for with regard to child marriage and SRHR. For instance, one concern that was raised was whether there was a missed opportunity in Zimbabwe and Malawi regarding this aspect. Secondly, it was suggested that there is a need for appreciating the stress that 'we cannot stop criminalization', and that there is a need for more thinking and clarity within and between cross-movements, and how that can be pushed. Likewise, it was noted the importance to remember that decriminalization is not access to justice, to services and thus the need to remember that there is also a need to work with service providers, and other stakeholders. Moreover, the discussion emphasized the need to work with various actors such as social services and welfare, parliamentarians, etc. This would ensure that these actors clearly understand the problems faced by criminalised communities. Lastly, dealing with injustices must include community-level work. As such, it was emphasized that when it comes about offering alternatives such as not calling on punitive measure but restorative measures, it is crucial to work at community-level and change the expectations of the communities in terms of what it means, and how we can contribute.

THE POWER OF THE COUNTER-NARRATIVES AND THE MEDIA

The discussion about counter-narratives pointed out that underestimating the responses to efforts to decriminalization, tending not to know how they are organized and the lack of information at community level on various narratives makes it hard to counter the opposing forces to decriminalization efforts. Secondly, it was noted that there is a risk of overstating the impact of criminal law and overlook how is it addressed. Decriminalization sometimes might be misleading, especially in contexts in which the criminal laws do not work or are not applied. Therefore, it was noted that it is crucial to be aware that it is mostly bylaws or unrelated laws that are used to attack

or harass various persons, such as sex workers. Also, the role of the media and how they have been approached, and the way it plays out in the press and even how journalists understand these issues are essential. There is a need to re-think more strategically the role of the press and what has been the thinking in terms of implementing strategies around criminalization of abortion, LGBTI rights, criminalization of sex work, etc.

LAW, RELIGION AND SRH SERVICES

Challenging criminalization is very tricky especially in a context in which the Quran is quoted, as it is in the Islamic Republic of Pakistan, where the Constitution by default is Islamic. It was noted that there was success when it comes to life-education schools, but at what cost – remains questionable. For instance, it was noted that it is hard to control the narratives, and there is no sense of not moving forward. Moreover, the fear on behalf of the government and those implementing policies that people will be converted into gay males and lesbian women and that this is eventually forcing people to have more sex. This fear constructed around sex education is against the Quranic teachings and Islamic values. Sex education as part of school education is, for example, sending nude pictures – which makes them believe that they want to have sex together rather than only educating them. Additionally, it was noted that accessing information and SRH services are scarce and that at community level, people are scared to send their children to SRH services. Lastly, questioning community behavior when and how to get the right information – remains crucial. As such, using alternatives adapted to the context is important. As an example, it was mentioned that in Pakistan they use the term 'sexual minorities' rather than 'queer', 'LGBT', etc. given that the latter terminology is life-risk threatening.

CRITICAL LINKS, QUESTIONS, and WAYS FORWARD

First of all, it was iterated that when speaking to decriminalization to challenge criminalization the link between violence associated with discrimination must be kept in mind. There is a need to speak about how to challenge violence against women and girls and particularly trans women. How to challenge criminalization to speak about the violence component? How to speak to governments and to bigger global players that that always speak about discrimination?

Secondly, it was noted that the age of consent works against us when it comes to sexual assault issues, which requires cross-movement re-strategizing. There is a need for cross-movement and for various stakeholders to sit together and discuss the ways to address these issues to realize human rights. For instance, looking at sexual assault issues and the age of consent, someone can say that they consented, however given the laws and policies, it is considered statutory rape.

Thirdly, it was acknowledged that the inconsistencies between existing laws and complementary laws connecting such as civil, penal, etc. and their interplay are sometimes problematic given that a progressive point of view might be in the penal law, but then a regressive one exists in civil law. This issue raised the question of how these inconsistencies can be addressed, and how different policies and different laws can be mapped out. In order to have progressive laws, there is a need to address this issue holistically.

Further, it is highly important to think about the fact that decriminalization does not give one access to justice, SRHR, services, etc. and there is a need for the social decriminalization of these aspects. As such, it was noted that

the feminist social movement must work so that abortion is not only legal (i.e. *out of the penal code*) but legalized and accepted in people's socialization and thinking. Thus, there is a need to think about how the penal code affects the access to abortion (e.g.: *limitation to 20 weeks*). As well, we need to see all the laws that affect SRHR.

The link between the justice aspect, and the way in which the work with the media is done, points out to the importance of planning for advocacy. It was noted that despite various efforts to sensitize the media, there was no real progress towards policy change. When it comes about working through the legal system, the way in which one works across different systems such as Sharia law, pluralism, etc. is essential. There is a need to map out things in a systematic manner and plan for advocacy. Restorative justice needs to happen with evidence.

It is crucial to be cognizant of the role media plays and how it is linked with generating public opinion. There is a need to work with the media and with journalists to sensibilise them and show how they can cover the news and put titles. The way the media covers their news can help to shape public opinion. For example, it was mentioned that there has been a lot of work with the media in Ecuador where they have covered violence as a structural problem. This point is extremely important, and the media has a responsibility to show that these cases are not particular. Further, there are huge challenges with the media, and it is essential to continue working with them so that they use the correct terms. Women and girls are suffering violence and are experiencing discrimination, and all the stories of violence towards women and girls that seem particular are in fact not particular. These stories of violence towards women and girls are a structural problem, not an individual problem. As such, these need to be challenged as a structural problem, not only as individual problems. Criminalization is not the solution at all, and it does not make sense to solve a structural problem. Women are suffering violence because there is discrimination, and there is a need to link this.

Moreover, it was noted the need to talk about what justice means in our lives, and that there is need to content to what is restorative justice in our context and how do we make it work. Lastly, it was mentioned that the approach that has worked in Ecuador was listening to survivors and making them meet other families and they have highlighted that violence against women and girls is a collective problem and not individual problem. There is a need for a solution, and for conversations on what are the alternatives to criminalization given the cost of criminalization.

PANEL DISCUSSION: ALTERNATIVES TO CRIMINALISATION - REDUCING THE HARM WITHIN THE CRIMINALISATION APPROACH BY USING RESTORATIVE JUSTICE ALTERNATIVES

Objective: Discuss alternatives to criminalisation such as restorative and community justice systems and discuss effective advocacy approaches with law enforcement actors, including the police, administrative and prosecutorial authorities, judges and lawyers.

Moderator Ricky Nathanson, International Reference Group of Trans Women

Presenters: Fenya Fischler, The Association for Women's Rights in Development (AWID): *Harm reduction philosophy and practice from a feminist perspective, and as an alternative to criminalisation.* [\[add link to pres\]](#); Prof. Nick Crofts,

Law Enforcement and HIV Network: *The Role of Police in Challenging Criminalisation*. [\[add link to pres\]](#); Mari-Claire Price, RESURJ *Shortcomings of criminalisation of SRHR violations and evidence of alternatives* [\[add link to pres\]](#)

DISCUSSION

The discussion session focused on a) ways the Global South has been using legislative justice to cover the existing gaps and ways in which these actions can be brought together, b) on unpacking ways in which the model of presented by Prof. Crofts can be used in the SRHR and feminist discussions and whether the model of using the police to help the community can be adopted, and on c) how much are we advocating that criminalisation is actually harming the victims in another way by perpetuating the issues (e.g.: *hate speech*) and how would we introspectively speak about implementing restorative justice that will change the hearts of people.

FGM AND MINORITY-COMMUNITIES

It was noted that in the UK there was a conference looking at why the sexual minority from the black community does not report the crime. The ways on how these examples are taken and shared with the rest of the world require funding. Part of discussion, female genital mutilation (FGM) was identified as a serious problem, and it was noted that FGM-related desktop and empirical research are very limited. Given that FGM affects black and Asian communities, which are mainly minority communities raised the question of what was the impact of involving the community, and whether there has been thought how the children and sexual and gender minorities are safeguarded. Lastly, it was questioned how to safeguard children included in sexual minorities.

WORKING WITH THE POLICE

How can South Africa implement legislative justice and how do we engage with police officers? It was noted that there are misconceptions of gangs, and that the minister of police and police on the ground do not understand what harm reduction means. The police are the first point of contact for young people who use drugs, and the system increases the arrest rate in South Africa for people who use drugs, which were highlighted as problematic. As such it was noted the importance to start speaking about social development and unpacking strategies and approaches to get the police officers to understand harm reduction. Despite speaking about models that do not want to 'erase' people, the remaining question of where and how do we engage with law enforcement officers was highlighted. This requires several changes such as policy law reform, pieces of training, etc. It was articulated that while action at policy law is important, this will not solve the problem. It was highlighted that there is a need for a generational culture change in police. As an example, it was mentioned that despite the fact that Cannabis is now legal in Colorado, the remaining question is if that does change people's position and opinion. Given that, it was noted that it is important to acknowledge that this change is about past distinctions and changing minds. This indicated that it takes longer to have a generational change, and that proportions are changing. Likewise, peer education across boundaries and police training have been mentioned as playing a crucial role in terms of changing these perceptions. It is intriguing how creative the police can be and that they get awards for arrests and clearance, and the how a small possession is not a crime per se, but the way it is made publicly criminalizes it. Peer education is vitally important, especially because police listen to the police. As such, finding police champions is strategic, whereas doing police training is an important way to introduce harm reduction programs, which must start at the police academy. Likewise, there is a need for ongoing professional development. Moreover, staying in touch with most police reform movements across the globe and sharing lessons learned is fundamental (e.g.: *dividing people into groups for mental health*) especially because police have different approaches and they can revert people to them. Lastly, in terms of ways to bring and engage the police in these movements, an interesting example that was

given is that of a positive policing partnership that resulted in a collective report showcasing evidence from people's lived experiences. This approach involved a collaboration between CSOs, police offices, law enforcement offices, etc. in which they have collected statements and feedback by people on their lived experiences, and on wrongfully reporting and policing. There is a need for alternative ways and showing the police evidence from the people makes a real difference to changing their perceptions. Moreover, it is very important to think about innovative and alternative ways to engage with police.

VICTIM-PERPETRATOR, WOMEN'S AGENCY

One question raised during the discussion session was how the victim-perpetuation is seen as opposites in particular for sex workers and women who use drugs. It was suggested that this will never work as they are accused of using drugs, traffic, etc. Additionally, portraying women as victims might end up undermining women's agency. Thus, there is a need to watch out how people are framed in these ways. The way people are portrayed and perceived is very important, especially if one takes into account the link between the role of the police and the concept of protection given that some of the police feel that they are protecting when they are stopping sex work, making arrests, or removing children, etc. For instance, how children are removed shows how we infantilize women. Lastly, in relation to the idea of policing based on morality and how it is linked with criminalisation, it was suggested that even if we remove the law, the thinking remains the same.

DIVERSITY-REACTION LINK

In terms of reform, criminalisation of drug use, etc., it was noted that there have been some anti-gang shifts, which are a local trend compared to the global movement which are underpinning efforts where we have seen the most kind of movement with different police forces in terms of their willingness to buy into. It was pointed out that where the police and population majority are white, there is more movement to be progressive. However, the same movements have not been seen from places where black and other police officers of color look at the possibilities of problems and gender dynamics. Dynamic of possibilities of different police reform based on how they see the communities means increasing the diversity of the police and understanding whether this might change how the police react. That might not be enough.

WOMEN WHO USE DRUGS

It was noted that the war on drugs disproportionately affects women as evidenced by their fast-growing population across the globe, with statistics on women showing that 1 in 4 women in are incarcerated in the U.S., and that Native American women are incarcerated 6 times higher the rate than their white counterparts. As well, it was pointed out that there are many women who are arrested in Asia for drug use. This emphasized the need to understand what are the structural challenges in getting the feminist movements and drug policies changes in very repressive environments which are characterized by socio-economic challenges, especially for low middle-income groups.

LEGISLATION VS. ATTITUDINAL CHANGE

Further, it was mentioned that there is a struggle around the conception that legislation changes everything. The concept of legislation requires a fundamental attitudinal change and process change at the bottom before one gets to change laws. Laws are not fundamentally not working. There is an extent where thinking that criminalisation is the answer but in fact, there is a need to address issues at community level. As such, it was highlighted that context is very important, especially for Africa. For instance, interrogating how one can do FGM changes in Malawi, it was noted the importance of going to the communities and asking how to you address it. The raised the crucial point of understanding what are the fundamental challenges of culture, and how to go and explain to communities that they need to stop child marriages, and having meetings with kid wives and asking the community why are girls not getting educated but married. It is crucial to understand how this conversation can happen with the community.

As such, this must be seen in a context and talk to women and men on the ground. There is a need to bring women together and ask why the girls are not getting educated and why there is FGM. These discussions must be on the ground and these issues must be discussed in their language so that the communities affected understand these issues. There is a link between programme and culture and what is our message and how do we phrase it. Discussing ways on getting to the context on the ground is more significant than discussing policy and legislation.

