

State responses to drug-related criminality

1. As the Board has reiterated on several occasions, the fundamental principles underpinning the three international drug control treaties, as well as the Political Declaration adopted by the General Assembly at its twentieth special session, devoted to countering the world drug problem together, and the Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem, are the principle of a balanced approach, the principle of proportionality and respect for human rights.
2. In many States, policies to address drug-related criminality, including personal use, have continued to be rooted primarily in punitive criminal justice responses, which include prosecution and incarceration and as part of which alternative measures such as treatment, rehabilitation and social integration remain underutilized.
3. Drug trafficking and the diversion of drugs into illicit channels require the use of interdiction efforts, criminal prosecution and the imposition of criminal sanctions. At the same time, State approaches to dealing with criminal behaviour committed by persons affected by drug use and addiction has become more differentiated in recent years. This is a result of an evolution occurring in many States that have come to recognize drug use and dependency as a public health concern requiring responses that are health-centred and less reliant on punitive sanctions.
4. The Board welcomes that development as entirely consistent with what is foreseen in the international drug control framework. Prevention of drug abuse, especially among young people, must be the primary objective of drug control policy, and a comprehensive drug demand reduction strategy that includes the reduction of the adverse health and social consequences associated with drug abuse is of paramount importance.

Proportionality and alternatives to conviction or punishment

5. Disproportionate responses to drug-related criminality undermine both the aims of the conventions and the rule of law. Accordingly, the international drug control treaties require proportionate responses by States to drug-related offences and to the treatment of offenders.
6. States have an obligation under the drug control conventions to establish certain behaviours as punishable offences and to ensure that serious offences are liable to adequate punishment, particularly by imprisonment; however, that obligation is subject to the constitutional principles of the State and to the principle of proportionality. For minor drug-related offences including possession of small quantities of drugs for personal use committed by people who abuse drugs, the conventions do not oblige States to adopt punitive responses.
7. In such cases, the three conventions provide the possibility for alternatives to conviction or punishment through treatment, education, aftercare, rehabilitation and social reintegration. They allow States to focus the most severe penalties on more serious forms of crime, such as trafficking and money-laundering, giving States a certain discretion in the legislative and policy choices they make in implementing their obligations under the three conventions. There is no obligation stemming from the conventions to incarcerate drug users who commit minor offences.
8. The Board notes that the discretion to adopt criminal justice policies that include alternatives to conviction or punishment for minor crimes that is provided for under the conventions remains underutilized.
9. Where States have provided legal penalties for more serious categories of drug-related offences, including trafficking, the principle of proportionality must also continue to act as a guiding principle.

10. Although the determination of sanctions applicable to drug-related crime remains the prerogative of States parties to the conventions, the Board has continued to encourage States that retain capital punishment for that category of offence to commute death sentences that have already been handed down and to consider the abolition of the death penalty for drug-related offences.

Extrajudicial treatment of suspected drug-related criminality

11. The Board has noted with great concern reports that the targeting of individuals suspected of involvement in drug-related activity, including drug use, continues in some countries where they have been subjected to violent acts of reprisal and murder at the hands of law enforcement personnel and members of the civilian population. In some instances, those acts have been committed with the expressed or tacit approval, or even encouragement, of political actors and, in many cases, often go unpunished.

12. The extrajudicial targeting of persons suspected of illicit drug-related activity is not only a breach of the three international drug control conventions, it also constitutes a serious breach of human rights and due process norms as contained in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights and is an affront to the most basic standards of human dignity.

13. The Board wishes to reiterate, in the strongest possible terms, its categorical and unequivocal condemnation of those acts, wherever and whenever they may occur, and calls upon all Governments concerned to put an immediate stop to such actions and to publicly commit to and undertake investigations into any person suspected of having committed, participated in, aided and abetted, encouraged, counselled or incited any such extrajudicial actions, in full observance of due legal process and the rule of law, and their prosecution and sanction, as warranted.

INCB is the independent, quasi-judicial body charged with promoting and monitoring Government compliance with the three international drug control conventions: the 1961 Single Convention on Narcotic Drugs, the 1971 Convention on Psychotropic Substances, and the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

* * * * *

For further information, please contact: INCB Secretariat at Tel: (+43-1) 26060 4163
Email: incb.secretariat@un.org, Website: www.incb.org
