



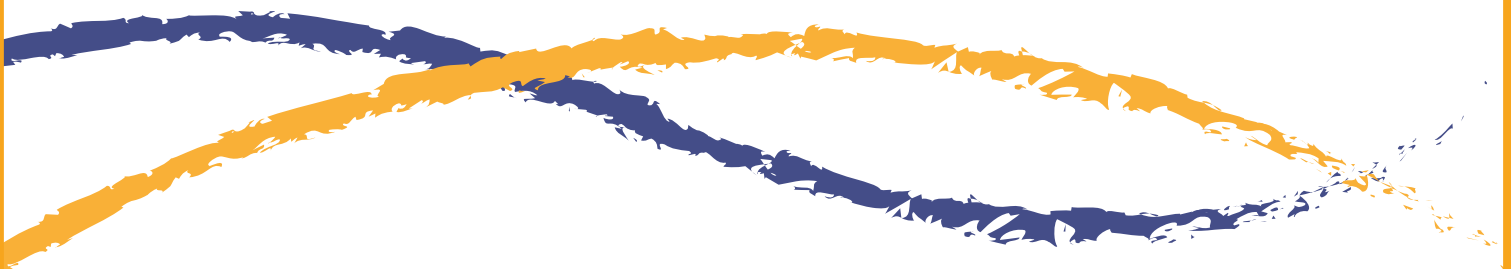
ILF | THE INTERNATIONAL
LEGAL FOUNDATION

CAMPAIGN TO
**DECRIMINALISE
POVERTY & STATUS**

REPORT

South Asia Convening on Decriminalising Poverty and Status

24-25 January 2025 | Colombo, Sri Lanka



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INTRODUCTION



As members of the Campaign to Decriminalise Poverty and Status, the Neelan Tiruchelvam Trust and the International Legal Foundation (ILF) brought together actors in South Asia, primarily civil society activists, organisations and legal practitioners, for the first regional Convening on Decriminalising Poverty and Status in South Asia in Colombo, Sri Lanka, from 24- 25 January 2025. The Global Campaign to Decriminalise Poverty and Status is a coalition of organisations from across the world that advocate for the repeal of laws, reform of policies and change in practices that target people based on poverty, status or for their activism.

This Convening was the first event of its kind and intended to initiate, facilitate and support partnerships that address criminalisation of poverty and status across South Asia. Using the criminalisation of poverty and status as a critical lens for identifying instances of structural discrimination and violence, the convening adopted an intersectional and interdisciplinary approach to address inequalities in criminal legal systems and practice.

Activists and organisations from the African continent, where there is a strong and successful regional campaign to decriminalise poverty and status, also participated and shared their experiences and learnings.

Context

Mirroring global trends, South Asia is grappling with growing inequality, challenges in achieving social justice and protection of human rights within a context of criminal legal systems that fail to deliver justice. Systemic discrimination and social exclusion contribute to and worsen poverty, making it more likely for marginalised communities to experience poverty. Though states have incorporated equal protection and non-discrimination clauses into their constitutions and domestic laws, in practice, criminal justice systems discriminate against and disproportionately criminalise people who are experiencing poverty as well as based on other intersecting characteristics such as race, caste, ethnicity, religion or belief, disability, nationality, gender, or sexual orientation. Criminalisation is further exacerbated by the weaponisation of justice institutions and processes to control the public, as well as a growing global anti-rights movement/backlash. States routinely deploy law enforcement mechanisms, courts and prisons against the poor and most marginalised for reasons that have little to do with ensuring safety or delivering justice.

Instead of addressing the root causes of marginalisation and poverty, these communities are often criminalised. For example, across the region, fines and fees are routinely levied against people who can't afford to pay them and are imprisoned as a result. Also, across South Asia, colonial era vagrancy laws criminalise homelessness and persons living in poverty. Moreover, people from marginalised communities experience disparate treatment. For example, people sentenced to death in India were found to be poor and belonging to the marginalised sections of society. Many people from marginalised communities also experience overt discrimination. For example, many countries such as Sri Lanka continue to criminalise same sex conduct. Although Pakistan enacted the Transgender Persons Protection Act in 2018, the rights of LGBTIQ persons continue to be violated by law enforcement policies with few repercussions. Similarly, drug control and mandatory drug treatment laws and policies of governments in the region disproportionately harm marginalised populations.

This discriminatory criminalisation, and the lack of effective, quality legal aid services for persons arrested or detained across much of South Asia further limits the ability of historically marginalised individuals and communities to challenge discrimination, exercise their constitutional rights and seek remedies for violations and traps them into cycles of poverty, social exclusion, violence and incarceration.


In response to this growing inequality, civil society organisations across the region are addressing these historical and structural harms. For example, advocates in India, through strategic litigation, successfully achieved the decriminalisation of same sex conduct. In Pakistan, civil society is combating the use of the death penalty, while advocates in Nepal are litigating the unjust imposition of fines and fees on people experiencing poverty.

Aims of the convening


The objectives of the convening:




- Develop a common understanding of the scope and scale of the problem of criminalisation in South Asia. This could potentially identify:
 - The laws that need to be repealed, and/ or litigation or advocacy strategies;
 - Practices that need to be ceased; and
 - Progressive and regressive change
- Map current work, research and existing initiatives being undertaken.
- Map the opportunities for reform/engagement and lessons learned in key cross cutting issues in South Asia.
- Identify partners to strengthen the network of the Campaign.
- Learn from experiences shared by African civil society organisations and activists on successfully advancing decriminalisation of poverty and status in the African continent.
- Learn from activists and CSOs who have successfully used community organising as well as legal strategies to achieve decriminalisation.
- Discuss strategies to strengthen civic space to enable CSOs to actively advocate for decriminalisation of poverty and status.

DAY 01		
Time	Session	Moderator/Speaker
9.30 - 10.00 AM	Opening remarks: Introduction to the South Asia Convening on Decriminalising Poverty and Status	<p>Ambika Satkunanathan, Chairperson, Neelan Tiruchelvam Trust, Sri Lanka</p> <p>Jennifer Smith, Executive Director, International Legal Foundation</p>
10.00 - 11.00 AM	The cost of discrimination: How laws, policies, and practices enable discrimination of marginalised and vulnerable groups	<p>Dr. Usha Ramanathan, Lawyer and activist, India</p> <p>Raju Chapagain, Chairperson Justice and Rights Institute Nepal</p> <p>Shikha Pandey, Programme Director - Asia, International Legal Foundation.</p> <p>Jalahan Amara Jakema, Programme Manager, Advoc Aid, Sierra Leone</p> <p>Moderator - Ambika Satkunanathan Sri Lanka</p>
11.30 - 11.45 AM	Q & A and discussion	
11.45 AM - 1.15 PM	<p>Presentations by panellists - 11.45 AM - 12.15 PM</p> <p>Drug use and treatment: Moving beyond criminalisation</p> <p>Q & A and discussion - 12.45 - 1.15 PM</p>	<p>Ambika Satkunanathan, Sri Lanka</p> <p>Tripti Tandon Deputy Director, Lawyers Collective, India</p> <p>Malika Zafar Executive Director, Nai Zindagi Trust, Pakistan</p> <p>Mina Mensah Head, Africa Office, Commonwealth Human Rights Initiative, Ghana</p> <p>Moderator: Giada Girelli, Senior Analyst, Human Rights and Justice Team, Harm Reduction International</p>
1.15 - 2.15 PM	Lunch	

<p>2.15 - 5.00 PM</p> 	<p>Reimagining justice: Strategies to decriminalise poverty and status</p> <p>Presentations by panellists - 2.15 - 3.00 PM Panel 1: Legal Strategies: Strategic litigation and ensuring equity in access to justice</p> <p>[Break-out groups -3.00 - 3.45 PM]</p> <p>[Tea break - 3.45-4.00 PM]</p> <p>[Break-out groups' presentations - 4.00 - 5.00 PM]</p>	<p>Justice Hari Prasad Phuyal Justice of the Supreme Court of Nepal</p> <p>Ajay Shankhar Jha Executive Director, Public Defender Society of Nepal</p> <p>Saliya Pieris PC Former President Bar Association of Sri Lanka</p> <p>Anneke Meerkotter Executive Director, Southern Africa Litigation Centre, South Africa</p> <p>Prof. Anup Surendranath Executive Director, Project 39A, India</p> <p>Moderator - Sarah Belal Executive Director, Justice Project Pakistan</p>
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DAY 02

<p>9.30 - 12.00 PM</p> 	<p>Presentations by panellists - 9.30 - 10.15 AM Panel 2: Beyond litigation: Advocacy, awareness raising and community mobilization</p> <p>[Break-out groups -10.15 - 11.00 AM]</p> <p>[Tea break - 11.00-11.15 AM]</p> <p>[Break-out groups' Presentations - 11.15 - 12.00 PM]</p>	<p>Paba Deshapriya Director, Grassrooted Trust, Sri Lanka</p> <p>Dr. Ponni Arasu Independent researcher and activist, India</p> <p>Martin Macwan Founder, Nasvarjan Trust, India</p> <p>Adrian Jjuuko Founder, Human Rights Awareness and Promotion Forum, Uganda</p> <p>Moderator - Dr. Kaushalya Perera University of Colombo, Sri Lanka</p>
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<p>12.00 - 1.00 PM</p> 	<p>Panel 3: Using international standards and mechanisms: The impact of regional litigation, and regional networking in enabling reforms</p>	<p>Daron Tan Legal Advisor, International Commission of Jurists.</p> <p>Leah Conklin, Advocacy and Communications Director, International Legal Foundation</p> <p>Julie Matheka Programme Manager, International Commission of Jurists, Kenya.</p> <p>Zaved Mahmood Human Rights & Drug Policy Advisor Global lead on Incarceration Office of the High Commissioner for Human Rights</p> <p>Moderator – Nikita Sonavane Criminal Justice and Police Accountability Project (CPA Project), India</p>
<p>1.00 - 2.00 PM</p>	<p>Lunch break</p>	
<p>2.00 - 3.30 PM</p> 	<p>Presentations by panellists – 2.00 – 2.45 PM Call to action: Creating an enabling environment for decriminalisation initiatives</p> <p>[2.45 - 3.30 PM- Q & A/ discussion]</p>	<p>Subha Wijesiriwardena Co-founder, Just Futures Collaborative, USA</p> <p>Jojob Faal Sy Communications Officer, Campaign to Decriminalise Status and Poverty</p> <p>Ambika Satkunanathan Chairperson, Neelan Tiruchelvam Trust, Sri Lanka</p> <p>Moderator - Jennifer Smith, Executive Director, International Legal Foundation</p>
<p>3.30 - 3.45 PM</p>	<p>Tea break</p>	
<p>3.45 - 4.00 PM</p> 	<p>Closing remarks</p>	<p>Ambika Satkunanathan Neelan Tiruchelvam Trust, Sri Lanka</p> <p>Shikha Pandey International Legal Foundation</p>

DAY 01

1. Opening remarks: Introduction to the South Asia Convening on Decriminalising Poverty and Status (9.30 AM - 10:00 AM)

- **Speakers:** Ambika Satkunanathan [NTT] and Jennifer Smith [ILF]

2. The cost of discrimination: How laws, policies, and practices enable discrimination of marginalised and vulnerable groups (10.00 AM - 11.30 AM)

The session will focus on the nexus between poverty, status and discrimination and violence against certain social groups in South Asia, in the context of the socio cultural commonalities and shared colonial history of countries in this region. For instance, laws that criminalise certain conduct, such as begging or homelessness, or imprison persons who cannot afford fines, exacerbate the precarious plight of those subject to historical, structural and systemic discrimination and violence. Moreover, due to structural discrimination, inequality and violence, the affected persons cannot access remedies. This session will map the patterns in the region and discuss factors that drive the criminalisation of poverty and status in the region.