BETTER EQUIPPED ALLIES

It is highly important to keep in mind not to replace one orthodoxy with another. As critics of criminalisation who are looking for alternatives, it is crucial to be aware that the alternative of restorative justice is not the final solution. As such, it is important to look at the communities to solve conflicts, and be aware that the communities are not necessarily democratic and are not without hierarchies. Therefore, it was pointed out the need to reflect on these aspects which must be taken into account especially in terms of looking for new solutions. Moreover, in any context it is important to think about how human rights are adopted, and how human rights are realized and enforced in any scenario. For example, thinking at the police and at the other justice people and the law, requires strategies about how the legal education systems can be changed, so that there are more and better equipped allies.

THE POWER OF COMMUNITY & CONTEXT

The FGM safeguarding and community-led initiatives, without the feminist movements that are focused on the criminalization, are crucial aspects that must be considered. For instance, social protection mechanisms are about empowering and understanding the capacities of children, however some are extremely protectionist. Especially when it comes about child protection or FGM, it was pointed out that there is a feeling that these mechanisms do not do enough. In the UK, organizations working on the FGM issue were given as a great example as there was a shift that led to a call on law, and now they focus on community led practices and initiatives. It was noted that the communities led the call for the law on FGM and led that within the community. This resulted in a shifted focus on youth led programs and community programs. Additionally, on the restorative justice aspect it was also pointed out that there are many gaps and the biggest problem is that is not investigative in any way and it requires a violation or a crime to happen to do that. Likewise, people do not see this as an alternative. Moreover, the criminal justice is more than just a response.

When it comes to racism, sexism and sexual and gender-based violence (SGBV) there is a need for change at social level and community level, and it must be acknowledged that prison does not end SGBV, but in fact it perpetuates it. As such, reducing SGBV and reducing structural issues needs change on various levels. Moreover, it was indicated that people can be perpetrators and victims. In the feminist movement there is a feeling that one does not need to be a victim and be saved, whereas the focus must center on people's agency and complexity. Moreover, the victim-perpetrator view is not accurate, as people can be both and everything in between, and thus in the feminist movement is this idea of being punished or rescued which is problematic, especially the focus on the good in people versus the structural analysis. Understanding these complexities, and their response is important. For instance, using feminist language in concepts and applying them to women who use drugs and work collaboratively raises the question of then these issues are being framed.

One of the challenges in building connections around feminist approached and drug policy is that because it impacted communities of women whom are already disenfranchised. This has worked in contexts in which women go back to their communities, and in trans movements. For instance, in the Northern-Eastern part of Brazil, women who use drugs or have been released from prison have used the language of probation which was successful (*i.e. feminist movement working with anti-prohibitionists*).

However, in Indonesia the police reform programmes did not think the approach was working and the real structural barrier identified was corruption. This brought up the question of how corruption can be removed. As an example, it was mentioned that the professionalization of employees could remove the opportunity for corruption. Likewise, police hierarchies have been identified as an issue. Lastly, an interesting example that was mentioned was about an Australian radio host whom spoke about children and the link between sexual abuse and junkies. This example shed light on the importance of taking 'context' into account. The point raised was that by thinking for a second at the context one can think and ask what if the child that was abused is now the junkie, which highlights the importance of understanding people's behaviors in a context. There is a systematic risk of increasing and policing the most vulnerable and the police do not understand what leads to that behavior and that sometimes the 'perpetrators and victims' are being two sides of the same coin. The police must understand what leads to criminality, and that adverse childhood experiences systematically influence one's behavior and that we cannot be thinking at challenging child sexual abuse and then berating drug users.

OPEN DISCUSSION: THE ROLE OF THE JUDICIARY IN CHALLENGING CRIMINALISATION

Objective: To understand opportunities for challenging criminalisation with the judiciary system through experiences and work of implementers.

Moderators: Susana Fried, CREA

Speakers: Judge Zion Ntuba, Judge Malawi: *Experiences from Malawi* [\[add link to pres\]](#); Kene Esom, United Nations Development Programme: *The role of the United Nations* [\[add link to pres\]](#); Tashwill Esterhuizen, Southern Africa Litigation Centre (SALC): *Preparing communities for litigation* [\[add link to pres\]](#); and Livio Zilli, International Commission of Jurists (ICJ): *Role of Jurists* [\[add link to pres\]](#)

DISCUSSION

The 1st part of the discussion focused on ways in which there can be stronger connections between the judiciary and CSOs, especially in contexts when they seem to be in conflict with each other, whereas the 2nd part focused on work around cases on drugs and possession of drugs.

CONNECTING THE JUDICIARY w/ CSOs

Firstly, it was noted that it is essential to bring different actors together. As such, it is important to ensure that whenever there are opportunities for judges and civil society to be together regarding all the issues such as discrimination, stigmatization, etc., a multi-stakeholder approach must be adopted. This approach might ensure that at regional level, the communities affected have a chance to sit together with the decision-makers. Secondly, it was noted that from a litigation point of view, it is important to engage them from the very first stage and ensure that there is community building and mobilization. The main idea highlighted is that it is essential that the civil society and the community owns the litigation. Further, it was iterated that any litigation should be community driven, and that the strategy should be coming from them. Equally important is to ensure that this comes up in court, especially considering that the contexts are very different. For example, in Botswana it is much easier to be visible than it is in Malawi. However, it is crucial to be aware that strategies are different and that even though at times, the aim is to have more visibility, there are occasions in which it is more strategic to opt for not being visible. These strategic decisions depends on the context and on the agenda, thus it is important that CSOs understand their role. Thirdly, it was noted that relying and enjoying the high presence of fellow judges in different countries has been very powerful and influential, especially when it comes about message delivery. Moving further, one of

the approaches mentioned in terms of language use was that it is often tried to avoid terms such as training. This is because various judges might be reluctant. Instead, it was pointed out that an alternative terms such as judicial colloquia, etc. are being used. This yield different reactions, however the engagement objective remains the same as the training offered to judges are very important.

Additionally, the discussion pointed out that there is a need for strategic partnerships, and that one cannot do work and talk about brining the courts close to communities without actually working with civil society. The grassroot civil society must be a part of it, and jurists must have partnerships with civil society. Further, on an individual basis, one must be open. It was highlighted that as a judicial officer a person can become immune to someone who is sitting in front of them, and this happens because these are people they deal with every day. Thus, one needs to look at the person as a specific person, and uphold the oath they took. It was argued that law enforcement officers are all bound to protect the Constitution, and that they must remember to uphold and protect fundamental human rights. Lastly, it is important to be aware that there are people who will not take on the law because sometimes there are issues where people's cases will not be taken up. For instance, family might be another reason; people will not bring a case because they want to protect their family.

CASES ON DRUGS AND POSSESSION OF DRUGS

This part of the discussion aimed to unpack the work being done around cases on drugs and possession of drugs, and whether the problems lies with the law enforcement officers and not with the society as a whole given that judges are those who send people to jail. This was also pointed out as a being related with a war on poverty.

Firstly, it was given the example of a case in Pakistan which was brought in the court through civil society working on trans diverse people's matters, which raised the question of what was meant by civil society. In clarifying that, it was noted that it should not be the NGOs who take up the case in court, as for instance, a judge may not take the case on if the merits will go the NGOs which might be seen as problematic. This example pointed out that the importance of working as non-NGO groups, and of going to court as individual activists as sometimes, the chances to make a change are increasing. The ways in which these approaches are adopted is highly important especially because how various aspects of a case are very contextualized. Secondly, it was noted that when people are encouraged to use litigation as one avenue, a major problem identified is not not taking time to think about the effects it will have on people advocating, and how then people's expectations are managed. This points out several ethical questions such as how much the care of activists is being taken into consideration. The context is very important, and in some countries, activists are very willing to come out. However, in cases where people do come out, it was noted that it is important to look at privacy orders as a way to protect activists. As an example, it was mentioned a case where an activist did not want his name in the media. This meant that the court has been asked to have a privacy order and that in the eventuality in which his name would have been mentioned, those using it will be in contempt of court. This further accentuated the fact that litigants must be protected, Moreover, it was pointed out that in this case, the court was more willing to step into the case because the person did not have a public identity and because the person will never be known. Further it was mentioned that litigation is difficult, and that there is only a limited support to activists. Likewise, other resources might be limited and there is a need to

decide who is going to do what and who will supplement where in terms of supporting activists. It was suggested that unless people are arrested, it is good to try to avoid litigation.

Moving to aspects related to drug use and passion of drugs, it was mentioned that there is a dilemma regarding judges breaking their oath vs. judges whom are applying the law. However, judges are duty bound to apply the law of the country. Therefore, sometimes judges are bound by having to apply the law (e.g. two men caught in the sodomy act). Even though the United Nations Office on Drug and Crime (UNODC) is pushing states to understand a human rights approach to drug control, judges have to apply the law of the country. The challenge that was pointed out is that the global war on drugs that is being pursued has created a dimension where the very marginalized persons, those whom are suffering a lot of multisectoral identities are further marginalized. It was iterated that the drug lords are not the ones who end up in courts, but it is normally the ones who are caught in possession of or using drugs. Further thinking at the ethics behind applying the law, it was noted that it comes to one single principle namely that everything is really about “do no harm”.

Therefore, it was noted that in strategic litigation when one is representing individuals, it is crucial to focus on rights, and that those individuals have the right to exercise their rights. Whether people are taking advantage of the law, the former judicial system was not very forthcoming for a lot of people. Despite the law, and taking the step to go to litigation it is challenging. For instance, it was noted that it is very difficult to be cross-examined. Additionally, it was mentioned that courts are not the most gender sensitive and politically correct place, and that the marginalization of people can still be perpetuated in court. For instance, if there is a case about a sex worker, it is important to acknowledge them as a human being. This point further highlighted that the dignity of people must be protected. As such, it is crucial to give that person their dignity when they are in court (*e.g. assuming they are HIV positive, allow their names and their children's names to be protected*). It was accentuated that it is essential that law enforcement offices and judges remember people's humanity and have empathy. When it comes to sending a person to jail or doing a community service order, it is important to look at *why* someone committed a crime in the first place. Another important aspect raised up was that judges are there as public servants and unfortunately the law school does not equip one for life. Lastly, it was noted that it is hard to take apart the victim-perpetrator binary, but that it is really important to see how we engage this in the judiciary. Likewise, the ability to be able to debate about various issues when cases come up such as issue of child defilement and age of consent, there is an ability for you to rethink the position and look at who is the victim and perpetrator.

PANEL AND GROUP DISCUSSION: CHALLENGING CRIMINALISATION IN EMERGENCY SETTINGS

Objective: To share experiences, strategies, best practices and difficulties in responding to emergencies affecting criminalised groups, such as mass arrests, changes in legislation, disappearances etc. To discuss the roles of different actors and what is needed to better respond in the future. To find ways of supporting each other and working better together around emergencies.

Possible group work questions: What do we, as NGOs, Government, academics, civil society, UN staff and others, do when a crisis occurs around criminal laws? When there are mass arrests of a particular population, or if the government announces a new law or harsher penalties? What do we each see as our role, and as the role of others? This is becoming all too common. What does a successful response look like? How can we work better together, deploy resources quicker, or prepare for, or even avert such events? How have such events been utilised to then push for lasting reform?

Moderator: Emily Christie, UNAIDS

Speakers: Kene Esom (United Nations Development Programme: *The role of the United Nations in emergency settings*. [\[add link to pres\]](#)); Sibongile Ndashe, Initiative for Strategic Litigation Africa (ISLA): *Experiences in Tanzania* [\[add link to pres\]](#); and Sally Shackleton, Frontline AIDS: *Rapid Response Funds* [\[add link to pres\]](#)

DISCUSSION

The first part of the discussion session highlighted several crucial aspects related to crisis situations in which people have been targeted or have disappeared. This discussion tapped into law situations that are negatively affecting people, presenting an opportunity for all participants to discuss about various roles and ways of working better. Likewise, the conversation explored what it works and what it does not depending on the context.

LAWYERS as HRD

The reflection on the role of lawyers raised the critical question as to which groups of lawyers one can go to in a crisis situations, which presented itself with the challenge of knowing whether they have the capacity required to engage properly. Considering that the civil society space is shrinking, it was noted that it is important to consider what several actors are doing to protect these lawyers. As an example, it was mentioned that in Tunisia and Lebanon there were experiences where people stood up, and that in a case that saw men who have sex with other men (MSM) being prosecuted, the lawyers whom were part of the MSM case have been attacked by their own peers. Further, it was suggested that one way in which these people could be looked at, was Human Rights Defenders which created an opportunity to broaden the circle and bring them in.

SEED FUNDING FOR LGBT

The discussion raised a crucial point regarding the efforts to getting seed funding to kick off and get a LGBT organization moving. This showcased that there is a huge gap in terms of funding and needs-coordination and that there are no services going to LGBT communities. During times of crisis, all the attention is given to service delivery and human rights organizations are left out. It was reiterated that one of the problems is that there is no mapping done. As an example, it was mentioned that even in Pakistan where trans diverse people are recognized, the United Nations agencies do not even know about these groups. When it comes about criminalization in Pakistan, there is no coordination between actors responding to emergencies, and the UN agencies did not do any mapping and used the existing tactics. Despite the fact that there are organizations working with LGBT persons, they do not reach to LGBTI communities and trans diverse communities were left out as well.

