



State violence in the name of deterrence: Understanding judicial corporal punishment for drug offences

Partner: Harm Reduction International

About Harm Reduction International

Harm Reduction International (HRI) is a leading NGO dedicated to reducing the negative health, social and legal impacts of drug use and drug policy. HRI promotes the rights of people who use drugs and their communities through research and advocacy to help achieve a world where drug policies and laws contribute to healthier, safer societies. HRI's Human Rights and Justice team monitors rights abuses committed globally in the name of drug control, and advocates to promote the human rights of people who use drugs and their communities. Currently, primary focuses of the team are the abolition of the death penalty for drug offences, compulsory detention and treatment of people who use drugs, and the right to health of people who use drugs.

Project Background

Corporal punishment can be understood as institutionalised physical violence carried out as a disciplinary measure and is clearly and absolutely prohibited under international law as a form of cruel, inhuman or degrading treatment, if not torture. This prohibition is enshrined in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, as well as regional human rights conventions. UN human rights jurisprudence is consistent that corporal punishment not only constitutes cruel, inhuman, and degrading treatment, but also violates human dignity, a fundamental tenet of the human rights system.¹

¹ Among others, see: A/60/316 (2005), para. 19-23



People who use drugs or engage in drug markets retain their fundamental rights, and a comprehensive system of human rights standards exists that should guide State actions with respect to drug policy. Nevertheless, the repressive approach to drug control adopted in many countries leads to, or enables, a wide range of human rights violations and abuses, disproportionately impacting upon the most vulnerable in society and perpetuating cycles of violence and marginalisation, while failing to substantially reduce drug-related harms and risks.²

While significant research documents many such human rights violations, little is available on the use of judicial corporal punishment for drug offences.

In 2011, Harm Reduction International published its report 'Inflicting Harm: Judicial Corporal Punishment for Drug and Alcohol Offences in Selected Countries'. The report, which examines judicial corporal punishment in international law, and the laws around its application for drug and alcohol offences at the national level, remains one of the only available sources on the phenomenon.

Despite a lack of attention on this issue, corporal punishment continues to be imposed in a number of countries as a form of judicial punishment for drug offences. In order to fully understand the scale of the phenomenon, and develop effective strategies for action, there is a need for further research, including detailed mapping of national legislation and practice, and further analysis of the applicable human rights framework.

Project output

In light of the above, the objective of the project is to research and write a 30-page report which includes:

- A review of the international and regional human rights framework governing corporal punishment;
- A comprehensive mapping/survey of domestic legislation prescribing corporal punishment for drug offences, including relevant jurisprudence where available;
- A review and description of the forms of corporal punishment used;
- A review of the use of corporal punishment in the countries retaining corporal punishment for drug offences;

² A comprehensive review of the human rights dimension of drug control is provided by the International Guidelines on Human Rights and Drug Policy, available here: <http://humanrights-drugpolicy.org>



- A complete bibliography.³

The final report will be based on the following corresponding strands of research:

- 1) A mapping of regional and international human rights standards relating to corporal punishment by way of a desk-based literature and jurisprudential review;
- 2) A mapping of national legislation prescribing corporal punishment for drug offences (including a basic review of other offences which attract capital punishment) by way of desk-based research and interviews with experts;
- 3) A mapping of existing practice in countries retaining this form of punishment by way of desk-based research and consultations with experts.

The project will close a significant gap and contribute to shedding light on an under-discussed phenomenon; as well as provide the basis for further research and advocacy work by Harm Reduction International.

Project outline

The project will be developed in three stages:

- 1) November December 2019: Project design and planning
 - Meeting with HRI to discuss the project and its strategic objectives;
 - Desk-based research towards the development of a literature review and a complete bibliography to be submitted to HRI by 13 December, for review by 10 January. The literature review and bibliography will focus on:
 - International Law and Jurisprudence;
 - Academic literature;
 - Basic mapping of countries retaining corporal punishment for drug offences in their legislation;
 - By 13 December, development of a one-page internal and external communications strategy related to the project, the external elements to be agreed in collaboration with HRI;
 - By 13 December, submit an ethical review application;
 - Identification of local partners/research informants; drafting of interview questions.

³ The bibliography is in addition to the 30-pages



2) January-March (10 weeks): Research and data gathering

- Based on the findings from phase 1, and through discussions with HRI, definition of the geographical focus of the research and development of a research strategy for the second phase;
- Further desk-based research as necessary, focused on the selected countries;
- Qualitative research as necessary, including interviews with research informants;
- First draft of the report to be shared with HRI by the end of term for comments and discussion.

3) April-June (8 weeks): Reporting

- Revision of the first draft based on discussion with HRI in stage 2;
- Finalisation of the draft;
- Development of an advocacy strategy for and with HRI;
- Presentation of the research findings at HRI's office.

Project bibliography

- UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment* (10 December 1984). UNTS 1465.85
- UN General Assembly, *Convention on the Rights of the Child* (20 November 1989). UNTS 1577.3
- UN General Assembly, *International Covenant on Civil and Political Rights* (16 December 1996). UNTS 999.171
- Human Rights Council, 'Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak. Addendum: Study on the phenomena of torture, cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention' (5 February 2010). UN Doc. A/HRC/13/39/Add.5, par. 209-228
- International Centre on Human Rights and Drug Policy, 'United Nations human rights mechanisms & drug control legal briefing paper no 3: The Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Available at: <https://www.ohchr.org/Documents/HRBodies/HRCouncil/DrugProblem/ICHRDPTorture.pdf>
- International Centre on Human Rights and Drug Policy et al., *International Guidelines on Human Rights and Drug Policy* (2019) www.humanrights-drugpolicy.org



- Harm Reduction International, 'Inflicting Harm: Judicial Corporal Punishment for Drug and Alcohol Offences in Selected Countries' (London, 2011)
- Amnesty International, 'A blow to Humanity. Torture by Judicial Caning in Malaysia' (London, 2010)
- Resources on World Corporal Punishment Research website: <https://www.corpun.com/>
- Resources of the Global initiative to End All Corporal Punishment of Children: <https://endcorporalpunishment.org/>