- ◆ **Session format:** the moderator will pose questions to the panellists, followed by a Q and A session/discussion.

- **Speakers:** Dr. Usha Ramanathan [India], Raju Chapagain [Nepal], Shikha Pandey [ILF], Jalaham Amara Jakema [Sierra Leone]

Moderator - Ambika Satkunanathan [NTT]

Tea break 11.30 AM - 11.45 AM

3. Drug use and treatment: Moving beyond criminalisation (11.45 AM - 1.15 PM)

Persons who use drugs are a vulnerable group across South Asia, where governments resort to the “war on drugs” and adopt punitive responses to a health issue. In this context, they justify human rights violations and the militarisation of policing. Persons who are dependent on drugs and small-time dealers of substances who engage in the trade due to financial vulnerability often cannot afford bail and/or legal representation and spend prolonged periods of time in prison. This session will focus on the importance of human rights and health-based approaches to drug dependence, including measures to reduce harm and the provision of community-based voluntary treatment options.

- ◆ **Session format:** each panellist will speak/present for ten minutes following which there will be a Q and A session.

- **Speakers:** Ambika Satkunanathan [Sri Lanka], Tripti Tandon [India], Mallika Zafar [Pakistan], Meena Mensah [Ghana]

Moderator: Giada Girelli [HRI]

Lunch break 1.15 - 2.15 PM

4. Reimagining justice: Strategies to decriminalise poverty and status

Panel 1: Legal strategies: strategic litigation and ensuring equity in access to justice (2.15 PM - 5.00 PM)

This session will discuss the legal strategies used in South Asia and in Africa to challenge the criminalisation of poverty and status. Speakers will share the different types of legal interventions available in their contexts. This will also involve a conversation on access to justice and equity in the provision of legal aid, particularly for populations caught at the intersections of criminalisation of poverty and status.

- ◆ **Session format:** This session will be a Q and A with panellists facilitated by the moderator for 45 minutes.

- **Speakers:** Justice Hari Prasad Phuyal [Nepal], Ajay Shankar Jha [Nepal], Pulasthi Hewamanna [Sri Lanka], Anneke Meerkotter [South Africa], Prof. Anup Surendranath [India]

Moderator - Sarah Belal [Pakistan]

Breakout session: 3:00 PM - 3:45 PM

Tea break 3.45 PM - 4.00 PM

Present outcome of discussion: 4:00 - 5:00 PM

DAY 02

1. Panel 2: Beyond litigation: Advocacy, awareness raising and community mobilization (9.30 AM - 12.00 PM)

Advocating for the decriminalisation of poverty and status involves influencing policymakers to repeal or amend laws and change policies and practices, as well as challenging prejudice and fear-based narratives. This requires the mobilisation of communities and devising effective strategies to raise awareness and educate the public and policymakers on the impact and costs of criminalisation. This session will therefore discuss the strategies that can be used in this regard, in particular, the best practices and lessons learnt in other contexts.

◆ **Session format:** The session will involve a Q and A session with the panellists for 45 minutes, followed by a breakout session and presentation of outcomes of the discussion.

● **Speakers:** Paba Deshapriya [Sri Lanka], Dr. Ponni Arasu [India], Martin Macwan [India], Mehlab Jameel [Pakistan], Adrian Jjuuko [Uganda]

Moderator - Dr. Kaushalya Perera [Sri Lanka]

Breakout session: 10:15 AM - 11:00 AM

Tea break 11.00 AM - 11.15 AM

Present outcome of discussion: 11:15 - 12:00 PM

2. Panel 3: Using international standards and mechanisms: The impact of regional litigation, and regional networking in enabling reforms (12.00 PM - 1.00 PM)

This session will focus on engaging with international and regional mechanisms and utilising consensus-based standards and best practice tools which can be useful in local litigation strategies and/ or efforts to reform specific laws, policies and practices that criminalise poverty and status, and enable holding governments accountable to their obligations to ensure equal access to justice for all. The ICJ's practitioners's guide to human rights approaches to criminal justice; the ILF's Rio Principles; the Principles on the Decriminalisation of Petty Offences in Africa, the UN common position on drugs and incarceration; and the role of the OHCHR will be discussed, as well as ways regional networking can strengthen local reform efforts.

◆ **Session format:** Each panellist will speak for ten minutes each, followed by a Q and A session with the participants.

● **Speakers:** Daron Tan [ICJ] Practitioners Guide, ILF - Rio Principles, Julie Matheka [Kenya], Zaved Mahmood [OHCHR] - UN common position on drugs and incarceration and the role of OHCHR.

Moderator - Nikita Sonavane [India]

Lunch break 1.00 PM - 2.00 PM

3. Call to action: Creating an enabling environment for decriminalisation initiatives (2.00 - 3.30 PM)

Civil society, networks and donors each have a critical role to play in advancing efforts to decriminalise poverty and status. For instance, they can ensure that voices from affected communities are heard and supported via grants and non-monetary resources and allyship. They can also ensure that collaboration with the State does not further the criminalisation of persons based on poverty or status, or exacerbate the impact of these policies. Networks can also be a powerful mechanism for community-building, and the sharing of information, best practices and successful litigation, advocacy and other strategies. This session will explore how to build stronger partnerships and networks through interactions between stakeholders to devise strategies on how to advocate for decriminalisation.

◆ **Session format:** Each panellist will speak for ten minutes, followed by a Q and A session with the audience.

● **Speakers:** Subha Wijesiriwardena [Just Futures Collaborative], Jojoh Faal Sy [Campaign to Decriminalise Status and Poverty], Ambika Satkunanathan [NTT].

Moderator - Jennifer Smith [ILF]

Tea Break 3:30 - 3:45 PM

4. Closing remarks (3.45 - 4.00 PM)

● **Speakers:** Ambika Satkunanathan [NTT], Shikha Pandey [ILF]

Summary of proceedings

Introduction

This is the report of the South Asia Convening on Decriminalising Poverty and Status held in Sri Lanka on 24-25 January 2025, jointly organised by the Neelan Tiruchelvam Trust (NTT) and the International Legal Foundation (ILF). NTT and ILF are members of The Global Campaign to Decriminalise Poverty and Status – a coalition of organisations advocating for the repeal of laws and reform of policies and practices that target people based on poverty, status or for their activism.

This first South Asian Convening on Decriminalising Poverty and Status brought together organisations and activists engaged in national and regional efforts to decriminalise poverty, status and/or activism in their respective communities. Discussions over two days saw participants reframing narratives regarding criminalisation and the criminal justice system while understanding common challenges and sharing strategies to address them.

Themes that emerged during the discussion include the ways in which the existing legal system fails to protect vulnerable groups and the role states play in this by weaponising the criminal justice system to restrict the rights of its citizens. The complicity of society, including civil society organisations (CSOs), in this through their failure to critically engage with the system and hold it accountable was highlighted.

These discussions led to sharing successful counterstrategies and good practices, including areas for potential collaboration to decriminalise survival behaviours and protect marginalised and oppressed communities in the region.

This report provides a comprehensive overview of the two-day proceedings, focusing on each of the following themes:

1. The cost of discrimination: How laws, policies and practices enable discrimination of marginalised and vulnerable groups;
2. Drug use and treatment: Moving beyond criminalisation;
3. Reimagining justice: Strategies to decriminalise poverty and status;
 - Legal strategies: Strategic litigation and ensuring equity in access to justice;
 - Beyond litigation: Advocacy, awareness raising and community mobilisation;
 - Using international standards and mechanisms: The impact of regional litigation and regional networking in enabling reforms;
4. Call to action: Creating an enabling environment for decriminalisation initiatives.





Opening Remarks: Introduction to the South Asia Convening on Decriminalising Poverty and Status

Ambika Satkunanathan¹, in her opening remarks, emphasised that although the stated objective of criminalisation is to achieve certain social aims such as deterrence, prevention of harm to society, accountability and rehabilitation, in reality the impact is the opposite. By granting states and dominant social groups the means to control sociopolitical space and certain populations, criminalisation only tackles the symptoms of social problems superficially, falsely promising to solve them through incarceration.



Ambika Satkunanathan,
Chairperson, Neelan Tiruchelvam Trust,
Sri Lanka.

The harmful effects of criminalisation and incarceration go beyond the negative impact on an individual's physical and mental health to also economically and emotionally harm families and divert funds from essential social services. Furthermore, it adversely impacts livelihoods, health and education, including of children. Other effects include overcrowded prisons and extrajudicial killings of certain groups of people.

Satkunanathan drew examples from the wars on drugs and terror – which she termed as the “two great wars of our time” – to show how criminalisation targets specific marginalised and discriminated-against groups. In both wars, the common thread is a militarised response to social and economic problems.

Counterterrorism laws are used globally and in South Asia to racially profile and criminalise minorities, especially through the militarisation of law enforcement. This exacerbates human rights violations committed under their cover. Drug laws and policies rooted in ethnic, race and class prejudices remain and are carried forward by the postcolonial state. These policies intersect with poverty, marginalisation and discrimination as drug dependence is driven and worsened by factors such as poverty and homelessness.

Satkunanathan highlighted that, in this context, violence, especially structural violence, is a crucial element that drives the criminalisation of poverty and status.

