



GRAND DUCHY OF LUXEMBOURG  
Permanent Mission to the  
United Nations Office and other  
international organizations in Geneva



MISIÓN PERMANENTE DE COLOMBIA  
ANTE LAS NACIONES UNIDAS EN GINEBRA



GLOBAL  
COMMISSION ON  
DRUG POLICY



Schweizerische Eidgenossenschaft  
Confédération suisse  
Confederazione Svizzera  
Confederaziun svizra



## International Women's Day Presentation: The 8 March Principles for a Human Rights-Based Approach to Criminal Law Proscribing Conduct Associated with Sex, Reproduction, Drug Use, HIV, Homelessness and Poverty

**Invitation to a Side Event at the 52<sup>nd</sup> Session of the UN Human Rights Council**  
**Wednesday, 8 March 2023, 15:00 pm – 16:00 pm**  
**Geneva, Palais des Nations, Room XXII**

On the occasion of International Women's Day, the International Commission of Jurists (ICJ), together with the Office of the High Commissioner for Human Rights (OHCHR), UNAIDS, WHO, UNDP, Colombia, Luxembourg, Switzerland, Amnesty International and the International Bar Association's Human Rights Institute and the Global Commission on Drug Policy, invite you to a presentation and discussion on a new set of legal principles elaborated by jurists for a human rights-based approach to criminal law proscribing conduct associated with sex, reproduction, drug use, HIV, homelessness and poverty.

### Background

Criminal law is among the harshest of tools at the disposal of the State to exert control over individuals and, therefore, should always be used as a measure of last resort. However, globally, States have exhibited a growing trend towards overcriminalization. Continued use, and in some cases a new proliferation of arbitrary and discriminatory criminal laws proscribing conduct associated with sex, reproduction, drug use, HIV, homelessness and poverty, have led to egregious human rights violations, including by engendering and perpetuating stigma, harmful gender stereotypes and discrimination based on grounds such as sex, gender, sexual orientation, gender identity and gender expression.

Unless criminal laws proscribing the above-mentioned conduct are directed at coercion or force or otherwise at the absence of consent, their mere existence – let alone their threatened or actual enforcement – violates human rights. The criminal proscription of the above-mentioned conduct is not

in conformity with general principles of criminal law and international human rights law, either because the proscribed conduct should not be criminalized at all, since it involves the legitimate and lawful exercise and enjoyment of human rights, or because the content and scope of certain criminal offences are otherwise inconsistent with general principles of criminal law.

In such circumstances, criminalization violates or otherwise impairs the exercise and enjoyment of the full range of civil, cultural, economic, political and social rights, including the rights to dignity, equality, non-discrimination, freedom from violence, liberty and security of person, life, privacy and health. Moreover, unjustified criminalization of individuals and sometimes entire communities is increasingly impeding progress in advancing human rights in many areas, including: racial and gender equality; reproductive autonomy; disability; economic justice; civil liberties; sexual orientation; gender identity; education; youth development; and public health.

In light of this, in recent years, the UN Secretary-General, OHCHR and global and regional human rights mechanisms, bodies and experts, as well as national courts, legislatures and domestic human rights institutions, have expressed concern about the harmful human rights impact of criminal laws proscribing: sexual and reproductive health and rights; consensual sexual activity; gender identity; gender expression; HIV non-disclosure, exposure and transmission; drug use and the possession of drugs for personal use; and conduct associated with homelessness and poverty. They have called for the removal of criminal and other punitive laws, policies and practices pertaining to some or all of the above-mentioned conduct as a critical step to protect the right to health and other human rights. Despite these calls, such harmful criminal laws continue to be enforced and, in some cases, strengthened.