CLIMATE AND HUMAN RIGHTS

This part of the discussion highlighted the importance of understanding climate related catastrophe and its various consequences on various groups of individuals. A very interesting point raised was the importance of being aware how the criminal justice system covers for instance hurricane affected people. As an example, it was noted that in Louisiana, this had a serious impact on sex workers whom got arrested as a result of this. Moving further, it was pointed out that in environmental justice it is crucial to understand the big picture and how each issue is interrelated with other crises. The extent to which one is connected to other emergency response donors and the support might access are crucial. The struggle to get information and the coordination of funds are problematic, and it was emphasized that in emergency situations people receive emails asking '*what can I do to help?*' and there are several e-mails to verify whether you know people or if something is wrong with the forms. The challenge raised up is that

these verifications take time, and after 3-4 weeks into an emergency people still did not get any help. One example of this general and funding coordination was a situation from 2018 in Zanzibar which led to no response at all. When the emergency has passed, no donor provided funding and people had to coordinate things differently on the ground. There was a clear disconnection in terms of coordination, however the UN agency groups even took credit, when they did not do anything. Moreover, it is highly problematic that people believe they got funding when in fact they did not.

FPs OPEN TO CRITICISM

Moving further, it was noted that funders can do a better job, and that they need to be more open to criticism. It is difficult to access funding if you are not the arrested persons or an organization working with them, and that it is the mainstream international organizations who are called on the ground. International agencies cannot make decisions for people on the ground, and they must ask people how to respond. However, in some cases, certain people have been asked not to be involved in a response. This was because the way they were framing the issue, which would have created other challenges. As such, it was noted this approach allows for solving or dealing with a situation differently (e.g.: *unlawful arrests*). Moreover, it was noted that in emergency settings the tension is very real, and that there are also situations in which people on the ground were saying that even they have a specific need or want specific, there are however other agencies present which made decisions for them. Moving further it reiterated the importance of being open to criticism as a funding partner and that it is important to discuss about other venues of funding. For instance, in terms of natural disasters, when resources are scarce then marginalised groups are targeted and there is need to trigger responses. The problem identified and noted is that funding is limited, and that human rights are not fully funded because public health funding only funds very limited activities to service provision and HIV.

LAW SUPPORT & UNRESTRICTED FUNDING

There are service organizations which are committed to LGBT and sex worker's right and are working in contexts where there are no legal fees, services and doing the work at their risk. There is a need for better mechanisms to support human rights defenders and women. For instance, sometimes there are HRD who are lawyers and need assistance. It is important as civil society and stakeholders that it should be the law which assists in these situations. For instance, when funding is given to community groups especially, donors must commit a percentage to contingency as there is a need for unrestricted contingency money for crisis. There are projects that have potential for unrestricted contingency. Last but not least, it was noted that in terms of thinking to ways of responding to crisis requires a better understanding of and inclusion of all those affected. Likewise, there is a need to better reflect upon situations in which a number of people are arrested. On the same line of thought, it was pointed out that the importance and the need to bring other actors. Moreover, it is crucial to advocate for unrestricted funding to have within grants funding earmarked responding to emergency or crisis situations. Disasters and humanitarian responses are a major issue. Despite not being necessarily the central focus of this discussion, it could be a further focus. Lastly, it is noted the importance of discussing what to do because vulnerable groups became even vulnerable and vulnerability multiplies.

GROUP DISCUSSIONS & REPORTING BACK

Further, the 2nd part of this session was structured in three thematic group discussions unpacking the key stages occurring in crisis situations such as preparation, responses, and understanding the legal context by adopting a person-centered approach.

GROUP 1: PEOPLE AND PREPARATION

The first group discussed various preparations and situations in which people have been arrested, harassed or disappeared, ways to respond to these situations, what has been done and what others have done, who else do we need to work with.

1. In terms of emergency funding mechanisms, it was noted that there is a need to create a better communications mechanism between the existing funding mechanism. Some examples of emergency funding mechanisms that were given are: Urgent Action Fund, Frontline AIDS, OHAI, etc.
2. There is a need to have a more accessible language as well as information regarding the existing funding, as sometimes existing funding mechanisms are very small and local. This is linked with the need for local knowledge in terms of funding mechanisms. This can be done by localizing and tracking more resources which would result in easier and faster access.
3. There is a need for sustainability. As such, it is crucial to invest in linkages and plural leadership as organizations come and go and ensure that these mechanisms are kept alive. Another equally important aspect is to share all the lessons learned.
4. It was noted that when there are situations related to or about sex workers, LGBTIQ people, and human rights defenders there is a huge gap, and that it is important to be aware that this is not necessarily HIV-related.
5. There is a need to train responses for psychological and social support. This support needs to be ongoing, and it must be beyond the immediate crisis.
6. There is a need for better legal training for legal aid lawyers. As such, it is important to build a pool of lawyers to respond and engage bar associations.
7. There is a need to have networks that are led by the affected populations. Likewise, there is a need for funding and supporting these networks and building a core of communications strategy and information among these networks.
8. There is a need for linking organisations with media and that the media working with and doing training for them to use it strategically or learning to refuse media access informed by the right not to be exposed.
9. The country emergency response teams should encompass networks, activists, those whom are directly affected, and funding partners.
10. In terms of data, it was noted that there are ongoing security needs such as security trainings on how to use secure communications mechanisms and mirroring content in safe spaces and how to keep all the data secure.

GROUP 2: PEOPLE AND RESPONSE

The second group focused on the relationship between the people affected, those who respond and the per se response.

1. One of the key points raised was about the need to document what is happening and what is the response, which is linked with how to use the media attention. This would allow getting the network running and it should be consistent in dealing with the media, families, other actors, including the legal teams and the emergency fund.
2. There is a need for coordination on the ground between those involved in responding a crisis and those affected by the crisis. This further recalled the importance of being aware what is allocation of roles among several stakeholders including international actors, families, community movements, etc.
3. One of the problems pointed out was the sometimes there is confusion in terms of who is leading the emergency response, which leads then to no response. As such, in terms of role allocation and coordination, it is highly important to ensure that all those involved, including international actors (*e.g.*: INGO, UN bodies,

etc.) know their role. This implied that there is a clear need for better coordination between all the actors involved.

4. It was highlighted that the right people need to be contacted, and that it is important to ensure that people in the emergency and/or humanitarian setting are contacted and that the communities are involved. There is a need for local consultative processes and to ensure a real connection to the movement and that the voices of those affected are central to the response.
5. During emergency and/or humanitarian settings there is a need to ensure the physical and digital safety of people. These are crucial aspects which need to be considered. For instance, the lack of privacy and security has the potential to put at further risk marginalized communities which can result in loss of various rights, and even physical harm or death.
6. Responsiveness was identified as a key element. As such, it was noted that it is crucial to be aware that responses are individual and flexible and that there is a need to act quickly.
7. In addition, specificity is essential. As such, it is crucial to identify strategies for specific situations which are context and person focused.

GROUP 3: THE LEGAL CONTEXT

The third group focused on the importance of the legal context and on the strategies adopted in terms of responding to a certain situation.

1. It was noted that there is a need to think strategically about possible scenarios and their impact in terms of how to react to certain actions. As an example, it was mentioned that the preparations before the Same-Sex Marriage (Prohibition) Act (SSMPA), 2013 that was passed as law in Nigeria, and the reactions that followed since the law was passed, did not see the best strategy to lobby. The anti-gay campaign was led by mother's union and the church which was very strong especially because religion in Nigeria is considered gold. It was noted that when the law was passed, maybe the reaction was to soon and did not foresee its impact. As such, this iterated the importance of foreseeing various types of impact and consequences. For instance, it was noted that this provision in Nigeria had a huge negative impact on HIV.
2. Another important aspect that was raised was that it is crucial to make sure that Human Rights Defenders have safe houses and that people affected or those at-risk are safe. Moreover, it was noted that in a situation there is a need to identify who are voices, and what is the collective response. For example, in the case of the Nigerian SSMPA, it was noted that people were screaming outside Nigerian embassies around the world, yet there was a lack of a collective response as people had differences in opinion. Immediately after the deal was passed, the social media took over and media started advising people that as if their children are gay, they should go to the police station. This situation shed light on the importance of recognizing the mistakes made on the ground as Human Rights Defenders. Even though the bill had limited impact on LGBTI persons, and no one has been prosecuted under that bill, it still created a potential risk. Therefore, it is important to take a sit back and think what are the outcomes of various changes.
3. Lastly, it was pointed out that it is important to be aware in what ways and to what end is the press using various actions to shape public opinion. With reference to the situation with the bill in Nigeria, it was mentioned that the press used the bill for political ends, and to win a second term, yet they failed.

X

Day 2

OVERVIEW OF PROGRAMME

The second day of the ID meeting was structured around one talk show and a breakout session, and two multi-poster presentations sessions followed by in-depth discussions. While the talk show focused on unpacking the role of other partners in challenging criminalisation globally, the poster session aimed to share research and evidence while stimulated dialogue around possible next steps of action.

TALK SHOW AND BREAKOUT SESSION: THE ROLE OF OTHER PARTNERS IN CHALLENGING CRIMINALISATION

Objectives: 1) To identify and expand new areas for potential collaboration, especially through bringing new actors and “unusual suspects” like business, tech and data experts and the media into the movement. 2) To Identify existing platforms, movements, stakeholders and processes that can be used to achieve a critical mass that is challenging criminalisation.

Moderator: Phillipa Tucker, Accountability International

Speakers: Chivuli Ukwimi, HIVOS, The role of private funders in challenging criminalisation; Mia Malan, Bhekisisa Centre for Health Journalism, and Mail and Guardian. The role of media in challenging criminalisation; and Lucinda van den Heever, Accountability International, Advertisers Activists Collective (AAC).

CREATING A CRITICAL MASSES

First of all, it was suggested that within the human rights work sphere, the importance of doing external impact assessments of the work, and understanding how each actors reaches out to various areas that are impacted by that work – is well aligned with the ways in which critical masses are created. As such, in doing impact assessment and measuring the impact is crucial to ask everyone to speak their truth to have real sense of how we are performing.

Secondly, the discussion highlighted the importance of bringing other stakeholders into the movements. As such, it was noted that there are political, religious and judicial (PRJ) leaders and the unusual suspects who need to be brought in. It was indicated that PRJ are the key, and that there is a need to become PRJ-allies, and to find champions in those sectors, namely people whom can champion ending criminalisation in their own spaces. Further, it was raised the question whether there is a collective understanding on what the opposing forces are. In addition, it was indicated that it is crucial to be aware of the context and how various things change. Moreover, with reference the creation of critical masses, it was mentioned that the creatives – the artists ‘room’ such as artistic people, musicians, etc. have a huge impact. As an example, it was noted that in Uganda artists like Bobby Wine are very political, which suggested the importance of thinking to what extent artists can play a role to put messages across. Further, the extent to which funding partners engage with the creatives in the innovation hubs, even when they do support them, remains questionable. Further, it remained unanswered why people and organizations do not tap into innovation when they do programming, especially when it is so refreshing to have creatives in the

room who can play devil's advocate. Because people working in art ask different questions, this will create a space challenging our thinking and giving us food for thought.

For instance, it was noted that the JFB agency was part of the Advertisers Activist Collective (AAC) project and they are what can be called an 'unusual' partner which was targeted quite specifically. The work done with this ad agency showcased a great example of a creative way to destabilize heteronormativity. The AAC project was launched in 2016 as a way to bring LGBT activists together with advertisers into the room to promote LGBT equality. It was noted that, as part of that, advertisers asked whether we can help them disrupt the messaging, which is biased to heterosexuality. Further, it was mentioned that mostly, LGBT people do not see themselves represented and in that there is a space in which there is a need to challenge stigma and representation. For instance, the #EqualityGuideline was developed to help advertisers, marketers and business to promote LGBT rights. Moreover, it was mentioned that this is an impactful area of work, in which there were done four trainings across eight advertising agencies. The LGBTIQ- related trainings have been done with approximately 400 staff focused on the ability to identify what is offensive and not, and how that can be changed that through advertising. As part of the strategy, there were one-on-one conversations with the CEOs of the advertising agencies which were impactful. For instance, an impactful story mentioned was about an ad for NedBank promoting a money app which showed the diversity of people – people living with albinism, a blind person, young people and a trans women, noting that when they created this ad, they have thought about the AAC work. Moving further, it was noted that for ad agencies, the most difficult people to work with are their clients and that there was a big push back from them to work with the trans women so they pushed back to keep her in the ad, which is something you do not often see in South Africa. Likewise, it was noted that working with ad agencies was very deliberate and the fact that that we tapped into common things, and had a dinner with twelve ad agencies where there were invited LGBTI activists whom spoke about stigma – created a platform for discussions, which was very powerful. The advocacy work, and working directly with the clients is very different. There was a bigger goal and vision, and as such, there was a very important delimitation that the ad agencies themselves should be the advocate and activist for their clients, because they are working together.

THE ROLE OF PRIVATE FUNDERS IN CHALLENGING CRIMINALISATION

During the talk show session, it was highlighted that funders should bring money to the table, and that they need to be responsible, especially because this is a challenge for all of us and funding partners should not stay on the sidelines, but they should be proactive and make some introspections. It was emphasized that funding partners in general should seriously think about funding decriminalisation and should be more responsive. There have been situations repeating again and again and unfortunately the funding partners have been sitting on the sideline rather than responding. These problems raised the importance of funders ability to read the time and respond to these issues.