Moreover, a common feature of populations being criminalised is that they are groups already discriminated against and marginalised, such as drug users and ethnic minorities. A common form of criminalising is through demonising them, thereby normalising the violence committed against them.

Criminalising survival behaviours deepens social inequalities, perpetuates systemic inequality and undermines confidence and trust in law enforcement and the criminal justice system. Authorities often accuse those targeted as being the source of disease, deviance or crime – a counterproductive approach that denies social complicity in the creation of poverty, socioeconomic inequality and injustice.

These punitive responses to poverty fail to offer constructive solutions to socioeconomic and development issues and do not foster human rights compliance or effective problem-solving. Yet, there is an increasing weaponisation of justice institutions and processes to control the public, amidst a growing global anti-rights movement and a backlash against human rights, said Satkunanathan.

“States are routinely deploying law enforcement, courts and prisons against the poor and most marginalised for reasons that have little to do with ensuring safety or delivering justice. While states protect the boundaries of wealth, privilege, power and status, people continue to be imprisoned for the inability to pay fines.” – Satkunanathan

¹ Ambika Satkunanathan, Chairperson, Neelan Tiruchelvam Trust, Sri Lanka.

Therefore, Satkunanathan emphasised the need to study violence, not as incidents or specific cases of violations, but as a conscious state strategy, practice and tool of social control. When countering criminalisation, she encouraged challenging what is thought to be fundamental, and even sacred, especially to lawyers.

“To most of us, the criminal justice system and imprisonment as justice is a given. We never question it. We acknowledge the gaps and shortcomings, but never question the fundamentals of the system. Keep in mind that, through the years, while the espoused values of this system remain the same, their real-life functioning, that is, what happens in practice every day, has changed. It has been distorted and become dysfunctional.” – Satkunanathan

Recollecting how the national study of prisons in Sri Lanka, which she led², fundamentally altered her perceptions, Satkunanathan stressed that the criminal justice system as it stands does not work, mainly because it was constructed by and serves those in positions of power who subvert and undermine the rule of law and politicise institutions that are supposed to dispense justice.

Due to this, institutions become instruments of discrimination and violence and are ultimately part of the carceral state which abuses marginalised populations. With institutions remaining beyond the reach of the law, abuse is normalised.

Satkunanathan also explained the work of the Global Campaign to Decriminalise Poverty and Status. Its members advocate for diverting resources from law enforcement, prosecution and punishment, and reinvesting it in communities towards measures that address the root causes which drive people to come into conflict with the law. These include alleviating poverty and providing healthcare and housing.

Recognising the global crisis of criminalisation, Satkunanathan said the Convening aimed to bring together organisations and activists who lead efforts to decriminalise poverty and status to understand the scope of the problem, discuss common challenges, successes and good practices, foster collaboration and brainstorm effective collective strategies.

She further outlined the goals for the South Asia Convening as follows:

- Develop a common understanding of the scope and scale of the problem of criminalisation in South Asia to potentially identify laws needing to be repealed and/or litigation or advocacy strategies and practices that need to be seized;
- Identify progressive and regressive change that has taken place over the last several years;
- Map current work, research and initiatives along with opportunities for reform and engagement;
- Learn from the experiences shared by colleagues from the African continent;
- Listen to activists and CSOs who have successfully used community organising and community mobilisation as well as legal strategies to achieve decriminalisation;
- Discuss strategies to strengthen civic space or, at least, push back on the shutting down of civic space, to enable all to actively advocate for decriminalising poverty and status.

² Human Rights Commission of Sri Lanka. 2020. Prison Study by the Human Rights Commission of Sri Lanka. N.p.: Human Rights Commission of Sri Lanka.
<https://www.hrcsl.lk/wp-content/uploads/2020/01/Prison-Study-by-HRCSL-Concise-Version.pdf>.



Jennifer Smith³, in her remarks, highlighted the previous work of the Global Campaign, especially by its members in Africa who have strategically formulated interventions to decriminalise poverty and status. These include strategic litigation at the national and regional levels, media and art work, research and quiet advocacy, and policy reform.

“We believe that we should be considering a similar instrument that would outline ways in which member states should be addressing and eliminating discrimination in law enforcement and criminal justice systems.”

Jennifer Smith,
Executive Director,
International Legal Foundation.

She used examples to illustrate how civil society, activists and advocates, when working together and engaging with regional and international mechanisms, can influence governments. One such instance was when activists and advocates convened to discuss the lack of access to legal aid in the African continent and initiated a call-to-action which resulted in an international process to formulate and adopt the United Nations (UN) Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems⁴. This has been powerful and instrumental in enabling governments to give effect to their obligations to provide access to legal aid and to reform their legal aid laws, systems and policies.

Towards that end, the ILF and a number of their Campaign partners advocated for civil society representation in Brazil at a United Nations Office on Drugs and Crime (UNODC)⁵ Meeting on Equal Access to Justice for All, in December 2024. It resulted in an outcome document which was submitted to the Commission on Crime Prevention and Criminal Justice (CCPCJ)⁶ and is due to be discussed by member states in May (2025). The document contains many recommendations of the Global Campaign to Decriminalise Poverty and Status, including the:

- Repeal of discriminatory laws;
- Elimination of court-imposed fines and fees;
- Establishment of accountability mechanisms for law enforcement engaging in discriminatory activity; and
- Removal of barriers to access legal aid.

It also calls for states to meaningfully collect and report disaggregated data for persons who are arrested, prosecuted and convicted of criminal offences.

Additionally, the ILF has been a partner in organising international forums, such as the biannual International Conference on Access to Legal Aid in Criminal Justice Systems⁷, since 2012. In November 2023, it held a regional convening with the Government of India⁸, bringing together experts from the Global South to discuss the challenges to meaningful access to legal aid across South Asia and Africa. Smith emphasised that such convenings are critical in creating greater understanding about the shortcomings in state action to meet their legal obligations.

³ Jennifer Smith, Executive Director, International Legal Foundation.

⁴ United Nations Office on Drugs and Crime. 2013. United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.

https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf.

⁵ <https://www.unodc.org/>

⁶ <https://www.unodc.org/unodc/en/commissions/CCPCJ/index.html>

⁷ <https://www.theilf.org/items/final-report-on-the-international-conference-on-access-to-legal-aid-in-criminal-justice-systems>

⁸ <https://www.theilf.org/post/collaborating-to-expand-access-to-legal-aid-in-the-global-south>

One example of the power of a convening comes from ILF's first international legal aid conference to which they invited a number of government officials from Myanmar at a time when they (officials) had not considered the necessity of providing such assistance to people accused of criminal offences. Consequent to their participation, they had agreed to draft and adopt the very first legal aid law in Myanmar⁹.

Smith outlined the purposes of the South Asia Convening on Decriminalising Poverty and Status, which are primarily brainstorming and formulating ways to establish and use a South Asian network of organisations and experts to meaningfully drive change that will address discrimination and eliminate it from law enforcement and criminal justice systems. She hoped that one outcome would be the creation of a roadmap and the meaningful catalysis and acceleration of reform in each other's communities.

"It's worth noting as we gather here today, we do so at a time when authoritarianism is on the rise and the hard-won victories of the last two decades are under threat. No country is immune to these threats. My own country of the United States (US) is experiencing our own authoritarian threat today. It can feel as though these challenges before us are insurmountable. While things may seem bleak at the highest levels of government, the work of advocates is shining the light of justice greater than ever." – Smith

The panels that followed elaborated on the key messages of the two introductory speakers, flagging the need to change the system, frameworks and narratives surrounding criminal justice. Panelists also outlined strategies for litigation and community mobilisation in their efforts to reimagine justice. These ideas were discussed by centering the benefits of cross-border collaborations.

⁹ <https://www.theilf.org/myanmar#:~:text=Myanmar%20took%20a%20tremendous%20step,the%20ILF%20in%20June%202014.>

* The Cost of Discrimination: How Laws, Policies and Practices Enable Discrimination of Marginalised and Vulnerable Groups

In the first panel, legal and justice rights activists affirmed the importance of breaking down the meaning of the law and changing narratives about its practice. Encouraging stakeholders to understand how states are colonising their own, especially through technology, they underscored how engaging with the system as it presents itself, is failing.

Dr. Usha Ramanathan¹⁰ traced the passage of colonial laws in the Indian subcontinent as those introduced to control populations, especially after the initial uprisings against the British colonial rulers. Laws have changed since colonial times and now increasingly control ideas and spaces, which requires the present paradigm to be shifted and intervention methods to be changed.

Over time, states have also grasped how impunity works in their favour. As a result, states now understand their power over lawmaking and the legitimisation of all forms of violence.

She critiqued recent efforts by the Government of India to purportedly decolonise criminal laws¹¹, and pointed out that the “colonial element” in them remains untouched. Colonial laws in the hands of an independent nation had done little to change the status quo, Ramanathan held, urging civil society to not only battle for the enactment of good laws but also for not having any laws in many situations as they are not issues that require legal regulation.

She stressed the need to focus on technology, explaining the harmful effects of state initiatives such as the “Unique Identification Project” in India¹² on citizens, especially the poor. Although such technological interventions were projected as solutions which would increase accessibility to, and efficiency of delivery of, services, the evidence is that they often exclude and criminalise the very populations they claim to serve.. In India, there are multiple interlinked databases which allow the state to “see” the citizen but not vice versa, thereby allowing the state to make decisions without being held accountable, or to make mistakes with impunity. Thus, people are made redundant, dispensable and marginalised in the present system.

“Marginalisation seems to be the most benign [of the three], so you can imagine what the other two are.” – Ramanathan

¹⁰ Dr. Usha Ramanathan, Lawyer and activist, India

¹¹ <https://idronline.org/article/rights/how-indias-new-criminal-laws-curb-civil-liberties/>

¹² <https://uidai.gov.in/en/>

Jalahan Amara Jakema¹³ continued the discussion by using an example from Sierra Leone where the criminalisation of debt targets the poor. Loans offered to “save” the poor often result in incarceration when they are unable to repay them, since many sign loan agreements without an understanding of their terms and conditions. Jakema said that such situations occur when laws are made from places of comfort without considering their negative impacts on people.



Jalahan Amara Jakeema,
Program Manager,
Advoc Aid Sierra Leone.



Shikha Pandey
Program Director – Asia,
International Legal Foundation.