In 2018, UNAIDS, OHCHR and ICJ convened an expert meeting to discuss the role of jurists in addressing the harmful human rights impact of criminal laws. The convening endorsed the call by civil society and other stakeholders for the elaboration of a set of jurists' principles aimed at assisting legislatures, the courts, administrative and prosecutorial authorities, and advocates to address the detrimental human rights impact of criminal laws proscribing sexual and reproductive health and rights, consensual sexual activity, gender identity, gender expression, HIV non-disclosure, exposure and transmission, drug use and the possession of drugs for personal use. Subsequently, civil society and other stakeholders identified the need for such a set of principles to also address the criminalization of conduct associated with homelessness and poverty. Following this expert meeting, ICJ took the lead and produced successive drafts of the principles and circulated them to a wide range of expert jurists, academics, legal practitioners, human rights defenders and various civil society organizations working in diverse legal traditions, for their review. Between 2020 and 2022, a series of in-person and on-line consultations took place, until the final version of the principles was finalized and circulated for endorsement in early 2023.

The ICJ, along with partners, recognizes the particular discriminatory impact that criminal law can have on women and girls, and on other at-risk individuals and groups, including through restrictions on sexual and reproductive health and rights, bodily autonomy and the disproportionate impact of laws criminalizing HIV, drug use, sex work and poverty. Criminal law may reinforce harmful stereotypes embedded in perceived roles based on, *inter alia*, sex, gender, race and economic status. Hence, the ICJ, along with partners, considers it apposite to present and discuss these jurists' principles on the occasion of International Women's Day to highlight the importance of a human rights-based approach to criminal law in furthering gender equality and women's human rights.

## **Aim and audience of the principles**

The principles are intended to address the detrimental impact of criminalization of the above-mentioned conduct on health, equality and other human rights. They aim to offer a clear, accessible and operational legal framework and practical legal guidance – based on general principles of criminal law and international human rights law and standards – on the application of the criminal law to conduct associated with:

- sexual and reproductive health and rights, including abortion;
- consensual sexual activities, including in such contexts as sex outside marriage, same-sex sexual relations, adolescent sexual activity and sex work;
- gender identity and gender expression;
- HIV non-disclosure, exposure or transmission;
- drug use and the possession of drugs for personal use; and
- homelessness and poverty.

The principles aim to be useful to the widest range of concerned stakeholders and should be of immediate relevance and practical use to certain critical audiences such as:

- legislators;
- administration officials with delegated legislative powers to adopt binding rules, regulations and policies;
- judges, including magistrates, presiding over criminal cases;
- prosecutors and legal practitioners (*e.g.*, defence lawyers, legal aid advocates) involved in criminal cases;
- judicial benches in higher courts;
- heads of prosecution services or similar authorities responsible for establishing policies and guidelines or issuing instructions to prosecutors and other law enforcement officials;
- policymakers;
- executive officials;
- national human rights institutions;
- oversight bodies;
- legal service providers;
- victims' groups;
- civil society organizations;
- academics;
- human rights defenders.

### **Objective of the side event**

This side event aims to present the principles and discuss their relevance and the contribution of jurists and other concerned stakeholders in addressing the detrimental human rights impact of criminal laws proscribing the above-mentioned conduct, with a particular focus on the harmful impact of such laws on women's human rights and gender equality.

The side event will take place on Wednesday 8 March from 15:00 pm to 16:00 pm at Palais des Nations, room XXII.

### **Chaired by Dr Ian Seiderman, Law and Policy Director, ICJ**

Volker Türk	United Nations High Commissioner for Human Rights;
Christine Stegling	Deputy Executive Director, Policy, Advocacy and Knowledge Branch, UNAIDS (remotely);
Ruth Dreifuss	former President of the Swiss Confederation, Chair and Commissioner of the Global Commission on Drug Policy;
Edwin Cameron	Inspecting Judge, Correctional Services, South Africa and former Justice of the Constitutional Court (remotely);
Melissa Upreti	Member of the UN Working Group on discrimination against women and girls (remotely); and
Phelister Abdalla	President, Global Network of Sex Work Projects (remotely).