It was noted that funding partners behave like they are in a bubble and pretend that what is happening on the ground does not affect them. From this point, it was further indicated that there is a need for funding partners to approach people on the ground and draw a clear line between their own agenda and to make themselves available. Moreover, it was pointed out that it is crucial to understand that sometimes is not about money, but opening up certain spaces funding partners have access to. For example, it was mentioned that SIDA has access to a many political leaders and dialogue with leadership at AUC, SADC and parliamentary level, etc. As such, it was indicated that it is essential that funding partners play a role in opening spaces for partners and getting the message across.

Moreover, during the talk show it was highlighted that funding partners should also set up special funding initiatives. Many funding agencies are very bureaucratic and should in their own spaces have some special initiatives

for people to use, for instance in emergency situations. Funding partners should have special initiatives that can be used to respond to emergencies, criminalization, etc. especially now that the contexts becomes very conservative. Moreover, funding partners should be realistic, and understand that for instance, when funding challenging criminalization globally work, there cannot be results tomorrow or in a few years. As such, it was emphasized that funding partners should really look at the immediate gains and long-term goals as they have their own agendas. In terms of long-term gaining, funding partners need to look at the incremental approach, and appreciate that decriminalisation might not come today and be realistic about the fact that it will not come today.

THE ROLE OF ADVERTISERS IN CHALLENGING CRIMINALISATION

Furthermore, the conversation unpacked how we could stretch the approach of working with the creatives to challenging criminalization globally and what role advertising could play in challenging criminalisation.

As such, it was noted that currently the AAC work is with South African ad industry only, but that it has a broader reach. Advertisers play a strong role in being advocates with other peers in other countries as they have connections, and through the chaining – it is important to think how can one be an advocate with other people, and think about ways in which there can be done trainings around stigma and discrimination. As well, it iterated that it is important to think how one can do something that is more subtle, rather than extremely direct as there is always the risk of backlash. Likewise, one must think how do deal with the backlash, because at one point, it will come. Lastly, it was noted that the AAC has mostly looked at LGBTI persons, and that on the next round, the idea is to look at other marginalized groups such sex workers, people who use drugs, the diversity of women, etc. Lastly, it was noted that the project is very impactful and that there is a need to expand it to other communities so that it challenges criminalisation, and stigma, and discrimination.

The conversation continued by discussing possibilities on how this approach can be opened up to more issues, especially given that advocacy never stops. It was pointed out the need for conducting trainings with the hotel staff, to speaking about how media reports on issues, as well as to reflect on the environment in which they operate, their beliefs and their understanding of the research. For example, looking at the Tanzania's case related to pressure on sexuality and how Tanzania media reports, it was noted that there was no local media but only international media which is operating in an environment where the political suspends your credits if you are critical. In another case, it was mentioned that someone got detained because they were suspected of challenging the press, which showcased that they were operating in a very suppressive environment. It was suggested that there were similar cases in the U.S., for instance in Alabama, which contrary to people's thinking that it is a very free country, liberal, etc. For instance, it was noted that a study from University of Berkeley, California showed that journalists report very rarely on abortion as a health issue, but mostly it is reported as a political or moral issue. Despite the fact that one of the most powerful tools media has is to involve the human face especially when it comes about criminalisation, only in 4% of the stories they found a human case. Further, it was pointed out that when it comes to criminalisation, there is a need for human face and case studies, and there is a need to use research and effective tools, use health benefits of that, and use human rights. Journalists and the media are under financial pressure, and certain stories do not get past editors. It was noted during abortion media trainings it became apparent that only 40% of them have ever done a story on abortion and that despite that almost all of them had community journalist prizes, still some did not get past their editors. Therefore, it was raised up the importance of conducting editors' trainings as well. Moreover, it was pointed out that there is a need for funding for these trainings and interventions, and that unfortunately it is extremely hard to get funding for decriminalization or abortion.

Moving further, it was pointed out the importance of doing reporting on decriminalisation of sex work. This was mentioned as being an important priority for the Gates foundation under the health department, however when it comes to abortion, there is no information on where to find operating safe health abortion services. Even though in South Africa there is an online maps showing healthcare facilities that provide abortion services, which serves as basis for community development projects too, one of existing challenges is that funding partners are not willing to fund this work which requires annual updates, methodology experts, masters or PhD students. As such, in order to keep updating the map, there is a need to find other funding opportunities, which is ultimately related with reaching the quality desired.

Regarding media trainings, an aspect that was exemplified was the importance of training as well persons who had an abortion, and that for instance, the persons conducting the training wore a T-shirt (*get your ideology out of my biology campaign*) which helped about destigmatizing abortion. Moreover, it was noted that there was produced a manual for the media on this matter, which was used in India, Brazil and parts of the UK, however it needs to be updated because the laws and the contexts change. Likewise, the production of these materials requires funding. Further, the power and the need for narrative stories has been emphasized, especially when it comes about the decriminalization of sex work. For instance, a narrative story of 6000-7000 words gets value and it is widely reached and engages people can have a powerful impact on decriminalization of sex work. Amsterdam is an example of how the narrative stories played out. However, in South Africa there are underdeveloped skills when it comes about narrative story and it is time-consuming and expensive to train people on these skills. Lastly, it was noted that on a critical thinking forum, it was explained to the deputy constitutional ministry that the sex work terminology is biased and that it was questioned how can we use the term 'sex worker' and not prostitute as they have thought that the terminology enforces sex work.

DISCUSSION

ADVERTISERS and the MEDIA

The discussion session started by emphasizing that the AAC project is very interesting and very innovative, and by iterating the importance of understanding whether there are any challenges around the expertise advertisers have, how to get those testing and to have more diverse focus groups. As well, around the interest of working with advertising agencies, it was questioned whether there has been any work done around how advertising is representing PLWHIV. For instance, one of the problems mentioned is that in the media, when there is a story around gender-based violence (GBV), the perpetrator is on the news, and the victim story or the abortion story are usually placed under the women's sections and not under "real news" section.

ABORTION STORIES in the MEDIA

On the link between abortion and the media, it was noted that one problem is how abortion gets covered. For instance, in the U.S there are people who are anti-abortion, and people who are pro-choice which have created a false idea of balance but there is no real representation of the real support, there is only a false 50-50 perception. As such, it was emphasized the interest of hearing about strategies on how you deal with that, and how do you make a feminist and human rights argument around these issues.

There are various reasons why someone may not want to carry a child, and whatever the reason, there was a case from 2018 about someone living with HIV and who did an abortion in the U.S, in which the organization hiring the media initially did not let the woman to talk to them about her story as there would have been political implications. This is a challenging situation. There is so much of the way the criminalisation in the U.S of abortion, HIV, LGBTI and there are many stories reported by people focusing on crime reporters with no health background. Thus, it is important to continue trying to do a report that is completing the real stories made by these crime reports and to take action when these stories are published. For example, it was noted that they e-mail those reporters about the stories and tell them what they have missed and that we have the resources and we will join the reporting and that there is need to change how they cover the stories. There is a need to look at funding partners across their diversity as some of them are organs of the state – implementing state morality, and we need to be more critical of by very wealthy – partial decriminalisation. There is a need to engage more with people, and there is a need for allies and for funding partner to speak to each other about these problems. There is a need for more people in that space, especially when there are always false narratives. If one supports decriminalisation, they must be in denial and think how the problems are covered. Likewise, it was questioned whether the issue of prostitutions or sex work comes as a diversion, as there are connotations that embrace the word prostitutes which are in positive spaces such as in the UK. It is important not to be diverted, and be aware that some words are – yes, stigmatizing but we should not be distracted.

Another example that was mentioned was about the real struggle to connect with advertising agencies, and selling the message across, which eventually led to a very interesting ads campaign. The material could have been further used as a media tool, however at the end of the project, all that material was lost. This issue questions what the PR led do with it and whether they really understand what communities of sex workers, LGBT persons are trying to communicate, and why did it go once the project ended. The remaining question is how to utilize the products coming out with the ad agencies. As such, it was noted that one of the challenges with the electronic media is that because of existing laws and policies, even though an organization wants to run the ads created, it will not be possible. Lastly, it was mentioned that they are putting together now a legal team to assess what can be done and whether they can go around the legal challenges.

An example of working with media to challenge criminalisation, especially HIV criminalisation is the UNAIDS IAS office media statement. It was noted that the press conference was the 1st time when there was a feeling that there could be a different framing of HIV as there were scientists standing up collectively and saying that criminalisation of HIV is wrong. Further, being aware that there are around 65 different outlets and newspapers that only previously reported on HIV criminalisation, recalls on the importance of knowing who delivers the message. Delivering the right message is not only about peers talking to peers but about people who are taken seriously by people¹.

ANSWERS

MEDIA and ABORTION: STORIES and FUNDING

It was noted that even though some funding partners are indeed organs of the state, there could be used a “basket funding approach” and have institutional donors contributing to that fund, including those who are state oriented

¹ HIV JUSTICE WORLDWIDE has published “Making Media Work for HIV Justice: An introduction to media engagement for advocates opposing HIV criminalisation” <http://www.hivjustice.net/news/media-toolkit-four-languages/>

or aligned. Once they put the money into the fund there are less restrictions with the state demands. For example, HIVOS SRHR fund gets state funding across actors working with innovative issues and other issues and there is also a SRHR related special initiatives fund. The regional SRHR strategic grant is a special initiatives fund aimed to be responsive, timely and innovative.

On the aspect of how abortion stories get covered, it was given the example of the political conservative party in South Africa and it was mentioned that in 2018 they started doing a lot of abortion stories. Because of an understanding framed as "moral issues", they have been accused by a health journalist. It was noted that these actions would be so different if there would have been a different issue which showcases that reporting is becoming a political issue. For instance, 80% of the reporting in the UK is done by political reports. Further, the importance of strategizing how to make the reporting from a women's issues to a news front page issue was highlighted. The issue of having a right-wrong dichotomy has been brought into question even in situations where there have been abortion stories in a context like South Africa in which abortion is a legal issue, but the stories made it seem illegal. Therefore, it is crucial to be very careful on how the stories and case studies are selected. For example, a pregnant person who is a student and decided to get an abortion shared how it changed her life, showcases the importance of identification. As such, there have been trainings with people how to be in the media and select them in such a way that allows people to identify with them, as these are not exceptional cases. Further, explaining to someone scientifically how do you do an abortion, from the scientific reasons to the procedures, etc. it was noted to be important. Likewise, it was noted that it is equally crucial is to interview people with the right messages. For instance, talking about implementation of law and access to services, and that is not implementing the law – that should be story, not your moral issues.

DIVERSITY and the POWER OF ADVERTISING

Working with corporates and ad clients is a grey area of work. In terms of making this work more diverse, it is important to work not only junior staff, but with everyone and to get buying in from the CEO as well. The clients are in a place in which the struggle is to understand how to bring in these workshops the clients and speak about these issues. In South Africa the laws are progressive, however the society is very conservative. The FSB is running community services and they are trying to find positive words for LGBTI however it remains the question of how do you use advertising to target the rule of law community. Regarding the representation of PLWHIV it was noted that this is not our workshop focus, and that we should think how we can challenge criminalisation around that as well. In addition to the AAC and building on sustainability, it was noted that we are in a point now and we want to go to advertising academics, universities and also speak with marketing departments and get them in the human rights curricula. Furthermore, on the #EqualityGuideline it is crucial to hire LGBT people and make them part of your staff and reaching out to queer people will create a more inclusive space for you. It is also crucial to try to do the work differently. For instance, the Lesbian Voices campaign aimed to have direct messages or statements from African lesbians, cisgender, trans women and gender non-conforming people that are communicated to the cisgender heterosexual public what they want them to know about being an African lesbian. It was noted that this is a campaign using Participatory Action in which they have been asked to choose the messages, the colors, the tone/feeling with a corresponding image, and to design the campaign. Likewise, the trainings and what we do are very refined, and targeted the lorries which covers MENA and SSA and it is the ad awards that are based in South Africa, and their impact assessment and the call for awards for this year shows that it is completely different than before, and it now looks like a human rights NGO.

As a final comment it was reiterated that there are great innovative projects happening, however there is a constant seeking of innovation testing when there are bad supported projects out there, which showcased that there is need for a push back and for asserting what that is.

x

STAKEHOLDERS MAPPING

[insert link with the stakeholder's analysis]

Part of this session, there has been conducted a stakeholder analysis of all CCG stakeholders with a particular focus on those that have not be brought into the CCG project and/ or movement. Particularly, the aim of the stakeholder analysis was to contribute to the three objectives of the CCG project. The stakeholders mapping analysis will be used to identify existing platforms, movements, and stakeholders with whom we can engage, and which can play a role to the achievement of a critical mass that is challenging criminalisation beyond the contacts that we currently have. This allows us to bring the so-called '*unusual suspects*' to the challenging criminalization movement. It will further contribute to the supporting communities in the Global South on taking various actions to challenge criminal provisions on identity, morality, sexuality and bodily autonomy.

POSTER PRESENTATIONS AND DISCUSSIONS

Objective: Share research and evidence from around the globe on challenging criminalisation and discuss next steps of action.