Shikha Pandey¹⁴ observed similar patterns in the way law is being used and commonality in the injustice meted out across the South Asian region. She elaborated on a structure of discrimination with five common patterns:

- 1 Discriminatory laws that target specific groups of people** – A new law passed in Afghanistan in 2024 targets only women and children¹⁵, barring them from working outside the home. Similarly, begging and morality laws in other countries target only specific sections of the population. In Myanmar, for instance, a monogamy law¹⁶ penalises women for extramarital relationships. These laws attempt to control the personal lives of people and communities.

On some occasions, these discriminatory laws criminalise entire ethnicities, such as the Myanmar’s Citizenship Law¹⁷ which does not recognise the Rohingyas as citizens. To obtain citizenship, they are forced to show proof of citizenship going back generations – a Herculean task as these papers are often lost in natural disasters or conflict, effectively rendering the Rohingyas stateless.

To make matters worse for the Rohingya people, Myanmar has a registration of residence law (Registration of Foreigners Rules, 1948) which curtails their freedom of movement. Pandey said that such discriminatory laws, specifically targeting certain segments of a population, focus on curtailing the freedom of movement, liberty and livelihoods.

¹⁴ Shikha Pandey, Programme Director – Asia, International Legal Foundation.

¹⁵ <https://press.un.org/en/2024/sc15932.doc.htm>

¹⁶ <https://www.myanmar-law-library.org/law-library/laws-and-regulations/laws/myanmar-laws-1988-until-now/union-solidarity-and-development-party-laws-2012-2016/myanmar-laws-2015/pyidaungsu-hluttaw-law-no-54-2015-law-on-the-practice-of-monogamy-burmese.html>

¹⁷ <https://www.ohchr.org/en/news/2023/06/myanmar-authorities-must-ensure-full-legal-recognition-right-citizenship-all-rohingga>

- 2 The enforcement of law results in discrimination** – Pandey drew from her work in Chhattisgarh, India, to show how Adivasis are discriminated against in the enforcement of antiterrorism legislation. The law is used to threaten and keep people in pretrial detention for long periods during which time the government grabs lands belonging to the Adivasis. From the 527 cases she studied, only four were convicted while 309 were acquitted and the rest are pending, demonstrating the maliciousness of most cases.

In this way, laws are used to control people, criminalise them and keep them in detention. Another example of this is the enforcement of laws against petty offences. Myanmar's Public Property Protection Act¹⁸ is a colonial law which punishes those found in possession of public property with whipping and seven years imprisonment. Under this law, Pandey's homeless clients were charged for possessing "property" such as a piece of wire or an iron rod.

- 3 Discrimination occurs during the legal process** – The process itself is replete with harassment, corruption and discrimination. Pandey gave an example of an outdated prison manual in India¹⁹ which divides tasks among incarcerated persons according to their caste (Dalits cleaned while the Brahmins worked in the kitchens). Hence, discrimination is apparent in every part of the system, from the police station to the prisons to even when accessing and receiving legal aid.
- 4 Ambiguity in the law** – Pandey spoke about the ambiguity in Myanmar's registration of residence law. The law allows a punishment of six months for a summary trial, but two years for a warrant trial. Since the law does not provide clarity on the punishment clause or the fine to be imposed, the court gives the maximum punishment and uses its ambiguity to detain even without a trial.
- 5 Lack of protective laws** – A lack of laws to protect vulnerable communities exacerbates discrimination. For instance, vulnerable women in Afghanistan who escape violent situations are further criminalised by the law, while in Myanmar many women and girls in the Rohingya community are victims of trafficking and receive no protection under the law.

¹⁸ https://myanmar-law-library.org/IMG/pdf/the_public_property_protection_act.pdf

¹⁹ <https://www.dw.com/en/india-top-court-rules-against-caste-based-tasks-in-prisons/a-70409131>

Raju Chapagai²⁰ spoke about the protective role laws can play but pointed out that, despite the existence of protective laws for the poor, they often cannot enjoy them. He stressed the importance of involving the community when engaging in strategic litigation, and presented a multipronged strategy which builds synergy among lawyers, social activists, the community and media.

Jakema explained that strategising and advocacy do not stop even in the face of wins. Their most recent victory in Sierra Leone saw the Economic Community of West African States (ECOWAS) Court, in the case of *Advoc Aid v. The Republic of Sierra Leone*²¹, ordering the state to amend, modify or repeal its loitering laws²². Despite securing a favourable judgement, they are planning to engage with different stakeholders to ensure its implementation. Additionally, they intend to provide technical support to movement-building by affected persons and to involve the media to ensure change takes place.

“The good thing is that we are not fighting alone. We know advocacy can take long and it can be fairly difficult, so you don’t work alone.” – Jakema

Jakema expounded their strategic approach to litigation in the aforementioned case, including by bringing it to the attention of international partners and networks. This ensures that cases are discussed in foreign courts beyond the jurisdiction of the Government of Sierra Leone.

“We look at the loopholes in our own laws, and we use that to ensure that we are attracting change of course.” – Jakema

The Q&A session saw participants highlighting the need to critically view previously-colonised people’s own complicity in perpetuating injustices and the colonial legacy, especially through feudalism, elitism and caste hegemonies.



Raju Chapagai,
Senior Advocate/Founding Chairperson,
Justice and Rights Institute, Nepal.

²⁰ Raju Chapagai, Senior Advocate/Founding Chairperson, Justice and Rights Institute, Nepal.

²¹ <https://www.amnesty.org/en/documents/afr51/7295/2023/en/>

²² <https://www.courtecowas.org/wp-content/uploads/2024/11/ADVOCAID-LTD-v-REP-OF-SIERRA-LEONE-ECW-CCJ-APP-18-22-JUDGMENT-ENG.pdf>



Drug Use and Treatment: Moving Beyond Criminalisation

The second panel discussed the socioeconomic harms of punitive measures with regard to drug use. A reimagining of our notion of poverty and health is needed to ensure that persons who use drugs do not experience fundamental rights violations.

Tripti Tandon²³ stressed the need to reimagine what poverty means in the context of the criminalisation of drug use. Through her work in India, she has encountered two categories of people in connection with drugs. First are the extremely poor and marginalised who use drugs. She described them as being “visible, but not visible”, and denied of their basic humanity and dignity. This group is dispensable in the system which does not meaningfully engage with them.

The second category are those accused of drug crimes and face charges in court. They are typically found in possession of drugs (for which they usually receive just a fraction of the quantity’s market value) while transporting them, with or without knowledge of what they are carrying.



Tandon drew from research findings to show that such people are involved in drug crimes, not necessarily due to poverty, but rather due to the precarity of their economic situation – or economic insecurity. As such, they may not look like “typical victims of drug trafficking”.

“In fact, they [politicians] want to outdo each other with harsher, stricter measures than the other.”

Tripti Tandon,
Deputy Director Lawyers Collective, India.

For instance, a woman accused of drug trafficking in Malaysia was not illiterate and had sunglasses and makeup in her purse, prompting the judge to state that she does not need sympathy or leniency. This demonstrated the role of the judiciary in the acceleration of the war on drugs. Therefore, drugs are a part of the continuum of poverty, dispossession, the long arm of the state and the criminal justice system, not a standalone issue.

Elaborating on the wars of drugs and terror, Tandon said that, although the former came first, it still has not seen the kind of critical examination that the war on terror has undergone, especially in South Asia. Even international human rights organisations operating in the region are only now beginning to look at how drugs control impacts human rights, so Tandon encouraged further engagement with the issue in South Asia. She criticised two frameworks used by the criminal justice system in the implementation of drug laws:

1. User versus trafficker
2. Treatments restricting the rights and freedoms of users

In the first, the criminal justice system only considers the quantity of drugs involved to differentiate between those who use drugs and those who are traffickers.

“If the quantity is less than a certain amount, then you are seen as the user and perhaps able to access some alternatives to incarceration. If you have more than a certain amount [on you], then you are seen as a trafficker. Now this mechanism has actually failed people who use drugs.” – Tandon

For example, the police have started invoking the concept of joint possession²⁴ where if a group of people are arrested with one of them in possession of drugs, all five are charged with an aggregate amount.

²³ Tripti Tandon, Deputy Director, Lawyers Collective, India

²⁴ A form of drug possession in which more than one person is deemed by the criminal justice system to be in possession of drugs at the same time.

The second framework that Tandon urged reconsideration of is treatment which restricts the freedoms and rights of those who use drugs. Treatment and rehabilitation which is institutionalised, and never at a respectful, convenient place for those who need those services, ends up being part of the security apparatus.

Tandon concluded her remarks by highlighting the “peculiar” case of the support for the war on drugs transcending political ideology with support from across the political spectrum – left, right and centre.

“In fact, they [politicians] want to outdo each other with harsher, stricter measures than the other.” – Tandon

Malika Zafar²⁵ spoke of methods of treatment which are rights-based and client-centric. She illustrated these using the experiences of the Nai Zindagi Trust²⁶ that provides HIV/Hepatitis C prevention and treatment services to people who inject drugs and their spouses and children.

Their first point of contact with clients is the “needle syringe” programme carried out by outreach workers who go to 500 spots, six days a week, to give them a prevention package. Reaching 45,000 people annually, the pack usually consists of three syringes, three needles, spirits, swabs, bandages and condoms [on demand]. The syringes, the type of syringe, the quantity of syringe, the brand of syringe and the number of syringes are all determined by the clients. The organisation does routine services to stay updated on current requirements.

Recognising the behaviours of drug users who are reluctant to leave the areas in which they are using, the organisation attempts to make the services accessible to them by going where they are. This includes testing vans where users can voluntarily get themselves tested. Zafar emphasised that all services are provided with consent.



Furthermore, they have three residential facilities for those who wish to stop using drugs and are looking for ethical, voluntary services free of physical abuse and coercion to withdraw without medication. In the three to six week residential facilities, clients are free to leave midway through treatment.

“About 10 to 15% of them leave treatment, which is a good measure. If you ever see a number like 4%, then you know there is something wrong in that centre. We expected 15% of people to leave.”

Malika Zafar,
Executive Director Nai Zindagi Trust, Pakistan

Reintegration is also an important component of the treatment process as those who find employment and are reintegrated have a better chance of not relapsing and being accepted by their families.

Zafar emphasised tailoring care services to respond to the specific needs of a population, advocating for a “bottom-up” approach which understands people, their psychology and how they wish to be treated. Accordingly, she advocated for the evidence-based Portugal model of treatment for those who are drug dependent, focusing on decriminalisation, voluntary rehabilitation and reintegration.

