



THE LONDON SCHOOL
OF ECONOMICS AND
POLITICAL SCIENCE ■

Houghton Street
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London, 14th May 2018

Office of the United Nations
High Commissioner for Human Rights (OHCHR)
Palais des Nations
CH-1211 Geneva 10, Switzerland

Dear OHCHR,

I am writing with regard to the following operational recommendation (o) of Chapter 4 of the UN General Assembly Special Session on Drugs, 2016, Outcome Document:

“(o) Promote and implement effective criminal justice responses to drug-related crimes to bring perpetrators to justice that ensure legal guarantees and due process safeguards pertaining to criminal justice proceedings, including practical measures to uphold the prohibition of arbitrary arrest and detention and of torture and other cruel, inhuman or degrading treatment or punishment and to eliminate impunity, in accordance with relevant and applicable international law and taking into account United Nations standards and norms on crime prevention and criminal justice, and ensure timely access to legal aid and the right to a fair trial.”

We at the International Drug Policy Unit of the London School of Economics and Political Science have undertaken an extensive and rigorous study of the implementation of so-called “drug courts” in the Americas and globally. We have done so for a number of reasons:

1. A concern that the evidence surrounding drug court models is being systematically misrepresented at a global level.
2. That economic interests and international lobbying have been driving and continue to drive the international expansion of drug courts, rather than evidence.
3. That drug courts represent an expensive system of very questionable efficacy. This is magnified in jurisdictions where the opportunity costs of such interventions should place a high burden against their implementation and where their likely success is low while their potential for abuse exceptionally high. In other words, they would serve as an impediment to the implementation of recommendation (o) of Chapter 4 of the outcome document.
4. That drug courts ultimately serve to maintain the overarching criminal justice orientation of demand interventions in the field of drug control, while adopting the language and appearance of being public health oriented. In so doing they appear to us to de facto subvert genuine public health responses by placing judges in charge of individual health needs and choices.

As such we at the LSE have undertaken an eighteen month study of the evidence from drug court models internationally, focusing on the US, Canada, Ireland, the UK and Australia. This study will be published as an edited book by the LSE in July 2018. In each case we found a mixed picture ranging from abuses, to poor outcomes, to internal collapse of the drug courts system, to marginal efficacy in specific and very limited cases. All of these outcomes suggested that the “drug courts” model would be unlikely to “succeed” when applied to the differing and deeply complex criminal justice circumstances within the Americas and posed an unacceptable level of risk of abuse when applied to areas with underdeveloped capacity and oversight within the criminal justice system.

While drug courts as a model thrive within the United States as well as enjoy widespread political support, decades of research have, at best, highlighted marginal efficacy in certain targeted areas - specifically small but not insignificant reductions in recidivism (c. 13%, but only as applied to certain groups) - while demonstrating no measurable impact on levels of incarceration (despite a repeated promises to achieve this) and have been the subject of a litany of complaints about cherry picking of clients, perverse outcomes for people funnelled into the intervention, such as “failing out” and receiving a worse sentence than if they had not undertaken the programme, that judges have ended up making medical decisions on behalf of clients with, at times, lethal consequences, such as demanding that clients cease substitution therapy to qualify. Meanwhile, the basic insights highlighted time and again by leading scholars in the field of drug policy studies remains, that drug courts ultimately exclude such a broad section of drug involved individuals from eligibility and are so exceptionally costly to run that they represent at best a weak policy intervention and at worst, one that is, or will be, a burden to importing jurisdictions.

The key insight that emerges time and again from our research on demand interventions is the centrality of coherent and low-threshold “wrap around services”. In the case of drug courts, those models which have demonstrated the most efficacy have shown a number of key underpinnings:

1. An exceptionally integrated interaction between public health, social and welfare services which address the underlying marginalisation and health issues of the individuals involved. In the Americas this is rarely the operating norm and should be recognised as such when contemplating the drug court model.
2. That these courts represent an absolute last recourse for complex cases already involved in the criminal justice system. In this sense it appears a drug court in name, but ultimately a complex intervention intended to extricate the individual who has, through a failure of social support services, ended up in the criminal justice system. The latter, it is recognised, frequently only serves to exacerbate their vulnerabilities. However, under the current construction drug courts models tend instead to net widen and bring individuals into the criminal justice system rather than divert them away from it.
3. The courts operate in a reasonably decentralised criminal justice system which enables the court to develop close operating relationships with necessary social services and enable these to assume key responsibilities. In contexts such as parts of Australia, this has been shown to be relatively effective. In most other contexts it has

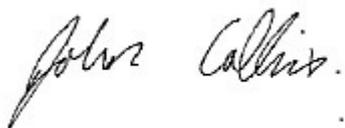
not. In the US this frequently manifests as judges simply dictating treatment regimens based on a total misunderstanding of best practice health policies. Further judges then simply punish clients for “failing”. In other contexts this has simply resulted in policy failure. In the UK the need for decentralised courts and services proved too high a threshold in a highly centralised system and the number of drug courts collapses precipitously. In Ireland clients found the courts to be short term fixes that provided little in the way of prolonged wrap around services which they may have received had they not been funnelled into a rigid criminal justice system.

For these reasons we suggest deep caution and reticence on the part of Latin American governments to welcome the import of these models. The case studies we have examined in Latin America suggest a predictable outcome based on the above cautionary tales. The levels of reduction in recidivism in some cases examined are exceptionally low, yet presented as success stories. Meanwhile, the legal infrastructure being created will eventually pose a direct cost to the state, at an opportunity cost of more effective, evidence-based, low-threshold community treatment interventions. Further, the propensity for human rights abuses is to such a degree that, in light of the academic evidence available, we suggest against their continued their roll out to areas where we know the fundamental oversight and monitoring components are simply not present.

From a human rights perspective there must be a particularly high threshold set against these interventions and I would urge that OHCHR makes a strong case for caution and scepticism for the adoption and expansion of this model based on existing and extensive scientific evidence and experience.

I thank you for allowing us to submit this contribution and remain at your continued disposal.

Yours sincerely,

A handwritten signature in black ink that reads "John Collins". The signature is written in a cursive, slightly slanted style.

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