Facilitator: Bob Mwiinga Munyati, Accountability International

Topics: Kenyon Farrow, TheBody.com: Using Media to Challenge HIV criminalization in the US (Loop Room) [insert poster?]; Susana Fried, CREA: Experience of CREA in bringing sex worker and feminist activists together in conversation to advance feminist support for sex workers' rights (Strand Room) [insert poster?]; David Patterson – IDLO, Lessons learned from experience in scaling up legal services for vulnerable populations, (Castle Room) [insert poster?].

DISCUSSION ON LESSONS LEARNED FROM EXPERIENCE IN SCALLING UP LEGAL SERVICES FOR VULNERABLE POPULATIONS

The discussion iterated the importance of why legal services must be central to a rights-based response to HIV for which the existence of a toolkit about the legal process and resource mobilization building the capacity of lawyers is crucial. Secondly, it was mentioned that scaling-up HIV legal services makes it difficult to engage the lawyers back in HIV response. For instance, in terms of training law students in Tanzania and Uganda, it was noted that the model of training legal students was based on a handbook for students providing legal advice in this context. While they were at legal clinics, the model allowed to make that approach open to the public. Further, during the discussion it was mentioned the example of a process of documentation of eight different legal services in different countries showcasing six points of what work in the delivery process. Taking Tunisia as a legal example, where young men have been arrested on the suspicion of being gay, lead up to a landmark in Tunisia which was criticized by lawmakers for providing free work. This situation created a sense that lawyers should be paid and provide free legal services. Lastly, on this point it was noted the need for a for a broader advocates base.

Secondly, it was mentioned that it was unclear whether the support is specifically targeted at the legal community, however it was noted that people in the movement are surrounded by advocates, peers, etc. and are looking at these bar associations and hold them to account. As well, it was noted that it is important to be aware that for instance, in the case of anal testing in Tunisia, there are aspects that can be changed something based on previous cases. The psychological impact is high, and someone needs to support these people. Additionally, it was raised the concern that sometimes lose people from the movement because of this. Therefore, it was emphasized that it is crucial to think how to keep people happily in the movement.

Further, it was asked whether lawyers or legal practitioners working in the court are targeted, and if they are supporting legal representation and/or litigation in the UK. As such, it was noted that there are various statuses, situations and people are disregarded by the legal situations they have, especially when comes about family law, housing, etc. They are taking all kinds of cases, but mostly focused on what is most horrendous as the time is limited. For instance, one example related to HIV criminalisation is access to employment, and it was mentioned that there was a case of strategic litigation case in Egypt in which several rights have been upheld under the Egyptian law, and that unfortunately they did not have the capacity to do it.

Further, on this issue of anal testing, it was noted that that Amnesty International has published a research report on anal testing, and that for example, the doctor is able to determine that the shape of the penis or the anal could determine if someone is gay. This was framed as highly problematic and the medical practitioners should be disbarred because the doctors doing this testing today in Tunisia are not scientific. Moreover, it was noted that people are brought to court as they are charged by the police, and they use only the medical reports to convict them. For instance, if the clients are not represented, it is the victim's word against the police, and it was observed that once they start to represent, some cases were dropped. This showcased that with legal representation, we can stop people going to jail and shifting.

Furthermore, it was questioned how these legal materials can be used to challenge courts and law. As such, it was noted that these resources are evidence-based and that they need to be used. Criminalisation is a barrier when it comes to health as this is a human right. There is a need for evidence-generation as each country has its own legal context and is very specific, and also there is the value of support and how they can be linked. For example, there were cases from MENA and LA countries in which the work has been shared, and had inter-regional dialogue using simultaneous translation. In terms of the legal context, and specifically looking at Constitutions, it was noted that South Africa has a strong position and legalistic system compared to other countries, and as such it is important to see how the work done in South African can be replicated in other countries. However, it was pointed out that the legal system is very good on paper, however the reality on the ground is different. As such, it was given the example of observing two similar cases of two men stealing two TVs, on the same day and while one of them got free, the other man got two years in prison.

Additionally, the discussion emphasized that in legal education, the law students come from a certain class, often privileged and out-of-touch with the reality and that they are very judgemental, and that there is a need for them to also measure the impact of law on society and the society's impact on the law. Lastly, when it comes about using HIV is an entry point, there can be many discussions about health in many areas how the law impacts on HIV and on health. As well, there is a need for HIV 1-on-1 sensitize trainings in which human rights advocates play a key role.

DISCUSSION ON EXPERIENCE OF CREA IN BRINGING SEX WORKER AND FEMINIST ACTIVISTS TOGETHER IN CONVERSATION TO ADVANCE FEMINIST SUPPORT FOR SEX WORKERS' RIGHTS

As part of this discussion, it was highlighted that a strong and vibrant movement is key on challenging criminalization. However, past experiences of working with nascent sex worker groups showed that there is a fragility of the group and that sometimes sex workers are very mobile. Secondly, if one engages people who are very strong activists, and whom have formalized and started running CBOs brings us to the opposing side. The problem mentioned was that this change is somehow brought into the conversation and used in such a way to suggest that this person is now a full-time program office, implying and using it as evidence that sex work is not work. Further, this impact the sex industry as well and from sex worker industry perspective, that person is seen as a traitor, as they no longer practice sex worker, but are an NGO worker.

On the question of what is the whole movement working towards it was noted that around sex worker rights it is important to focus on pushing the narrative that sex work is a feminist issue and that sex work is work. As such it was noted the importance of focusing and persuading people in the middle, rather than those who are anti-sex work. Further, it highlighted the importance of making sure that the message that not all sex work is trafficking gets across. This requires to be concrete about what a general recommendation should be saying around sex work, and doing our best to support sex work activists to be in those spaces (e.g.: Beijing 25+).

Further, it was noted that the Rethink Politics and Resistance, Reimagine Change and Transformation, Reboot Struggle and Movement Conference was a sex workers' space. It was perceived as an and powerful space especially because a person could have been surrounded by a majority of women supporting sex work and not being judgemental. This was found to be a constructive space where people could speak openly and learn from other people. As such, the space that was secured for sex workers and had a red-light sex worker present the work they do and share what experience they have. On that matter, it was also noted that it was sad to hear what some people's experience, yet there was an opportunity to share advice and challenge stereotypes. The space was instructed as an exhibit and used a narrative to take people through the space – words, photographs, body maps, etc. The the space was created as safe for both sex workers and for people grappling with their own understanding and bringing their questions. It was highlighted that giving a narrative testimony of the people themselves was very strong.

Moving further, it was questioned whether there is a gap between the abolitionist movement and sex workers movements which shed light on the importance of coordinating and mapping out different spaces in which key actors can engage differently and provide support. For instance, it is important that the groups and organisations with broad-based feminist agendas have a space where they can collectively focus on the work on sex work. Lastly, it was mentioned that as a collective see that taking on anti-SW feminism is an important view – convening, carrying conversation etc. and it is stronger when that is being done in collaboration with groups such as SWIFA. Further, it was noted that there are deliberate conversations regarding abolitionism and that there is this dichotomy *us vs. them* which is growing. Despite seeing the abolitionism movement being very vocal and out, it was noted that there was no direct engagement with abolitionist organisations as that is ineffective. However, reaching out to feminist groups that are not decisive or in the middle and people struggling with their position, it is ok. On the other hand, it was noted that it is not okay that in most of the panels are being brought up the issues on sex

workers' rights, but trying to do it in a way that is part of a coherent statement of how we collectively think and what's our analysis and politics.

Further, it was emphasized the importance of not running away from very conservative spaces. By deactivating them (*those opposing*) would be something very important and it is crucial to strategize together if there's something that can be done collectively and together such as anti-abolitionists campaign or a new project, a new NGO, etc. There is a need to take action as this gap cannot be let to get bigger and bigger. Moreover, it is important to have targeted advocacy with people and explain them why this is problematic. It was noted that it is crucial to think about ways to respond to this. As well, it was interrogated what would be the approach with policy makers, and whether there has there been any response from policy-makers on this work. As such, it was pointed out the importance of inviting them to sex workers, women's rights, etc. events. This was noted to be a strategic approach that can facilitate various changed, rather than struggling to changing minds. Lastly, it was noted that CREA is part of a collaboration – ComeMeIn, a sex workers rights working group and that the next year priority is to be present at Beijing 25+ and to support SW activists to attend and be in that space as this is policy space.

DISCUSSION ON THEBODY.COM: USING MEDIA TO CHALLENGE HIV CRIMINALIZATION IN THE US

The discussion started from the case of Sanjay Johnson in the U.S around the criminalisation of HIV in which their reporting played a role in the outcome of the case. As such, it was pointed out that some states have criminal laws on HIV transmission, disclosure or have no laws, but might use other types of laws to criminalize people. For instance, in Sanjay Johnson's case in the U.S they have used HIV transmission as a biological weapon law which was then used to criminalise. Secondly, one of the points raised was regarding the fact that Undetectable is Untransmissible (U=U) and there are people working in their states to change the law. As well, there are some people believing that if the law should be reformed in such a way that if you are undetectable (U), the cases should not only be taken. Meaning that a person happens to be positive but undetectable (U), their lawyer can use it to keep them out of jail. However, there is an existing divide around the matter of who is undetectable (U) and who is not, especially considering that in the U.S black bodies and Latino people are criminalised. It was noted that there is racial bias which negatively impacts access to care as it makes it less likely for trans women, black males, etc. to access healthcare.

Further, it was noted that North Carolina reformed their laws based on the aspect of being undetectable and as such, if a person is undetectable (U), they cannot be prosecuted. However, depending on the context, it was mentioned that U=U can make the situation worse sometimes. On this matter, it was noted the importance having guidelines for lawyers and people doing legal reform law on how to think about an ethical sense when U=U and when it is dangerous. The debated around this aspect was also related with ways in which people are dealing with miraculous surveillance, questioning how do they get access to medicine since when they do the resistance, the process triggers a punitive type of violence and now there is more research looking at the associations between different clusters. Likewise, there is a fear that science cannot tell the direction of transmission but how that data is being used, remains questionable.

Moving further, it was noted that there is a fear about the similarity of the virus showing the possibility that people can be in the same kind of network. There is a public health vs human rights debate and there is no consensus on

people are going to jail because of HIV disclosure or transmission, and not even within the communities. There is a need for real interventions and systems of strategy.

Further, it was noted that with the existing systems in place, if and when a person is or was infected it is a challenge to know that and it is also people's own responsibility to and how they engage in safe sex. Thinking what are the measures, and how could one know that this person is the last person I made/had sex with, is because maybe I've had sex with 180 people. Lastly, it was mentioned that one update on the criminalization of TB in the U.S and Hepatitis, IDLO reformed their TB criminalisation status – reduced their sentences for HIV non disclosure and transmission and made the TB criminalisation – and adding them to the law

POSTER PRESENTATIONS AND DISCUSSIONS

Objective: Share research and evidence from around the globe on challenging criminalisation and discuss next steps of action.

Topics: Carolyn Eisert, Amnesty International.: Zina Law case study of Jordan (Castle Room) [Insert poster]; Ann Fordham, International Drug Policy Consortium, Support. Don't Punish! Ending the Criminalisation of People Who Use Drugs (Loop Room) [Insert poster]; and Jide Macaulay, The House of Rainbow. The role of the church and faith communities on the impact of HIV stigmatisation and criminalisation (Strand Room) [Insert poster]

DISCUSSION ON ZINA LAW CASE STUDY OF JORDON

The discussion session focused on how the research evidence could be taken into a campaign mode and how that would look like. As such, it was noted that is when there are similar projects there is a thematic group that will do research and work with research regional offices. Secondly, the media and campaign approach require strategizing in terms of who is leading the work and assessing its impact so that the work done is not undermined.

Secondly, the discussion explored whether there are any ways of using human rights and dignity of the children as entry points, especially considering that some of them might be male. It was noted that this is an approach that needs to be unpacked. As such, it was emphasized that dignity can be used as an entry point and a tactic. Moreover, it was iterated that the impact of these laws on children is terrible and allows to work around these issues which are seen by people as an injustice. It was further noted that there are people who seen unapologetic about the fact that there are situations in which they are unapologetically framing everything as if it they are helping these women and these children. Another major problem identified was that the people running these programmes take children and place in adoption centers and the argument used is that this is in "the kid's best interest". Additionally, it was noted that the report of this research will come out in September.

The last point made was regarding the possible effects of this report on the development of the country given that can be a huge concern for the Jordanian government considering gender-based violence is a major human rights issue. On this matter, it was noted that the government is considering amending laws in these areas and giving impunity for clients. Likewise, it highlighted the importance of remaining in contact and reassessing the situation in the future.

DISCUSSION ON SUPPORT. DON'T PUNISH! ENDING THE CRIMINALISATION OF PEOPLE WHO USE DRUGS

The discussion reiterated that continuing to advocate for decriminalisation of drug use and possession is very important. Likewise, it was noted that it is essential to remain not distracted by the serious human rights violation

and that the rhetoric remains crucial. When there is no one criminalized in a context, people who are involved in small trafficking should be decriminalised as well. As such, it was suggested that under the UN conventions the reality is that member states do not really care about them and are permissible, and it was questioned why that only people who are in the lower quintile of drug trade are caught up. Therefore, the importance of looking at mitigating and advocating for sentences and explore alternatives to prison was highlighted. It was noted that it is interesting to question why for instance, if they are low-level offenders sent to prison when there are people really high on the level.