“We know from evidence that this [involuntary incarceration] does not work. If you could just lock somebody up for three months, and they would stop drugs, it would be very easy. There would be nobody who would have a problem with drugs, but it does not work. We have heard horror stories of physical and sexual abuse in such centres...18,000 people have voluntarily come to our centres since 2015 so people want to, at some point, seek treatment. If they don't, that's their right. Nobody has the right to tell them what to do with their body.” – Zafar

²⁵ Malika Zafar, Executive Director, Nai Zindagi Trust, Pakistan

²⁶ <https://www.naizindagi.org/>

Continuing the focus on compulsory drug treatment, Satkunanathan said that, in Sri Lanka, the Ministry of Health is not involved in drug rehabilitation. Instead, the main drug treatment centres are within the purview of the Commissioner General of Rehabilitation²⁷ and managed by the military. Three separate laws allow for compulsory drug treatment in Sri Lanka, which is not evidence-based and does not consist of any medical interventions.

Furthermore, according to the statistics of Sri Lanka's National Dangerous Drugs Control Board (NDDCB)²⁹, around 65% of people return to centres or are sent back as they relapse quickly upon being released.

"A study³⁰ I did found that those who are being sent to these compulsory drug treatment centres are young men. They said that they started using immediately upon release because they were also very angry. They said they were angry with their families, they were angry with the state, with the police, with everyone, because they felt like they had been let down. And when they came out, there was stigma, even within the families and within society, so they could not find jobs. They also said that the local police would harass them because they had been to prison for drugs." – Satkunanathan

In prison, persons who use drugs are at risk of violence. Satkunanathan noted that she had documented the deaths of three persons who used drugs and were experiencing withdrawal symptoms while she was serving as a Commissioner at the Human Rights Commission of Sri Lanka (HRCSL)³¹ – two, when prison officers had used force to control the person while they were experiencing withdrawal symptoms; and one, when his fellow cellmates had tied him up as they did not know how to deal with him when he experienced withdrawal.

Furthermore, a large number of persons who are found in possession of miniscule quantities of drugs are fined but languish in prison due to their inability to pay fines, demonstrating the link between poverty and the criminalisation of persons who use drugs. Sri Lanka's anti-drug operation named *Yukthiya*³², which ran for nearly eight months from December 2023, targeted poor neighbourhoods for searches without warrants.

Yet, the quantity of drugs seized during the months-long operation was small compared to the larger quantities seized at sea. Even after the operation was halted, large quantities of drugs continue to be seized at sea, calling into question the necessity and effectiveness of *Yukthiya*.

Approximately 150,000 people were arrested without warrants during *Yukthiya*, with even persons who did not have drugs in their possession, and persons who had been arrested years ago for drug use, being taken in. Satkunanathan drew attention to society's complicity in the "dehumanisation and demonisation" of persons who use drugs. This was demonstrated by the lack of public outrage or criticism of *Yukthiya*, which was also due to fear of being labelled by the state or society as supporting drug traffickers.

She pointed out the lack of awareness, even amongst civil society, on the issue and called on civil society to educate itself so it can better advocate for the state to adopt a health and human rights-based approach to the issue.

Mina Mensah³³ spoke about the review of and changes to drug laws in Ghana. The country's old narcotics law³⁴ took a criminal approach to drug possession and use, leading to abuse of persons who use drugs at the hands of the police, overcrowded prisons and denial of access to justice.

²⁷ https://www.moj.gov.lk/index.php?option=com_content&view=article&id=356&Itemid=276&lang=en

²⁸ Drug Dependent Persons (Treatment and Rehabilitation) Act, Bureau of Rehabilitation Act No. 2 of 2023, and Poisons, Opium and Dangerous Drugs (Amendment) Act, No. 41 of 2022

²⁹ <https://www.nddcb.gov.lk/>

³⁰ https://www.hri.global/files/2021/08/03/HRI_Report_-_Sri_Lanka_Drug_Control.pdf

³¹ <https://www.hrcsl.lk/>

³² An island wide police operation in Sri Lanka with a stated aim of eradicating drugs and organised crime. Since its commencement, many allegations of human rights violations have been levelled against it.

³³ Mina Mensah, Head, Africa Office, Commonwealth Human Rights Initiative, Ghana

³⁴ <https://ir.parliament.gh/bitstream/handle/123456789/2636/PNDCL%20236%20Rev.Ed.pdf?sequence=1&isAllowed=y>



Taking cognisance of these issues, the Narcotics Control Commission Act in 2020³⁵ adopted a health approach. However, Mensah said, the situation remains the same, due to the continuation of the judiciary's sentencing practices, old attitudes of the police and prosecutors and a lack of awareness about the new law among those arrested.

"I think that one of the things that ought to be done is education. Unfortunately, because of the amendment to the act, a lot of people say that the problem has been solved. Previously, prior to this act being amended, you would find a lot of education on drug issues, but there is not so much in recent times."

Mina Mensah,
Head of the Africa Office, Commonwealth
Human Rights Initiative, Ghana.

³⁵ <https://ir.parliament.gh/handle/123456789/1921>



Reimagining Justice: Strategies To Decriminalise Poverty and Status

Legal Strategies: Strategic Litigation and Ensuring Equity in Access to Justice

The third panel discussed approaches to strategic litigation while acknowledging its shortcomings in effecting systemic change in the criminal justice system.

Justice Hari Prasad Phuyal³⁶ began the discussion by defining what strategic litigation means – filing a legal case to bring about social change. Highlighting how Nepalese courts have played a role in ensuring equal right to property for women³⁷ and the criminalisation of marital rape, he stressed that the parliament could not have done the same on these issues.

Furthermore, he outlined the various techniques used in strategic litigation, including the preparation of arguments, how arguments are represented, the materials that are produced in support, how arguments are made and the persuasiveness of arguments. He also highlighted the role that elements in the external environment, such as the media, play in driving change when litigation is ongoing within the courts. While strategic litigation seeks to bring about social change through the legal system he emphasised the importance of effective communication to the public about the changes envisioned.

Saliya Pieris, President’s Counsel,³⁹ highlighted how the outcomes of public interest litigation in Sri Lanka have been dependent on the environment in the country at the time of litigation. A range of public interest litigation cases have garnered success in Sri Lanka, including those related to the environment, elections and economic crimes.



Saliya Pieris PC,
Former President,
Bar Association of Sri Lanka.

For example, when the Executive decided a few years ago to lift the moratorium on the death penalty⁴⁰, public interest litigation stopped the President from resuming executions. More recently, the appointment of an Inspector General of Police accused of torture was suspended⁴¹ through the courts.



Ajay Shankhar Jha,
Executive Director,
Public Defender Society of Nepal.

Ajay Shankhar Jha⁴² highlighted the success of a case in Nepal when the courts ordered the government to stop the detention of those who violated COVID-19 lockdown orders⁴³ for four or five hours. Additionally, the court directed the government to provide essential items to people during the lockdowns, thereby addressing some of the inequalities arising from poverty at the time.

“In Nepal, most are put in jail, not for what they have done, but who they are.”

³⁶ Justice Hari Prasad Phuyal, Justice of the Supreme Court of Nepal.

³⁷ <https://www.gefont.org/file/uploads/65b3714217a1b.pdf>

³⁸ https://www.law.cornell.edu/gender-justice/court/supreme_court_of_nepal_0#:~:text=The%20Court%20found%20that%20punishing,of%20repeated%20violence%20and%20rape.

³⁹ Saliya Pieris, PC, Former President, Bar Association of Sri Lanka.

⁴⁰ <https://worldcoalition.org/2023/03/28/moratorium-stays-in-place-in-sri-lanka/>

⁴¹ <https://sundaytimes.lk/online/news-online/SC-issues-Interim-Order-preventing-Deshabandu-functioning-as-IGP/2-1146352>

⁴² Ajay Shankhar Jha, Executive Director, Public Defender Society of Nepal.

⁴³ <https://www.theilf.org/post/in-nepal-creative-litigation-is-protecting-vulnerable-communities-amidst-covid-19>

However, while recognising the scope of public interest litigation, Jha emphasised that the justice system still plays a role in perpetuating existing economic and status inequalities.

Prof. Anup Surendranath⁴⁴ continued the discussion on the process of strategic litigation by using the example of the constitutionality of the death penalty in India. Although a large part of Project 39A's⁴⁵ work revolves around the death penalty, they remain conservative about bringing the question of its constitutionality to the Supreme Court.

They have, however, been engaged in individual litigation for those on death row for a number of years, strategically aiming to ensure the Supreme Court affirms as few death sentences as possible. Prior to eventually challenging the constitutionality of the death penalty, they believe it is important to have a number of years where the Supreme Court has not affirmed the death sentence.



"That is how I relate our individual work to the larger goal, but I do not think that the larger question of whenever we want to bring that question back to the Supreme Court is just a question of legal preparation. It is not about just coming up with the best arguments."

Prof. Anup Surendranath,
Executive Director Project 39A, India.

Other preparation strategies involve tracking annual data about the death penalty, analysing information and showing trends. As such, Surendranath underscored the need to assess multiple factors before raising the question with the Supreme Court.

Moreover, strategic litigation and effective communication about the law go hand in hand. One of Project 39A's key struggles remains communicating their research findings to a larger audience. Good public communication to disseminate legal findings is vital yet incredibly challenging, especially as it is expensive and requires expertise going beyond formulating a single social media post. It involves finding the right people to tell stories on different platforms.

"Today, if you ask me when we are going to bring a challenge on the constitutionality of the death penalty, the answer is that I don't know. But, the preparation for it can't begin six months before you file a challenge, right?" – Surendranath

Anneke Meerkotter⁴⁶ added a different perspective to the conversation on strategic litigation, emphasising that, although post-apartheid South Africa's first case at the constitutional court – the repeal of the death penalty⁴⁷ – gave a "beautiful judgement" on how the death penalty infringes on dignity and targets the poor, its long term transformative impact was limited. Today, a majority of South Africans believe in the death penalty, so she questioned how transformative judgements can lead to a change in mindsets.

Furthermore, she highlighted that the legal profession is a "different class of people" to the class being targeted by laws, and that lawyers protect their own class.

"In fact, the law is so simple, but lawyers are never going to say that. I mean, it is the most simplistic. This is not brain surgery or even kidney surgery. It is so easy, but we try to make it complicated."

Anneke Meerkotter,
Executive Director, Southern Africa
Litigation Centre, South Africa.



