THE GOVERNMENT’S DRUGS POLICY- IS IT WORKING?

LIBERTY SUBMISSION TO HOME AFFAIRS SELECT COMMITTEE

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1. Liberty (The National Council for Civil Liberties) is one of the U.K.’s leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research. It is the largest organisation of its kind in Europe and is democratically run.

2. Liberty welcomes the opportunity to present evidence to the Home Affairs Committee in respect of the government’s drugs policy. In the opinion of Liberty the current policy is not working and requires radical overhaul.

3. Liberty considers that the current policy of criminalisation of possession, use and supply of drugs represents serious infringements into civil liberties that are unjustified. Liberty therefore calls for the general decriminalisation of possession, use and supply and supply of all drugs, for the regime for control of drugs to be replaced by a civil mechanism of control, and for there to be right of access to the lawful supply of drugs.

4. Liberty considers as part of a free, democratic society individuals should be able to make and carry out informed decisions as to their conduct, free of state interference, or in particular the criminal law, unless there are pressing social reasons otherwise. Liberty is of the view that the decision by an individual to take drugs is such a decision and comes within the ambit of personal autonomy and private life.

5. John Stuart Mill argued that the state has no right to intervene to prevent individuals from harming themselves, if no harm was thereby done to the rest of society. ‘Over himself, over his own body and mind, the individual is sovereign.’ Such fundamental rights are recognised by government, both in allowing individuals to partake of certain dangerous activities, for example drinking, extreme sports, and also in international treaties.

6. Article 8 of the European Convention on Human Rights provides:
’Everyone has respect for his private and family life, his home and his correspondence. There shall be no interference by a public authority with the exercise of this right except as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the county, for the prevention of crime, for the projection of health and morals, or for the protection of rights and freedoms of others’.

7. In a society that respects fundamental freedoms of the individual, and in particular the right to individual autonomy and choice, general restrictions and criminalisation of taking of drugs, cannot be justified.

8. We would not argue for complete de regulation of all drugs. We accept that there are circumstances which will require regulation, and in some cases criminalisation, of aspects of supply and consumption of drugs. These would include for example the supply of drugs to minors, or those suffering from certain forms of mental illness, the use of drugs by those in professions where public safety is at issue, and basic criminal law provisions, such as driving under the influence of drink or drugs, where consumption of drugs can cause harm to others.

We would call for drugs to be regulated on public health grounds in a similar matter to other foods and non illegal drugs, which would allow for access to the legal supply of drugs.

9. In addition Liberty would state that the practical consequences of current drugs policy also creates substantive infringements into basic civil liberties. The nature of trying to police and fight crime on such levels has led to significant increases in draconian and restrictive laws and policing methods. Compared , for example, to measures taken in respect of prevention of terrorism, over the past 20 years measures to counteract the ‘war against drugs’ have had a far more wide ranging effect on basic human rights .
10. A significant proportion of the policing, and wider criminal justice budget, is spent on drugs related crime. Estimates suggest that 1/3 of the proceeds of all acquisitive crime go towards funding the purchase of illegal drugs, and according to Interpol the international illegal drugs trade accounts for approximately 8% of all international trade.

11. The origin and impact of policing and legislative methods to tackle drugs are both national and international. The nature of offences connected with the illegal drugs trade respond to forms of covert investigation and policing, not generally being crimes that have direct victims or witnesses. Thus methods such as the use of entrapment, listening devices and other forms of intelligence and surveillance, have been developed and are used 'to fight the war against drugs'.

Such methods of policing are by their very nature intrusive and restrictions on civil liberties, in particular article 8 rights, but also article 6 of the European Convention on Human Rights.

12. Erosion of basic human rights standards can also be seen in the attempt to tackle drugs from the seizure of assets angle. Thus recently the European Convention on Human Rights has recently upheld the provisions of the Drug Trafficking Act, which effectively reverses the burden of proof in a criminal matter.

Additional measures such as the proposal for seizure of assets, and establishment of criminal assets criminal assets recovery agency which offend principles such as presumption of innocence are being proposed.

13. The increased use of such measures represents significant incursions in to basic human rights standards. Mechanisms for control and regulation are inadequate or non existent, both nationally and internationally. Hence the Regulation of Investigatory Powers Act 2000 gave the police wide ranging intrusive powers, and has been criticised both for this, and the lack of adequate regulation of some of these powers.

Internationally there are insufficient mechanisms to regulate international practices, databases and sharing of information, with the establishment of systems such as Schengen Information system, Convention on mutual assurance in criminal matters 2000, Europol, Eurojust, Eurodac and Echelon. Regulation of these systems and methods of information gathering is inadequate, or non existent. The problem of lack of adequate regulation of these techniques was illustrated by the Van Traa enquiry in Holland into the use of entrapment.

14. In our view the effects of criminalisation of drugs, and the consequent policing such criminalisation requires constitute significant intrusions into civil liberties, and the privacy of the individual.

15. The current drugs policy also has adverse affects on significant numbers of the community, in particular those who are disadvantaged and disproportionately ethnic minorities.

Disadvantaged communities have fewer opportunities. The amounts of money that can be made from drugs are inevitably attractive to poorer elements of the population, who otherwise are unlikely to have access to high income earning jobs, and who see role models in their communities with the accessories of drugs income (flash cars, jewellery etc.) One of the major avenues open to individuals in these communities, and in particular young men form ethnic minority groups, is the illicit drug trade.

This can be seen recently in the increased involvement of Asian and Kurdish offenders in respect of drugs offences. Equally the poor and disadvantaged are more likely to have to fund their drug taking by crime than rich professionals.
16. Additionally in such communities a prevalence of drug culture can lead to a prevalence of violence. This is illustrated more starkly in the American ghettos, but there are signs of this increasing in this country, in particular with the presence of yardie gangs in areas of London and other major cities.

17. Drugs-related offences account for a significant proportion of crime. Ethnic minorities are disproportionately represented at all stages of the criminal justice system. Criminalisation of drugs clearly has implications for discrimination against ethnic minorities.

18. There are considerable arguments as to the health, addictive, and behavioural aspects of drugs, and the implications for legalisation on these. We would welcome the opportunity to expand on these and other issues in oral evidence to the committee.