The second question raised was how would one rule the government over in the eventuality of moving from a decriminalisation conversation, considering that if something is completely decriminalised, the communities might think that the government is failing them. It was noted that it is important to think for instance how then drugs could be removed from the community, considering that this would be a case in which removing low-level crime would mean removing a level of pressure. However, a main challenge remains. For instance, looking at the arrests in the context of marijuana in South Africa the communities were calling in and they were calling in for the military. There have been very vocal sections of communities that want the military to clean up. Another example given was Philippines, where there were 30.000 unlawful killings.

Another issue raised was whether people feel safer afterward, or whether they do support the war on drugs. This emphasized the importance of thinking how to work with the communities and how to work at community level, and how to apply the reduced profits. For instance, it was mentioned that in 2011 Mexico had the highest rates of drugs-related deaths. Moreover, it was pointed out that it is highly important to be aware of 'the balloon effect' and that as you decriminalise the use of drugs and possession in one place, the issue move to another part. For example, Latin America it is dynamic, and it is critical to be aware that when working on trafficking in general is that once you have a tunnel you can get through everything down that tunnel. As such, it was suggested that as drugs are decriminalised, the next most profitable would be the human body for slavery.

Moving further, the discussion unpacked level of engagement at global level about people discussing about slavery. One of the important questions raised was what is the thinking in terms of cross-movement and also what are the engagement approaches or strategies with development that have an impact on other movements. On these aspects it was initially noted that there is more thinking about criminal gangs, especially when being cognizant that there is a huge profit. As such, profit has been identified as an important aspect which needs to be considered, and that for instance, there are USD 6 billion per year in drugs. This raised two critical questions which need to be considered: 1) how to remove that? and 2) would the criminal network be able to sustain themselves or would they moving towards another crime.

Furthermore, it was noted that legal regulation will not solve these problems, but maybe it will reduce harm. For example, in Mexico, which is exceptional case with militarization, the government was saying that it will intervene only if cartels get violent whereas if they were peacefully doing their business. In South Africa on the other hand, it was social support and social regulation where policing and people could not participate in mainstream economy, but found different ways to participate.

As a parallel in response to trafficking and increased militarization, the criminalization of poverty and criminalization of discrimination and destigmatization were mentioned as crucial. As such, it was pointed out that the importance of being aware that people who are criminalized are not the middle class who do cocaine on the weekend, but rather people whom are push towards the margins of society. The police criminalisation of people and corruption also influence how people are actually criminalised. It was indicated that there is a link between bribery and criminalisation. As such, advocating for ways in which police will not be able to get money from you because you have drugs, is important. It was also suggested that most police are direct sellers and they are harassing people and just extorting money from them.

Likewise, it was emphasized that it is critical to understand that corruption is a core. The concept of corruption in law enforcement was mentioned as significant especially when it comes about drugs, sex work, etc. As such, it was noted that even if a drug user whom is not criminalised by the law, it is the intoxication aspect that will be used against that person to criminalise them, which can be related with another one. It is highly important not to forget that context is significant. Lastly, it was noted that decriminalisation is the start and that it is important to engage directly with the governments. Likewise, demystifying drug policy when advocating for reform was emphasized as important.

DISCUSSION ON THE ROLE OF THE CHURCH AND FAITH COMMUNITIES ON THE IMPACT OF HIV STIGMATISATION AND CRIMINALISATION

The discussion started by highlighting that in terms of the criminalisation of LGBTIQ people and behaviors there are three key aspects, namely the law, the society and fear. For instance, the fact that the politicians use an evil language was emphasized as a huge problem, as well as the huge abuse against young/youth LGBTIQ as they are branded as demonic.

Secondly, faith has been emphasized as an important aspect of the work being done around HIV stigmatisation and criminalisation, especially that homophobia has been suggested as being present in faith-related spaces. For instance, one example mentioned was about a case with someone standing in church behind his father speaking about LGBT as demonic, case in which the person later had to sign as they were part of chorus.

Further, it was emphasized that there is a need for physical spaces, education, seminars and trainings as well as for holistic pastoral care, counseling and support, leadership development, human dignity and human rights, story telling and documentation of narratives, resources and materials. Moreover, during the discussion session it was questioned to which extent and in what ways one can deal with issues concerning women's rights especially when the church is most of the times at the forefront, on which it was noted that men do not need to empower them because *women* they are *de facto* powerful.

Moving further, one of the discussion points raised was with reference to safeguarding LGBT children, and whether there should be created a new programme specifically focusing on this aspect. Another important aspect raised was with reference to South Africa and it was noted that there is an opposition against reforming laws around abortion, and that there is a conflating of LGBT and abortion issues. On this aspect, it was noted that there was a resistance to work in solidarity with them because they wanted to win first abortion, for instance. As part of the discussion it was mentioned that there are many issues of race in Europe and that there are people supporting LGBT matters, but not abortion, but supporting trans diverse people, but not sex work, etc. This situation has been highlighted as a major issue.

Moreover, it was noted that the concept of *un-African* depends on what they want to understand as African or not. It was emphasized that there are many negative connotations for a lot of people, however it seemed that there are not any negative connotations for men. It was suggested the importance of understanding the contexts in which the interrogations of people to non-people, when un-African to African happen. Further, it was noted that when the precolonial system was in place there were some protections and as moving towards Global North there is a human rights perspective. However, there it was noted that there is no protection or system and not there is not the older one before either. As such, it was noted that looking at the native laws versus the European laws brings up the question of what kind of the homosexuality does the Bible criminalize because it is not the kind of the homosexuality I am in. Last but not least, one interesting suggestion mentioned was whether there can be developed a document about what does the Bible says regarding putting people in prison, and possibly a religious book about how judges should judge.

The discussion ended with the point that looking at the commandment, love is the biggest one and that it speaks about that you love generally and there is no judging, which questioned and interrogated where one puts the concept of love in their scriptures and words to the people. The last case mentioned was about a pastor preaching about anti-gay love at a wedding suddenly, which pointed out the question of why should we go a church like that.

DAY 3

OVERVIEW OF PROGRAMME

The third day of the ID meeting has been entirely focused on the development behind and the process of elaborating a set of principles aimed to address the detrimental impact on health, equality and human rights of criminalization with a focus on select conduct in the areas of sexuality, reproduction, drug use and HIV. While the panel discussion focused on the background of the principles, the thematic discussion aimed to stimulate in-depth conversations aimed to contribute to process model.

PANEL DISCUSSION: THE JURISTS PRINCIPLES

Objective: Grounding the session by understanding background to and the thinking behind the contribution jurists can make to worldwide efforts to address the detrimental impact of criminalisation. Highlighting the responsibility of jurists, legislators, law enforcement officials, police, prosecuting and administrative authorities, judges and lawyers to challenge criminal law that fails to comply with human rights – including the non-discrimination principle and the right to equality before the law and equal protection of the law for all without discrimination – and that has a detrimental effect on health, equality and human rights.

Moderator: Livio Zili / Christina Zampas, International Commission of Jurists

Speakers: UNAIDS, CSO representative, UNDP, ICJ

This session started by noting that a commission of distinguished jurists are elaborating/developing a set of principles to address the detrimental impact on health, equality and human rights of criminalization with a focus on select conduct in the areas of sexuality, reproduction, drug use and HIV.

It was noted that ICJ is leading this process with a group of distinguished jurists and are focused on the following six areas:

1. Criminalisation of consensual sex contact.
2. Adolescent consensual sex.

3. Adultery.
4. Consuming and possession of drugs for personal use.
5. HIV non-disclosure, exposure, and transmission.
6. Same-sex relationships.

The criminalization of these six areas has an incremental impact on the quality of human rights and leads to stigma and human rights violations, and deprivation of liberty which are a result of this unlawful laws. Judges are the ultimate law enforcers, and can decide and make decisions that impact people's lives and freedom. As such, ICJ will focus on the role of judges and impact they have.

BACKGROUND

Why law has and should be changed? Firstly, it was noted that this change comes from consultations with civil society and from different actors and that it affects many issues and areas. With reference to the Consolidating Guidelines on HIV and Human Rights 2006, and first one from 1988 it was mentioned that there was a recommendation for decriminalization of sex work, and legalization of sex work, and not decriminalization on drug use. Since then there has been a continuous advocacy to ensure that they are consistent with the international human rights law and that they do not target vulnerable communities.

With reference to the decriminalization of same sex, sex work, drug use and possession and the consolidating guidelines on Key Populations in 2014-16, it was mentioned that in 2016, the UN Secretary General High Level meeting on HIV and AIDS called on states to leave no one behind and ensure access to services by eliminating impunity that violate on human rights looking at the criminalisation of HIV, sex work, etc. and all forms of violence against KPs. Further, it was mentioned that in 2017, there have been two expert group meetings, the 1st one being organized by UNAIDS and OHCHR in Bellagio in February which have examined and focused on the misuse of criminal law on abortion, adultery ,drug use, same-sex relations, sex works, and the criminalization of HIV transmission, exposure and non-disclosure. On the aspect of sex work there has been an expression of interest to have guidelines or principles to help jurists or legislators when the criminal law should or should not be used. The 2nd expert meeting has been in March 2017 and considered the appropriate use of law and its detrimental impact on health and human rights.

Moving further, it was noted that, in May 2018 there has been an expert meeting of jurists focused on discussing the idea of this principles and discuss how they would look like and what is the foundation, etc. The 2018 meeting which brought together jurists, law makers, academics, etc. resulted in an endorsement of three main ideas, as it follows: 1) From the report of the May 2018 meeting and Background Papers 1 and 2, it resulted that there was a need for guidelines addressed to judges, lawyers, prosecutors, police officers, legislators and policy makers on how to address criminalisation on those areas and to have real resonance with the real target audience. 2) There should be a focus on those areas e.g.: the criminalization on consensual sex conduct, etc. and that these should remain the focus areas. It was noted that the IHL and standards should be at the core of it – notions and foundations of substantive criminal law – common law, crim law, etc. have been noted as the core of those systems which should be also used to provide the framework for those principles. 3) It was noted that ultimately even if they came up with an incredible legitimate intellectually sound set of principles on those areas that are based on human rights and substantive law, the ultimate success or failure will be determined by the engagement of stakeholders into the principles. As such, it was noted that they will be an advocacy and they need to rely on those constituents and be accountable to them in the process of their elaboration in the sense of having people representing those communities as the ultimate drafters and deliberates. Lastly, it was mentioned that even if it the principles would

be intellectually super sound, however we cannot rely on the communities and different stakeholders, there will be no point.

INTERNATIONAL LEVEL: CONVERSATIONS and ACTIONS

Moving further it was pointed out that there have been many conversations and actions at the international level, and that the civil society will either make or break the principles. The principles will be elaborated by jurists, and the civil society's role is inclusion. It was noted that in the past four months, there has been engagement to see how the process should be run, and that maybe by September 2020 will have something.

One question that has been raised up was in terms of how the engagement of society would like and when will a draft become public. As such, it was noted the importance of special precisions, rapporteuring, the engagement with the UN, special rapporteur for SOGIE, and so on. It was emphasised that the consultations will continue, and that it has been put a call for submissions which has 60 submissions from across the globe from civil society, service providers, legal organizations, refugees, etc. from every region of the world. On this note, further engagement and contribution in the process have been encouraged.

Further, in relation the process it has been iterated that there are specific guidelines on IHR which have been endorsed by the Human Rights Commission and Council, however it is premature to say somethings now in terms of the expectations about delivering and the endorsement. Additionally, it was noted that when jurists met in May 2018, there has been a full session on what has been done and what has worked. Lastly, with reference to Siracusa Principles it has been suggested the importance and the role played by governments in terms of getting a UN number, the importance of politics at the UN level and of the Human Rights council membership which are all important. Moreover, it was emphasized that these issues that are core are part of attacks on human dignity.

Last but not least, it was suggested that ultimately an alternative would be to look at examples of principles that are not endorsed by the UN or anyone as such, and thinking at a product that will be used by civil society organizations in domestic advocacy. As such, it was suggested that there are four areas which need to be considered, such as: 1) thinking what is important to have in these principles when thinking about decriminalization; 2) how and in what way the principles, if they can, address these issues; 3) what does consensual sexual conduct means considering aspects of adolescent sexuality and adolescent sex work, etc.; 4) and what do you think about civil society's role? How it should look like? What documents should come out? It should be adaptable to contexts

THEMATIC DISCUSSION & BREAKOUT SESSION

Objectives: Assist in identifying a process model for the elaboration by jurists of a set of principles – such a model must be one that ensures that key stakeholders – especially civil society and affected communities – are adequately and effectively consulted on:

- the efficacy of such a set of principles;
- the form they should take;
- the process that should be adopted for their elaboration; and
- the individuals and organizations that should be involved in their development.

Breakout Groups Moderator: Emily Christie, UNAIDS, Criminalisation of HIV; Christina Zampas, ICJ, Criminalization of sexual and reproductive healthcare services (e.g., abortion, contraception); and Livio Zili, ICJ, Criminalization of consumption of and possession of drugs for personal use.