⁴⁴ Prof. Anup Surendranath, Executive Director, Project 39A, India

⁴⁵ <https://www.project39a.com/>

⁴⁶ Anneke Meerkotter, Executive Director, Southern Africa Litigation Centre, South Africa.

⁴⁷ <https://deathpenaltyinfo.org/upon-nelson-mandelas-death-recalling-first-act-of-south-africas-constitutional-court>

Thus, while strategic litigation works, it is not a silver bullet. Going beyond strategic litigation and changing the narrative is key in demonstrating how laws impact individuals. For instance, Meerkotter said that, although one law can be changed using strategic litigation, the police can always find another law to engage in abusive action. As such, collective efforts by multiple stakeholders are needed to decriminalise poverty and status.

Making an important addition to the conversation, Surendranath said it is vital to be conservative with the timing and preparation of cases as strategic litigation can sometimes be a “dangerous strategy”.

“If I have the instinct of a dangerous gambler – I’m going to go and put this and I might win it all or I might lose it all. So you better be damn sure about when you time it. Those are difficult choices.” – Surendranath

Surendranath also reflected on the shortcomings of legal aid systems, stressing that legal aid would not bring about structural change in the criminal justice system as it only addresses a symptom of the problem. Instead, he urged the participants to question what is being criminalised, along with the reasons for criminalising certain behaviours.

Literature on critical criminal law shows that the state is deliberate in not providing clarity on what is being criminalised and how criminalisation occurs as this vagueness benefits the state. Courts too are extremely differential to the executive on these questions.

The Q&A session that followed stressed the importance of preparing for strategic litigation before a potentially harmful incident occurs, especially as there may be attempts to use the courts to quash any challenge to government action. Additionally, it is important to prepare lawyers for such situations alongside increasing public education.



Beyond Litigation: Advocacy, Awareness Raising and Community Mobilisation

Paba Deshapriya⁴⁸ began the discussion by recounting the story of a woman who sought shelter from the Grassrooted Trust⁴⁹. Although she was bleeding from her forehead due to her husband's beatings, she refused to go to the hospital for treatment because the hospital would inform the police who would arrest her husband. This demonstrates how strict frameworks, such as those which instruct the hospital to inform the police when a victim of domestic violence seeks their services, may deny victims critical healthcare.

In rural areas, litigation is often not the priority. The aforementioned woman had even ultimately refused shelter services as she had been more concerned about her chores the next day of sending her children to school and waking her husband up for work.

Thus, poverty prevents people's access to justice and basic healthcare, as they do not have the time, financial resources or mental space to do so. Deshapriya emphasised the need for education to lift such communities from situations which entrap them.



Paba Deshapriya,
Director, Grassrooted Trust,
Sri Lanka.



Martin Macwan,
Founder, Nasvarjan Trust, India.

Martin Macwan⁵⁰ too highlighted the importance of educating the public – a task which requires effective communication. Recognising the power of knowledge, the Nasvarjan Trust⁵¹, which he founded, has worked to make the Indian Constitution more accessible to poor, illiterate communities. He displayed a copy of the Constitution – printed in the form of a “house”, with key articles of the Constitution resembling different parts of the house.

For example, he pointed out that without windows, a house would be in darkness – similar to the role played by fundamental rights in the constitution. Five thousand such model “houses” have been distributed in 15 Indian languages to date.

Dr. Ponni Arasu⁵² detailed her experiences with Voices Against 377⁵³ – a collective that rallied against Section 377⁵⁴ of the Indian Penal Code which criminalised adult, consensual, sexual acts between persons of the same sex which it deemed to be against the order of nature. The coalition brought together organisations, collectives and individuals working on a range of issues including women's rights, disability rights, child rights, sexuality and sexual and reproductive health, thereby expanding the idea of who is being affected by the criminalisation of LGBTIQ people and who can fight against it.

⁴⁸ Paba Deshapriya, Director, Grassrooted Trust, Sri Lanka.

⁴⁹ <https://www.grassrooted.net/>

⁵⁰ Martin Macwan, Founder, Nasvarjan Trust, India.

⁵¹ <https://navsarjan.org/>

⁵² Dr. Ponni Arasu, Independent researcher and activist, India

⁵³ <https://www.voicesagainst377.org/>

⁵⁴ <https://devgan.in/ipc/section/377/#:~:text=Whoever%20voluntarily%20has%20carnal%20intercourse,also%20be%20liable%20to%20fine.>

“Our intervention in court essentially brought in a much broader perspective on the impact of a law like this on society as a whole, and not just on people with any specific sexuality identities. This also helps, to some extent, in extending the documents within the court, not just to sexual orientation or sexual identities, but also to identities of class, caste and religion in the everyday lives of society as a whole.” – Ponni

Similarly, in Sri Lanka, a recent Supreme Court determination that stated that a bill to decriminalise same sex conduct was not unconstitutional⁵⁵ was a result of stakeholders from both within and outside the LGBTIQ community petitioning the court. They included mental health professionals, human rights activists, women’s rights activists and lawyers.

However, the big difference in these stakeholders coming together in Sri Lanka when compared with India was that the former was not through the result of broader networking or movement building. They were specific individual interventions developed independently of one another – different from the petitions filed as a result of movement and network building through Voices Against 377.

During their struggle in India, Ponni said, they also expanded within the legal realm, the discussion about other laws (beyond the sodomy law) affecting the LGBTIQ community. By writing extensively about these laws specifically affecting queer folks from oppressed castes or working class communities, they attempted to adopt an intersectional approach to the issue.

“And the thing about expanding [the focus on to] the number of laws that affect people is about essentially bringing focus on to ‘multiply marginalised’ queer folks...The face of that fight, to a large extent in India was, and to some extent is, elite queer folks from dominant caste and class backgrounds. By diversifying which top laws we were talking about as those violating the rights within this community, we also diversify who within the community we are speaking about.” – Ponni

In Sri Lanka, laws such as the Vagrants Ordinance⁵⁶ are being challenged by different groups such as those advocating for the rights of sex workers. These laws affect the queer community too, especially the more marginalised within it, such as the working class and the rural poor.

Another concrete strategy employed during the fight against Section 377 was to systematically write to English newspapers about the intersectional issues related to the law. Recognising the limitations of language and diversity of audiences for their writings, Ponni said they were still able to highlight the struggles of the multiply marginalised queer folks they were working with at ground level.

“We do not have efforts such as this to build a broader public discourse in Sri Lanka yet. This is absolutely imperative, because, as we know, there is no point in legal change if there isn’t broader social change.” – Ponni

In India, another strategy employed was to explicitly connect with other movements such as the annual March 8th marches in Delhi. By being included in such movements, they were able to, not just get rights for queer people, but create queer social justice spaces overall, recognising the generation of queer folks who have worked on anti-caste movements, in labour and in land struggles.

“In Sri Lanka, a space where folks feel like they have assistance with their basic needs, food, shelter, helplines, pro bono legal help, mental health, education and employment needs to be built. If this foundation cannot be set, then collective trust cannot be built. If collective trust is not built, the community cannot be mobilised. And if the community cannot be mobilised, a solid legal challenge within the courtroom cannot be mounted.” – Ponni

⁵⁵ <https://www.icj.org/sri-lanka-icj-welcomes-the-supreme-courts-determination-that-the-proposed-amendment-decriminalizing-consensual-same-sex-sexual-relations-between-adults-is-constitutional/>

⁵⁶ <https://www.icj.org/wp-content/uploads/2022/01/Sri-Lanka-Briefing-Paper-A-Colonial-Relic-Long-Overdue-for-Repeal-2021-ENG.pdf>

Nikita Sonavane⁵⁷ urged the participants in the Convening to consider the intersectionality of caste systems in South Asia, especially India, when discussing the harmful impacts of criminalisation. Caste discrimination, she pointed out, existed before the British colonised India. To date, this system continues where only certain communities are constantly subject to criminalisation and only certain others are considered respectable subjects of the law.

Within this framework, she focused on the history of policing in India, primarily tied to the Criminal Tribes Act, 1871⁵⁸ which criminalises thousands of tribes across the country. Although the law is colonial, it is linked to the existing caste system and operates on a presumption of guilt as opposed to the “cardinal principle” of the presumption of innocence in criminal law. In this way, India’s history of policing is intimately tied to its history of caste and colonialism.

Sonavane was part of a study conducted during the pandemic analysing everyday policing data in India, moving beyond cases of police violence commonly discussed, such as custodial killings. The study asked the following questions:

1. How does the police go about its job?
2. Who is being criminalised by the police?
3. What are they criminalising people for?

The study revealed that:

1. Police are targeting various oppressed caste communities and recording the caste of those subject to punitive action in minute detail (e.g. religion, caste, tribe of a person);
2. Most are being arrested for petty offences.

Hence, everyday policing targets and profiles oppressed caste communities, replicating the same profile of the “born criminal” or the “habitual offender” while also policing the streets and their homes and families.

Data on criminalisation is critical in attempts to reduce the scope and powers of the police, and ensure they follow the law. This includes using evidence for strategic litigation, adopting intersectional approaches to address the issue of criminalisation, policy advocacy and police accountability.

With the advancement of technology, criminal records are now being centralised in digital databases in India to use when people seek healthcare, rental facilities or employment opportunities. Thus, children from criminalised communities who may have to drop out of schools by virtue of being from those communities may face problems when they try to access services. Data historically collected by the Indian police is now being digitised and interlinked in the form of an interoperable criminal database, entrenching the tendency of state structures to view certain communities through the prism of the presumption of guilt.

⁵⁷ Nikita Sonavane, Criminal Justice and Police Accountability Project (CPA Project), India.

⁵⁸ <https://www.epw.in/tags/criminal-tribes-act#:~:text=During%20British%20colonial%20rule%2C%20the,against%20them%20at%20all%20times.>

Moreover, when big tech companies come to India, they interact with its history of caste and criminalisation. One example of this is Hyderabad – known as the new Silicon Valley of India. Its police chief had spent time with the New York Police Department (NYPD) in the US, learning about modernising the police force. He returned with technologies which then were adapted to the local context, thereby enabling and entrenching criminalisation of certain communities.

Thus, Sonavane highlighted the need to build solidarity with rights activists in the US to make them aware of the caste oppression facilitated by big tech in India.

Turning the focus to Africa, Adrian Jjuuko⁵⁹ based his insights on his work with the coalition focusing on the Decriminalisation of Petty Offences⁶⁰ in Uganda. One aspect of this included filing a case in 2018 in the country's Constitutional Court to get a judgement abolishing the provisions of oppressive laws.

The case was built using a coalition which included state institutions, i.e., both enforcers and victims of the law were involved. Jjuuko, like many other speakers, highlighted the importance of engaging with both the media and communities in the pursuit of decriminalisation.

"I think that's the beauty of our coalition. We have the Uganda Human Rights Commission as co-chair of the coalition...We have prosecutors themselves being part of this campaign. We also have the police as part of this coalition. This is strange, right? These are the guys that do arrest people, and they are part of the coalition. We brought them all together so that we can have a conversation around petty offences. In this way, we were able to reach out to the judges, prove it to make the decision that we actually wanted."

Adrian Jjuuko,
Founder, Human Rights Awareness and
Promotion Forum, Uganda.



⁵⁹ Adrian Jjuuko, Founder, Human Rights Awareness and Promotion Forum, Uganda.

⁶⁰ The regional campaign to Decriminalise Petty Offences in Africa is the founding movement of the global Campaign to Decriminalise Poverty and Status.

Using International Standards and Mechanisms: The Impact of Regional Litigation and Regional Networking in Enabling Reforms

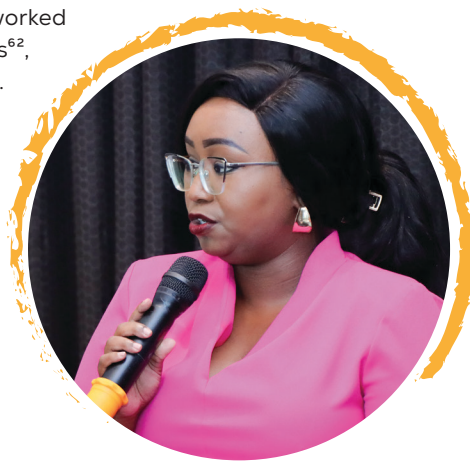
Julie Matheka⁶¹ explained the work of the global Campaign in Kenya from its beginning as the coalition to decriminalise petty offences. They began by analysing how petty offences affect their key constituents, such as street workers, sex workers, persons suffering with psychosocial disabilities, those who use drugs and the LGBTIQ community. They worked together with the Kenyan National Commission on Human Rights⁶², the state agency mandated to protect and promote human rights.

At the same time, the Campaign was growing in other countries. Realising similar issues were being faced by their respective countries due to once once having had the same colonial masters, they moved to convening a conversation in the region. This work resulted in the drafting of the “Principles on the Decriminalisation of Petty Offences in Africa”⁶³, which gave them a solid foundation for future work in the African continent.

However, before the principles were formulated, there were a number of other documents in Africa that discussed petty offences through a critical lens. This includes the Ouagadougou Declaration⁶⁴ which recommends that petty offences be decriminalised by African regional bodies and member states of the African Union due to them resulting in the overcrowding of prisons. Similarly, the Luanda Guidelines⁶⁵ show how the existence of petty offences leads to the arbitrary, excessive and abusive detention of persons in police custody and in pre-trial detention.

The Principles on the Decriminalisation of Petty Offences in Africa primarily state that the continued existence of petty offences violates the question of inherent dignity. Specific guidelines bring to light non-discrimination and equality, proportionality in criminal law, alternatives to criminalisation, the right to liberty and security, adherence to fair trial standards, economic and social justice for all, legal and policy reform and the protection and enforcement of human rights.

The document recommends that African countries who are signatories to the African Charter⁶⁶ conduct public education campaigns aimed at the decriminalisation of petty offences. There is a need for collaboration between civil society, governments and international bodies towards these efforts, as well as sufficient funding channelled into the criminal justice system to address these concerns.



Julie Matheka,
Programme Manager, International
Commission of Jurists, Kenya.

⁶¹ Julie Matheka, Programme Manager, International Commission of Jurists, Kenya.

⁶² <https://www.knchr.org/>

⁶³ <https://achpr.au.int/en/node/846>

⁶⁴ <https://s44224.pcdn.co/wp-content/uploads/ouagadougou-eng.pdf>

⁶⁵ <https://achpr.au.int/en/special-mechanisms-reports/guidelines-conditions-arrest-police-custody-and-pre-trial-detention>

⁶⁶ <https://au.int/en/treaties/african-charter-human-and-peoples-rights>



Daron Tan,
Legal Advisor, International
Commission of Jurists.

Daron Tan⁶⁷ spoke on the importance of coalition building and resource sharing in the Campaign to Decriminalise Poverty and Status, encouraging partners to consider the fundamental function and implementation of laws.

Leah Conklin⁶⁸ outlined how the Rio Principles, currently in the drafting stage, build on the work done in Africa by the Campaign to Decriminalise Poverty and Status.

"There is so much burden on civil society, on the people in this room, to be filling gaps, to be constantly fighting these fights, and we need to be shifting some of that burden back to governments who have the resources and the ability to provide these things, but aren't [doing so] for a variety of reasons. We need to figure out the strategies to do that."



Leah Conklin,
Advocacy and Communications Director,
International Legal Foundation.

Highlighting that, in addition to a number of international instruments, nearly every national constitution has a non-discrimination clause, Conklin emphasised that their collective strategy must be to hold governments accountable.

This also means identifying the champions in governments who share a vision of a just world, and giving them the tools and the resources needed to push for change within their institutions.

In 2022, the Campaign to Decriminalise Poverty and Status broadened its scope beyond the African region for the first time, when the Cape Declaration⁶⁹ – a call for high level principles aggregating their work – was adopted. This contributed towards ensuring the tools used by the Campaign are formulated in ways that are accessible to those in power, and can be used to engage with governments.

The Rio Principles are based on ILF's⁷⁰ experiences with the UN principles and guidelines on access to legal aid and criminal justice systems⁷¹ which have been effective in the movement to build stronger legal aid systems.

"They have these high level principles, but they also have guidance for governments on how to enact these principles. That is a model that we are hoping to replicate with the Rio Principles that are in development at the moment." – Conklin

⁶⁷ Daron Tan, Legal Advisor, International Commission of Jurists.

⁶⁸ Leah Conklin, Advocacy and Communications Director, International Legal Foundation.

⁶⁹ <https://decrimpovertystatus.org/?resources=cape-declaration-on-decriminalising-poverty-and-status>

⁷⁰ <https://www.theilf.org/>

⁷¹ https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf

Their vision includes incremental steps that can be followed to build a new system, abolishing the existing criminal justice system, but in a way that does not shut down dialogue with governments. For instance, a recommendation to abolish prisons may face blowback, but outlining smaller steps to get there will generate progress.

Accordingly, the Rio Principles are as set out under the following themes:

- Principles taking transformative approaches to justice, while looking at trauma, informed approaches to justice, alternatives to the current system and ending victimisation;
- Principles advocating for the repeal of laws which at face value are discriminatory, such as criminalising gender expression;
- Principles addressing laws that have the effect of being discriminatory because of the ways in which they are implemented, such as adultery laws;
- Principles providing recommendations to specific justice actors, such as law enforcement, judges and prosecutors.
- Principles covering remedies, accountability, representative systems and addressing the dangers of new technologies;
- Principles around data collection and the need for more data.

Expanding the conversation on cross-border efforts on decriminalisation, Zaved Mahmood⁷² detailed his work with the UN Office of the High Commissioner for Human Rights (OHCHR)⁷³. He presented a video on the International Guidelines on Human Rights and Drug Policy developed by several UN agencies⁷⁴.

Historically, government responses to drug use and the illicit drug trade have been punitively entrenched in law enforcement, which has disproportionately impacted lower income countries, specifically targeting the poor and communities in areas where crops are cultivated for the drug trade. Those most affected are often the most marginalised groups, including indigenous peoples and racial or ethnic minorities. Therefore, although human rights are universal and essential to the freedom and dignity of all, violations of human rights have come to define punitive drug control practices.

⁷² Zaved Mahmood, Human Rights & Drug Policy Advisor, Global Lead on Incarceration, Office of the High Commissioner for Human Rights

⁷³ https://www.ohchr.org/en/ohchr_homepage

⁷⁴ <https://www.hr-dp.org/about>



Zaved Mahmood,
Human Rights & Drug Policy Advisor, Global Lead on Incarceration,
Office of the High Commissioner for Human Rights.

This has worsened over time. For instance, more women are being imprisoned for drug-related offences and people who use drugs are often denied essential medicines and health services. For over a decade, the UN has called for drug control laws, policies and practices that respect human rights and are evidence-based.

The world is slowly shifting with at least 26 countries in Sub-Saharan Africa, Central Europe and Latin America eliminating criminal penalties for possessing drugs for personal, non-medical use. Nations are reforming drug control policies for more effective palliative care, but while this is encouraging, it is insufficient to drive further progress, the video noted.

Accordingly, countries need guidance on how to adopt and implement rights-based drug policies in which the International Guidelines on Human Rights and Drug Policy can play a vital role. Mahmood said that these guidelines are already being relied on to change the narratives surrounding drug policy. For example, in Colombia, the judiciary has used them in delivering two key progressive judgements.

While noting the positive examples of cross-border collaboration in efforts to decriminalise poverty and status, the Q&A session that followed recognised challenges in implementing similar initiatives in the South Asian region. The pessimism was especially based on India's increasing shift away from international standards to look inwards. As such, the feasibility of such mechanisms in South Asia remains a question.



Sarah Belal,
Founder and Executive Director of
Justice Project Pakistan.

* Call to Action: Creating an Enabling Environment for Decriminalisation Initiatives

Subha Wijesiriwardena⁷⁵ began the discussion by showing how advocacy for various rights is interconnected with decriminalisation. In the US, for instance, local law enforcement is using canine units trained in the detection of drugs to sniff out abortion pills at post offices in states where abortion is now criminalised⁷⁶. Dogs track envelopes of abortion pills being sent by women and service providers to those who need them. This scenario shows that feminist conversations about the right to abortion should have taken into consideration and been in solidarity with the push for decriminalisation of drugs as the same weapons are now being used to target communities.



In the photo, left to right:

Jojob Faal Sy,
Communications Officer,
Campaign to Decriminalise
Status and Poverty.

Jennifer Smith,
Executive Director,
International Legal Foundation.

Subha Wijesiriwardena,
Co-founder,
Just Futures Collaborative, USA.

Ambika Satkunanathan,
Chairperson, Neelan Tiruchelvam
Trust, Sri Lanka.