GROUP 1: MEANING OF CRIMINALIZATION AND DECRIMINALISATION

Given that meaning is based on context and people, the 1st group aimed to look at the meaning of criminalization and decriminalization and how it differs. It was noted that there is a need for clarity around what the principles are elaborating and addressing, which requires working definitions of criminalization and decriminalization. Secondly, thinking at what actually provisions are used domestically, it was noted that they despite not being part of the criminal law, they have the same or even worse impact. In this case, nuisance law and the vagrancy law were given as examples. Further, the importance of thinking what laws are used to target people was emphasised. Moreover, in terms of what administrative provisions are used, it was emphasized that they have an enormous impact such as vetting sex work people from their home, and that these provisions are almost as bad or worse than criminal law. Further it was noted that decriminalization, as it was unpacked, is just the legal aspect of it and that there are nuisance laws that are still used to stigmatize. Therefore, it was highlighted the need for something broader than just decriminalization of un-policing identity, morality, sexuality and bodily autonomy. It was suggested that there is a need for action-related and within SRHR, and that these principles should be broader. For instance, the discussion pointed out that for a trans person, just walking through an airport is a challenge, which raised the question of how the discrimination that comes from other areas is addressed, as this is equally important.

The group discussion indicated that there seems to be a default community mechanism, a discretionary cause. Even in the health care sector the power element is like a punishment and it is so pervasive. It was suggested that there can be a preamble about the broader reach of the criminal law explaining how society looks to punish, that there is an abusive power and how punishment that comes from. There needs to be a recognition of the broader link of law on society. The *zeitgeist* has been that whatever happens when something goes wrong, instead of rehabilitating and understanding. There is a default to punitive measures and of marking what happened, which is linked to a larger abusive power and social embracing of punitive laws.

Further, the need to be realistic about what these principles can and cannot do has been highlighted. It was indicated that it is extremely relevant to contextualize criminal law as it relates to social structures, stigma, etc. As well, it was noted that changing the criminal law, will not change many people's lives. For instance, looking at the criminalization of detention of migrants – there are many intersecting aspects such as the intersection of migration, class, race, etc. which need to be reflected. In terms of social issues, the criminal law and the broader context and how provisions apply must be considered in relation with the aim of what the jurist principles would be, and also with and how these principles' role is defined. There are many circumstances in which people are criminalized, and there is punishment by far worse than criminalization. As such, it is crucial to make sure that we do not exclude ourselves. Further, the it was noted that it is important to consider the needs vs. when a crime is committed and the lens that will be used when that crime is judged. Furthermore, it was emphasised that the realities of the criminal justice systems need to be considered. For example, in Madagascar there was a report on futile incarceration showing that for 60% prisoners the offense should be outside of the realm. People in poverty are brought in the court, the personal circumstances around SRHR might be taken into account. Another research report on HIV in South Africa in prisons showed that they do not have access to ARVs anymore. All these aspects emphasized a clear need to consider the linkages with sexual rights, mental health, etc.

On the discussion of definitions of criminalization and decriminalization based on contextualization, it was firstly noted that in each of the different contexts, there are criminal provisions that do not criminalize directly (*e.g. no*

direct abortion criminal law) but there are other provisions that are used to criminalize. Further, context has been mentioned as crucial. As an example, issues around environmental sanitation and administrative provisions around TB, incarceration of people with TB and where they live were mentioned. Moreover, it was noted that there are instances in which child protection laws used as way of controlling. The idea of “unfit mothers” is being used, pointing to mothers who use drugs, or mother whom are sex workers, etc. There are cases in which mostly, there are no legal provisions linked to that, but rather it is the social norms that inform those actions. However, there are sanctions imposed (e.g. family live disrupted). People are criminalized in instances where the nuisance laws are used to arrest and criminalize for instance, trans diverse persons because the way they look. There have have been various cases in Zambia, and in Malawi where the impersonation law has been used to criminalize a person, as well as fraud laws. For instance, an individual traveling was accused that they had a terrorist agenda and because of that represented a national security threat, this is the approach used to criminalize them. Another important aspect that needs to be considered is how employment laws are used against migrants, (e.g. many cases in the UK). Moving further, it was noted that decriminalization will not be enough and that there should be a scope that goes beyond that. This acknowledgement raised the question of what does it really mean for each area. For instance, in terms of the decriminalisation of sex work it was raised the importance of ask what’s next, and whether the next focus will be on calling for legalization, regulation, etc. As such, it has been reiterated that all these terms have different meanings and that people have different working definitions. Moreover, it was emphasized that there is a need for transformative change, and decriminalization is only the first change. Likewise, there is a need for building some protection laws: even if a law is legalized, it needs to be protected. There are models of having many civil cases and individuals are suing each other, and it was noted that it would be interesting to reflect whether these principles and the challenging criminalization globally could apply to civil law as well (e.g.: sex offender laws is sometimes used to criminalize). This highlighted the importance of acknowledging the limitations of legal laws. Moreover, it was noted that diversion needs to be taken into account especially when considering that lesser alternatives to the punitive justice approach can have a stigmatized impact. This was a framed as a crucial aspect which requires attention in making sure that one system will not be replaced with another.

There is a fear around decriminalization and as sex work activists especially because conversations end the conversations end at that point, and there is no one really asking that ‘what do we do when we get decriminalization’. It is important to think how do we get a sub-sexual within the human rights movements and what is happening next especially because in the sex work movement this is not an active conversation. One suggestion made was whether having a worker’s rights conversation can help the decriminalization of sex work. It was emphasized that there is a need to think who are your allies, partners, and where do you go to about the protection laws. In terms of sex work, legalization has been mentioned as the next level after decriminalization. However, it was noted that there is a need to reflect whether this is what sex workers want. It was reiterated that decriminalization is not enough and that there is a need to ask for something else such as worker’s rights. Actually, the conversation goes beyond and it was highlighted that there is a need to think about various scenarios such as what if abortion is decriminalized and then there’s no access to it. For instance, it was mentioned that in West Africa, legalization is the system and that sex workers in Senegal are pretty much okay with it. The idea of picking decriminalization with a bit of legalization and the Swedish model was pointed out as well. On this note, it was pointed out the importance of context, and that there is a need to reflect what would actually might be the ideal situation for different contexts. In some instances, decriminalization might not be the solution. In Senegal they do not need decriminalization, but protection laws. For example, the Netherlands has legalization but still there are cases of extortion and abuse.

Lastly, it was suggested that maybe the problem is not the law, but the implementation and how it is carried out. The greatest challenges are being specific enough to not misinterpret it in the opposition but at one point one has to take into account the local context and the community but without being vague either. Then, how criminalization, decriminalization, legalization is defined is crucial and is closely linked with the communities most impacted by the

laws. Therefore, it was pointed out that it is important to have a draft on who is implementing the law, and give a clear set of guidelines. In application of these problems the communities most affected need to be, and are consulted. Lastly, it was noted that it is important to reflect upon the discretion of the police outside the legal background (*e.g.: police arresting people*). As well, there is a need to consider how in customary or traditional justice system, or religious laws, the principles would function and how that would be reflected, and have consultations with religious leaders.

GROUP 2: ADOLESCENTS SEXUALITY, USE OF DRUGS & SEX WORK

The second group's focus was mostly around the concept of consent and how criminal law approaches two people at the very age of 18 having sex. The discussion took into account the importance of contexts, especially in relation to sex work and when sex work is work and when is trafficking, and also in relation to adolescents and use of drugs. Therefore, the discussion focused on how should the set of principles deal with these issues, and how they play out in the work. As such, it was firstly noted that in terms of paradigms and concepts to solve them, there is a need to adopt a human rights lens, but also from feminism, etc. and have an intersectional lens. For instance, looking at the issues of sexual violence and consent, the UK was given as an example, and it was noted that only 7% of individuals end up with convictions. On this aspect, it was further suggested that it is unsure whether the criminal law is how we should deal with sexual violence. Secondly, looking at the impact of criminal law, there is no role for criminal law in drug use. Also, it was mentioned that trafficking law is used in Europe for supporting migrants, refugees, asylum seekers.

In terms of consent, it was mentioned that there is an opportunity to emphasize consent. The burden of proof is on the victim to prove that it was not consent which impacts hugely the number of successful prosecutions. This was pointed out as highly problematic especially that the law can be a silencer. An example given here was about a case in which the person raped left the court with a criminal charge of bringing punitive charge.

Further, it was noted that for adolescents there is a risk of harm related to a specific section of their vulnerability and them being a target. Likewise, there is also the use of abstinence as the best protection method which should be redressed and allow them access to services they need rather than using criminal sanctions. In Africa there is a big discrepancy in terms of the age of having access to sexual reproductive health from 12 years old, but only allowed to have sex by 16 years old. If sex with someone whom is less than 2 years older than you meant that there is no crime. However, the challenge around these ages create several problems.

Moving further to the matter of sex work, it was iterated that one problem is the fact that sex work is not regarded as decent work, and that the legal definition is actually stating it "not as decent work" which criminalizes it. Moreover, it was suggested that political parties may only mention these aspects in their political programmes as 'a point that should be discussed' but with no further action, as it was the case with the ANC's political party programme.

On the issue of child or pedophile marriage, it was pointed out that in some countries the aspect of consent is very murky. Girls do not want to get married but in order to not be killed, they consent. Moreover, in some countries when they are married and get pregnant, they get then criminalized because they are underage, and so they themselves committed a crime. Consent was highlighted as being enormous. For example, Boko Haram uses young girls to detonate bombs in market places – which raised the question of how is that consent that they willingly choose to be the carrier of the bomb, or is it because is better than being raped 20 times a day back in the camp. There are linkages between consent, freedom to choose, and dignity which must be considered. Moving further, it was indicated that there is a need to protect younger people. As such, it was questioned why is it that people do not want to criminalize two 14-15 years old people, but want to criminalize a 35 and 14 years old. This interrogates

what concepts are used. Here, power plays a key role especially because consent might be undermined by the power differentials. On this point, it was noted that this is not the problem of the law but it is the application of it, and how consent is understood. Further, it was mentioned that there was a British case in the 1980s where a group of men in the UK were working around age of consent for teenagers and they went really far with their movement. However, it turned out that it was a group of pedophiles that were advocating for lowering the age of consent.

There are many questions that require answers, such as what is seen as acceptable sex practices and what is something considered stigmatizing, what level of discretion and by whom is applicable, how are established the parameters that would set the tone of what's applicable and not, and who has the authority to do so. It was emphasized that there are evolving norms and there is subjectivity which implies that what might be okay with a person, might not be with another, which poses the challenge then, of how these are contextualized. Looking at consent and freedom to choose, and the freedom to choose how you use your body, and what do you want to do, consent is attached to a singular action rather than freedom to choose how you want to live and your all well-being.

Returning to what to do in cases of sex work when the persons have 16-17 years old, it was noted that below 18 is not okay. As well, it was mentioned that one of the arguments is that of a person being 21 years old, and that in this case it is ok to have sex work by choice. However, the reality is that some people have started at 16 years old. The conversations around decriminalization are stating that sex work is for adult age, however, then the legal age of working is 18 years old, which draws a line for age of consent for being a sex worker. Another critical aspect noted was that in some cases, the age of work is 14 years old, which nevertheless allows a person to enter a contract. It was suggested that young people selling sex is a backlash within sex work industry and it was acknowledged that people engage in sex at young ages. Moreover, in terms of the age of criminal capacity, it was noted that is a variety around different legal capacities such as at what age can a person be held legally reliable. It was thus highlighted that there are various implications of being legally attached to the legal system at certain ages. Additionally, it was emphasised that there are different decisions on the same facts which questions then how is the law interpreted, and how is legal application of law in relation to international humanitarian law.

Furthermore, it was noted that in terms of training for judges, there have been case-studies to see how different law enforcement apply and interpret the law (e.g. UK judicial studies group). This emphasized the importance of thinking what is better for the individuals involved, the community, the society as a whole. There is a need to think forward what is good for healthy societies. Principles are not going to change the law but the way they are applied and used in judgements. For instance, if a judge interprets the law in a different way, the principles can then have a huge impact on the law and ultimately change it. However, the question that remains is how are various communities reached out to, and how are different jurisprudence being framed. Further, despite being noted that for the May 2018 meeting on the principles there were various individuals involved such as UN independent experts and UN working groups, as well as jurists coming from South Africa, Toronto, India, Kenya, Columbia, Nepal, etc. it was pointed out that there is a need for engaging more people.

The last point raised was on the issue of adolescents and consent, and it was noted that one of the issues coming out is about young people having sex, or issues of clients or young people selling sex which gets more contentious. On that note, it was suggested that if there would be the same age across all laws, there would be better health outcomes, and this depends on the age of consent.

GROUP 3: PROCESS OF ENGAGEMENT

The third group discussion started by referring to the International Guidelines on HIV and AIDS published 1989, updated in 2006 and the 12 key principles embedded within which have been endorsed by the Human Rights

Council. It was noted that envisioning communities translating the principles and what do the principles mean for them is very important. As such, it is crucial to seek funds for the processes or otherwise hope that people will pick it up. Further, it was indicated that ICJ wants to start engaging with organizations interested and have support and create spaces for conversations on how to do that and get potential funding partners on board. Also, dissemination was mentioned as one of the biggest challenges. Additionally, there is need for more buy-in from organizations. Moreover, one key question raised was how to translate the principles into reality and get buy-in. Another challenge mentioned was that when things are directed to be legal, impact sits with ministry of justice, however in the reality they sit with different ministries such as health, education, etc. As such it was noted that it is important to make the principles understandable for more constituencies (e.g.: not only by jurists, but also by the legal community). It was further emphasized that the primary target is the judiciary, and that as secondary targets there are legislators and police, and prosecution.