“So our aim is to provide this kind of supported infrastructure, to see that it ignites the collaboration, that for which we know the desire is there. We know that the desire is there, but we know that also communities are being targeted and attacked from every dimension, and so our aim is to create some supportive infrastructure that allows people to collaborate in meaningful ways...and with long-term partnerships.” - Subha Wijesiriwardena, Co-founder, Just Futures Collaborative, USA.

Elsewhere, in the Philippines, a sweeping amendment to their Penal Code has criminalised a range of behaviours, including sex outside of marriage. Although sexual rights activists rang the alarm on these Penal Code amendments years ago, mainstream human rights, democracy, freedom of expression and media activists did not pay attention.

Only after the Penal Code amendments were passed did they realise that criminalising sex outside of marriage also meant criminalising different communities and religious and ethnic minorities who cannot have their relationships recognised as their identities are not recognised by the state. Therefore, Wijesiriwardena said, these examples demonstrate how it is difficult to consider such issues in a contained, “location-specific” manner.

⁷⁵ Subha Wijesiriwardena, Co-founder – Just Futures Collaborative, USA.

⁷⁶ <https://reproductiverights.org/roe-v-wade/#:~:text=In%20June%202022%2C%20in%20a,The%20ruling%20in%20Dobbs%20v.>

Her work at Just Futures Collaborative⁷⁷ also recognises that rights activists are exhausted and often under-resourced.

“So our aim is to provide this kind of supported infrastructure, to see that it ignites the collaboration, that for which we know the desire is there. We know that the desire is there, but we know that also communities are being targeted and attacked from every dimension, and so our aim is to create some supportive infrastructure that allows people to collaborate in meaningful ways...and with long-term partnerships.” – Wijesiriwardena

Satkunanathan expanded on the role of grantmakers in creating an enabling environment for decriminalisation by highlighting the experiences of the NTT in Sri Lanka. Grantmakers from the Global North, while helping civil society organisations in the Global South that work on human rights and democracy, paradoxically have a “problematic” relationship with the region due to issues such as structural racism.

While acknowledging that local grantmakers such as the NTT could reproduce these inequities in different ways, Satkunanathan spoke about the positive aspects of local grantmakers. With no foreign policy to adhere to and no headquarters formulating policies or rules, the NTT is able to make the rules to suit the local context.

“This freedom allows us to have a high but considered and conscious appetite for risk, which most people do not have. I think that forms the core of our work. We prioritise making grants to community-based organisations, not the Colombo-based ones...” – Satkunanathan

In their work with rural CSOs, the NTT treads a fine line between playing the role of grantmaker and that of the capacity-builder. They view capacity building as a contribution to creating an enabling environment for civil society, since strengthening institutions makes them able to respond more effectively to community needs.

Additionally, increased levels of institutional accountability and transparency offer a form of protection against a repressive state, as the state can use shortcomings in the management and financial structures of a CSO to target them for punitive sanctions.

Satkunanathan stressed that rules to enhance accountability and transparency must not be disconnected from ground realities. For example, mandating a CSO to submit three quotations for a procurement process may not always be practical if the organisation is located hundreds of kilometres from the city and sources its materials from the local community. Thus, rigid, inflexible rules and processes may sometimes push CSOs to bend them.

Furthermore, when ensuring equity and inclusion, donors must recognise that hierarchies exist even within marginalised groups. NTT is also conscious of accountability within the organisation, recognising that it must not be a “one-way street”.

NTT ensures equitable language access. While foreign donors often require proposals to be written only in English, prompting local CSOs to hire consultants who may not be able to capture the complexities or nuances of their work, NTT allows CSOs to submit proposals in any of the local languages in Sri Lanka and engages with them in their preferred local language.

Finally, Satkunanathan spoke on how donors must not contribute to the shrinking of civic space by highlighting an example from the “Rajapaksa era”⁷⁸ following the end of the civil war in Sri Lanka. The Rajapaksa regime established a Presidential Task Force (PTF) to grant approval to non-governmental organisations and international NGOs to work in the war-affected Northern Province.

⁷⁷ <https://justfuturescollaborative.com/>

⁷⁸ Refers to the period between 2005 and 2015 when Mahinda Rajapaksa served as the president of Sri Lanka. His government, which had his family members holding key positions, has been accused of human rights violations, wartime atrocities, corruption and authoritarianism.

“The PTF would not give approval for anything like psychosocial assistance or any rights-related work. You would only get permission for work such as building houses, building wells, cleaning wells, etc. Other donors asked anyone applying to them to obtain PTF approval. But the PTF was an extralegal institution and was not established by an act of parliament or through a regulation. We, I think, were the only donors who said PTF approval is not required as it is an extralegal institution. I think that that was also an indirect way in which the donors were supporting or enabling the shrinking of civic space. Maybe they didn’t realise it, but it is another issue to watch for.” – Satkunanathan

Jojob Faal Sy⁷⁹ focused on the Global Campaign to Decriminalise Poverty and Status, highlighting that the Campaign aims to create a space where people can come together to do the work they are already doing in their individual spaces. However, different stakeholders may have different ways of expressing the problem and solutions. For instance, a lawyer speaking about jurisprudence may not be easy to understand, but a wider audience will be receptive to lived experiences, such as those of women or LGBTIQ persons.

Explaining the Campaign’s organising strategies, Sy said they created a coordinating mechanism by identifying focal points to direct activities on different themes. The members of this mechanism are persons across continents and thematic areas. The strategies adopted by the Campaign adapt to the needs of changing times. For instance, once a bad law has been amended, the Campaign considers what comes next. It gathers evidence first, and then uses that evidence for litigation, reform and advocacy.



“One of the things that the Campaign does is bring together people from very different pathways...We cannot lose the fact that it is through that joint, cross-regional collaboration that we can really push things forward.”

Jojob Faal Sy,
Communications Officer,
Campaign to Decriminalise Poverty and Status.

Satkunanathan concluded the discussion by highlighting the value of the decriminalisation of poverty and status framework – it is not triggering, is non-confrontational and could fit under the Sustainable Development Goals (SDGs)⁸⁰. Therefore, it is a convenient and useful framework within which complex issues that states may not otherwise wish to hear can be discussed.

⁷⁹ Jojob Faal Sy, Communications Officer, Campaign to Decriminalise Poverty and Status.

⁸⁰ <https://sdgs.un.org/goals>

* Closing Remarks



Pandey summarised the lessons learnt over the two days by first acknowledging the “striking similarity” of challenges, litigation strategies, dissemination of accessible knowledge and power of local movements within the region.

“We have learnt that battles cannot be won only in the courts, but they start outside the court with the strength of community-based work.”

Shikha Pandey,
Programme Director – Asia,
International Legal Foundation.

She highlighted key takeaways critical for success as shared by participants from Africa, including:

- The need for engagement with stakeholders, such as building coalitions with governments, advocacy via the media, working with parliamentarians and mobilising communities to challenge discriminatory laws and practices;
- The importance of storytelling (writing in a way that audiences understand and choosing local languages over that of the elite);
- The need to create shared experiences amongst collectives;
- The significance of data “that goes to the hearts and minds of those in power”;

“People who are experiencing challenges of criminalisation do not experience one issue at the same time. They may experience poverty, lack of access to education and health issues which are all symptoms of systematic exclusion. Thus, there is no one silver bullet – the responses have to be multifaceted.” – Pandey

She concluded her remarks by stressing the need to reevaluate the legal aid system in the region as the Convening demonstrated the increasing lack of trust in it. Pandey called on lawyers to have a “deep and ongoing contact” with the communities they serve such as social workers, religious leaders and paralegals as these stakeholders are critical to identifying acts of discrimination.

Satkunanathan drew the Convening to a close by reiterating that engaging with the system as it exists is not working because the idea of the state has evolved, along with the way in which it functions. Despite the state’s responsibility in protecting and promoting rights, it is now the predator.

Hence, governments tend to treat their citizens as subjects which, in the context of the Global South, is an extension of feudalism and casteism. It also reflects “unspoken issues” such as classism, privilege and new forms of privilege, even amongst civil society.

Furthermore, she criticised the privilege enjoyed by civil society, of which they are largely unaware. Civil society is often fragmented along urban-rural, ethnic and religious lines and this divide is exacerbated by the failure to address issues of inequality and inequity, in particular socioeconomic rights of marginalised communities. Within CSOs themselves, marginalised communities are under-represented, raising questions of existing inequalities within the nonprofit sector.

This lack of awareness could also shape the manner in which civil society organisations address issues of inequality, discrimination and marginalisation within broader society. This includes failing to meaningfully create space for the voices of the marginalised as well as appropriation of the voices of the marginalised by urban, better resourced, privileged CSOs.

“This not only results in more fractures within civil society but also enables a hostile state to label civil society as disconnected from the people.” – Satkunanathan



Civic/social movements have morphed into the “nonprofit sector”. This makes collaboration and the building of coalitions difficult, particularly during repressive times, as it is challenging to mobilise people at the local level.

Satkunanathan proposed that the way forward should first be to question the fundamentals of the legal/criminal justice system and to break down the meaning of law.

“We need to change narratives, including in our own minds.”

Ambika Satkunanathan,
Chairperson, Neelan Tiruchelvam Trust.

Legal strategies have had limited impact due to elite/right-wing capture of public institutions, particularly in South Asia, hence heightening the need to reassess social justice interventions. These include legal reform initiatives, since litigation and legal reform, commonly used by rights groups to seek redress for historical and structural injustices, have yielded mixed results. Additionally, since progressive laws and policies are not implemented due to sociopolitical factors, to only, or even to mainly, focus on law reform will not yield results, Satkunanathan emphasised.

“This is why we want to adopt not only an intersectional approach but also an interdisciplinary approach. Socioeconomic and political factors impact on the drafting and implementation of laws, and sometimes a socioeconomic or sociopolitical approach may be far better or more effective than a legal approach. Hence, we adopted this broad lens throughout the Convening.” – Satkunanathan

* Conclusion



The South Asia Convening on Decriminalising Poverty and Status saw the discussion of several cross-cutting themes, including:

- Failures when engaging with the current system in its current form to achieve decriminalisation;
- Criminalisation targeting those already vulnerable and marginalised, especially economically;
- The postcolonial thread that binds harmful laws in South Asia;
- The need for postcolonial states to critically view their own complicity in the problems with the criminal justice system, especially where caste and minority discrimination are concerned;
- Being mindful not to treat strategic litigation as a silver bullet because, although it can help in addressing social issues, it can also yield mixed results or, in some instances, lead to unexpected harmful outcomes;
- The importance of movement-building and community mobilisation beyond the courtroom in countering oppressive laws.