In terms of how would those legal audiences would look like, it was mentioned that there are many different documents online as resources to be used for people. Further on the question of whether the 60 submissions have been representative of all the areas or not, it was iterated that many submissions have been on HIV, with fewer on abortion, adolescence, adultery. On this point, it was noted that there is a need for concerted efforts to reach out to groups living in Middle East and North Africa (MENA), and not only to judges, but also to civil society. Moreover, it was noted that the consultation process will continue for at least another year, and that they will be attending conferences, meetings, etc. For instance, it was mentioned that looking at Central Asia and Eastern Europe, the network of people who use drugs have not been represented. However, the National Human Rights Institutions are creating a roadmap of the process to see consultations from national, regional etc. to bring all stakeholders into the conversation, and to have buy-in from member states. Likewise, there are UN special procedures and rapporteurs and working with them, and the principles will be brought into the UN and have them buy-in on the principles. From that point, the principles can be taken also the AUC, however they must be AUC applicable ones. Lastly, these aspects are not about process but rather at the end.

Furthermore, it was noted that it is crucial to make sure that there is a mapping of Global South Institutions to capture the variety that exists, especially that of legal systems even though when they are similar. Likewise, making sure that there are judges from different laws and across all regions was pointed out as essential. For example, it was suggested the idea of having a smaller group of judges that are very committed and whom could be the "ambassadors of this project". Likewise, the links with civil society organizations are very important as well as getting endorsements from activists in different regions. Moreover, it was pointed out that there is a need for discussions with academic institutions and reaching out to human rights departments. Similarly, it was noted that there is a need to think about how civil society spaces would look like and what would be the process. It was noted that it is important to have activists and people who represent global community networks in the space. For instance, the Key Populations Reach Programme had few judges and that may be good advocates. Additionally, it was encouraged to count people, the type of people to speak with, how they engage with and where they come from. This was suggested as a crucial aspect, especially in terms of putting those numbers out very transparently which will also be measurement for ICJ and for others. Equally important this process would give legitimacy. It was further noted that beyond the primary consultations with the civil society is important to be creative and have creative spaces to brainstorm on how the principles could be translated to other spaces beyond legal, and to other areas such as health. For instance, the Public Health Congress in Rome in 2020 was indicated as an interesting space to have a workshop on these matters.

Moving further, it was mentioned that WHO engaged with sexual health department to be part of the principles, and are looking at the impact of criminalization on health. As such, it was pointed that there is a need to draw linkages to the universal health coverage and to the SDGs. It is important to be transparent about the process on consultations. There is a need to think about spaces, and judges whom can be engaged with. Moreover, there is a

need for strategizing the principles beyond SRHR, how they could be applied and how could the principles be supportive potentially to other issues. There is a need to think about issues related with decriminalization that are beyond SRHR. For instance, looking at the criminalization of people who grab or remain on judicial land even they are not supposed to be there anymore, criminalization of people who are homeless, obstruction of justice and how is that criminalized. As well, it is important to look at the socio-economic rights criminalization, climate change criminalization, etc. For example, it was mentioned that there is a programme in Germany working with people who have desires to have sex with children and they have harm reduction mechanisms, which are very important as they teach people how to stop it from happening and prevent it. Lastly, it is important to be aware that the criminal law is very attractive and people rush to use it and punish things. One example in this case is the link between the criminalization of migrants and terrorism.

REPORT BACK SESSION FROM THEMATIC GROUPS

Objectives: 1) To assist in identifying a process for the elaboration of a set of jurists' principles responsive to, informed by, and coordinated with other ongoing efforts in this field, including chiefly those of CSOs. 2) To ensure optimal buy-in on the part of key stakeholders and communities in process identified. 3) To make the process chosen respectful and inclusive of, and accountable to, those affected and those who represent them.

GROUP 1: MEANING OF CRIMINALIZATION AND DECRIMINALISATION

First of all, it was noted that there are several 'elephants in the room' and that there are various facets of it whether it is the decriminalization of exclusively sexual conducts and SRHR, HIV, same sex, adultery, and drug use. The discussion also unpacked issues related with other legal provisions that would then continue to target people. This raised the question of whether will they live a free stigma life.

Secondly, it was noted that it is important to be aware of the various legal regimes and about regulations that have an impact in terms of sanctioning people. Likewise, it must be considered whether an exclusive focus on decriminalization would be enough and what it is meant by decriminalization. There were pointed out questions regarding what needs to happen beyond decriminalization, and whether that would be sufficient. It is important to capture the full impact of criminalization and how laws are used to stigmatize, and to adapt and move beyond decriminalization. It was emphasised that it is crucial to take into account the broader context. For example, it is essential to consider how national security law, impersonating someone, or mental health law, etc. are used to detain people.

As a reminder, it was noted that it is decisive that the principles need to be realistic and consider in the preamble that contexts vary and that there are ways in which the criminal law impacts the society and what is their role. There is a need to contextualize the criminal law as it impacts many other structures of society. For instance, looking at the detention of migrants, there is a need for adopting an intersectional lens and understand issues of class, race, etc.

The core of the principles should go beyond SRHR. In deciding the aim of the principles, was noted that it is essential to take into account the *need* versus *what is*. Recognizing different contexts was mentioned as being highly important, especially in order to operate internationally. Context again was reiterated as crucial. For instance, there were and still are cases in which people living with HIV are incarcerated by use of other provisions which can be regarding TB.

There was expressed concern around calling for alternative approaches as these alternatives can stigmatize and free a vacuum that will not benefit communities. As such, it is crucial to unpack how far we have gone with

protection law. For instance, looking at the protection of sex work activists, various arguments based on worker's right could be articulated as they can advocate for decriminalization of sex work.

One challenge however is that of being specific enough but not be misinterpreted, and of being reflective of the local context at the same time. There are issues that need greater consideration such as pluralism, traditional /religious, legal systems, custom laws, etc.

Further, it was noted that there is a need to ensure that beyond decriminalization, the employment discrimination is also taken into consideration, for instance. Decriminalization is not enough and there is a need to ensure that people are protected against discrimination against who they are perceived to be or who they are. There is *de facto* and *de jure* decriminalization which needs to be considered. For example, there was a conversation explaining legal regimes in the Netherlands suggesting that colonial laws are removed but de facto that is not the case.

Lastly, it was discussed the extent to which in other contexts would decriminalization be enough. Looking at HIV for instance, it is important to move beyond specific criminal laws because many countries use specific statutory laws to criminalize HIV. In terms of drug use and linkage with Samaritan laws, someone can be in trouble if they use drugs and might need to access public health, and decriminalization of drug use is not enough. There is a lot of HIV denialism in Russia, criminalization of drug use in Brazil, etc. which highlights even more that context is essential.

GROUP 2: ADOLESCENTS SEXUALITY, USE OF DRUGS & SEX WORK

From the group discussion there have been high-level concepts coming out across human rights and criminal law. As such it was emphasized the importance of starting with a human rights basis and right to bodily autonomy, which represents a basis when discussing about young people. As well, it was noted that it is essential to consider various aspects such as deterrence, denouncing etc. and role-playing regarding consent in children, having consensual sex, and use of drugs.

Secondly, it was pointed out that the problem with public health personnel and that how adolescents having sex are being criminalized, has the potential to take up pregnancy rate in various contexts. Further, it was highlighted that when looking at the purpose of criminal and human rights, public health impact raises particular issues. Regarding alternatives to criminal law and what criminal law aims to achieve, it was mentioned that there needs to be somethings included in the principles that the most appropriate ways to respond.

Moving further to the issue of informed consent versus the freedom to choose, it remains unanswered who is responsible for making sure that people are informed when it comes for instance about the issue of informed consent and sex. Some principles outline percentages and purpose and how judges need to think around consent. Likewise, there are issues around child marriage versus the age of consent. There is the issue of child pornography as well. Additionally, it was noted that the criminal law does not deal well with consent and it is not adapted to that. As such, how do we decide when someone is going to consent, that it has the right age. This is not only an age problem, but also science issue. For instance, considering when does someone becomes mature is relative and differs from one person to another.

GROUP 3: PROCESS OF ENGAGEMENT

The group discussion highlighted that the principles would be good to have, yet it was questioned whether the civil society would actually be able to use them in their countries. As such, it was indicated that there is a need for the principles to be adapted to various contexts. Also, it was emphasised that it is important to understand how

various documents connect in each context, such as the Yogyakarta principles and Nigerian Constitution, etc. Further, it was suggested that the document can become very complicated, and that there is a need to have general principles. However, they should not be too broad, and they need to be based on human rights principles.

Further, it was noted that is crucial to think how to address judicial biases and people's attitudes, and how to bring judges and civil society organizations together to kind of provide testimonials in judicial spaces. There is a need for engagement with civil society organizations to ensure that there is national buy-in and that principles are adaptable to different contexts. Moreover, it was pointed out that the judges are the third tier and that it is important to be cognizant of the fact that before judges, there is police which is the first tier as they make the arrests, and secondly, there are the prosecutors as the second tier. Therefore, it is of high significance how each of these aspects are taken into consideration and engaged with. Moreover, there is a need of ensure that there is broader engagement which includes different stakeholders outside advocacy and legal spheres such as health advisers, etc.

Lastly, it was emphasised that it is essential to take into account the importance of drawing linkages between more areas on SRHR and perhaps go beyond these areas to link it with various areas such as migrants, SDGs, etc. For instance, it is important to think how would these principles apply to the criminalization of migration. Likewise, there is a need to use the principles to encourage other people working in other areas and to create solidarity.

FINAL COMMENTS

In terms of the development of the principles, it was noted that there are several next steps of action and that the consultation which has essentially two aims is coming to an end. Therefore, the first aim refers to ensuring the expansion of the intellectual reach, whilst the second aim is to consult on the process and alternative processes in actually developing and adopting the principles. Further, it was noted that everything will be collated into a proposal which will go back to funders, with the hope of having models that could be used by 2020 and then have a final version by 2021. Lastly, it was pointed out the continuous need for engaging with various stakeholders and putting out a roadmap with thematic areas to consult upon and reach to others, and to possibly have this translated in many languages.

CLOSING REMARKS

The 2nd ID meeting closing remarks session captured the essence of the two and a half-day discussions around the multi-dimensional aspects related to criminalization, which indicated that the criminal laws prevent us thinking about structural changes. For instance, stigma around drug use has been identified as a major challenge. Secondly, it is critical be aware that criminalisation is an effective re-election ploy. It was suggested to be a cheap political hand grenade that politicians use to divert attention away from socio-economic and environment issues. Likewise, the discussions highlighted the importance of looking at the linkages with and the role of corruption in criminalisation. Further, even though peer influence was mentioned to be a powerful tool for us, it was iterated that it is not the only one. Additionally, it was emphasised that it is important not to shift blame off our populations and onto other people.

Moreover, the discussions showcased that there is a need to challenge the perception and narratives that violence is particular and not structural. Further, the discussion about alternatives to criminalization emphasized the need to always consider nuances, and not extreme perpetrator-victim situations. Likewise, it was reiterated that autonomy is key. In addition, it was highlighted that communities must lead and that it is very important to have community-led approaches. To continue with, it was emphasized that we must not rely solely on decriminalization and criminal justice system. There also preventative programmes, and changing the way we respond (social services, police etc.) must be improved. Moreover, it was indicated that movement building is worthwhile and that there should not be

only expensive reactive litigation. Lastly, it was highlighted that there is a need to prioritise assistance for most left behind (MLB) and criminalised individuals and groups in emergencies and humanitarian settings and disasters. It is essential to have different people in the room and consider how the work in one area might negatively impact another area. This suggested the need to better understand the impacts of criminalisation holistically.

POSSIBLE UPCOMING WORK THAT NEEDS TO BE DONE

1. There is a need for a book such as a special edition journal to share messages to a broader audience, and into new sectors.
2. There is a need to bring the humanitarian sector into challenging criminalization movement.
3. There is a need to unpack in depth the links between corruption and criminalization.
4. There is a need to unpack the alternatives to criminalization such as reparation, restorative, rehabilitative, community-based justice, diversion options, transitional justice, etc. whilst being aware that diversion could also be problematic.
5. There is a need to identify the opposition and map their work.
6. There is a need to identify those that are allies but still calling for criminalization.
7. There is a need to do more cross-movement personal narratives on criminalization.
8. There is a need for a central archive and newsletter. AI just created a Facebook Group to this end, named Challenging Criminalisation Globally.
9. There is a need for evidence on the cost-benefit analysis on prison's effects on society, and finding ways to make prisons financially unsustainable (including understanding social capital)
10. There is a need to understand the impact of drug decriminalization on human and other commodities trafficking, as well as the regional differences and similarities on these issues.
11. There is a need for more evidence on structural barriers and human rights across the movements-
12. There is a need for meetings so that we can plan and strategize our work long-term so we can be more effective and align our work more.
13. There is a need to get evidence on linking the CCG to socio-economic rights e.g. water, housing, education, employment, etc., climate change, land, race and safe environment movements and so on.