



International Centre
on Human Rights
and Drug Policy



Joint Submission: The promotion and protection of human rights and international drug control

12 April 2016

Introduction

The International Centre on Human Rights and Drug Policy¹ and Amnesty International welcome this opportunity to contribute towards the 2016 UN General Assembly Special Session (UNGASS) on Drugs. This important meeting comes at a time when the current drug control model is being questioned and human rights abuses are being highlighted as part of the negative consequences of drug control, in particular following the Human Rights Council high-level panel on “the impact of the world drug problem on the enjoyment of human rights” held in September 2015.² Indeed, it is the widespread human rights abuses committed by both state and non-state actors that have led to this UNGASS being brought forward from 2019. There is a clear message from the international community that the human rights abuses and violations that arise in the context of drug control policies and counter-narcotic operations can no longer be ignored. It now becomes essential that this momentum is firmly grounded in international law and transformed into operational commitments.

The UNGASS on drugs must be viewed as the beginning of a wider reflective process underpinned by a rigorous and inclusive assessment of the global state of drug control in the negotiations of a new Political Declaration and Plan of Action to be adopted in 2019. The lead up to 2019 is a critical moment to ensure that political commitments to drug control have clear, unambiguous articulations of international human rights law and standards.

In order to do so, there is vital need for the different stakeholders including States, UN institutions, civil society and private actors to recognise drug control as a thematic issue that needs a human rights perspective to ensure full and effective protection for all affected individuals and communities. This submission specifically calls upon States and UN institutions to recognise international drug control as a thematic human rights concern and to move beyond the current rhetoric, towards institutional commitments that improve international drug policy by ensuring the respect and protection of human rights. To this end, we wish to highlight three particular areas of work that would need to be considered:

- Developing an independent process aimed at the establishment of ‘International Guidelines on the Promotion and Protection of Human Rights While Countering the World Drug Problem’
- Building sustainable human rights accountability for drug control, including through an annual thematic debate at the Human Rights Council
- Establishing an independent, expert advisory group to review the UN drug control architecture and its system-wide coherence

Drug control as a thematic human rights concern

In recent decades, multiple national, regional, and international human rights mechanisms have documented ways in which drug control has negatively impacted the health and welfare of countless

¹ The International Centre on Human Rights and Drug Policy is an academic partner of the Human Rights Centre, University of Essex <http://www.hr-dp.org/>

² Pursuant to Human Rights Council Resolution 28/28, see study submitted by the OHCHR to this panel: Office of the High Commissioner on Human Rights, ‘Study on the impact of the world drug problem on the enjoyment of human rights’ (UN Doc A/HRC/30/65, 4 September 2015).



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individuals across the globe.³ It is now well recognised that human rights abuses in the context of drug control are widespread, taking place all across the world as a consequence of the action or omission of both state and non-state actors.

Amnesty International has long documented numerous human rights violations committed in the context of the implementation of drug policies. The organization has recorded hundreds of death sentences and executions that are carried out each year for drug-related offences,⁴ despite the fact that such offences do not meet the threshold of “most serious crimes” under international law.⁵ Amnesty International has also expressed concern over a trend to militarize public security and policing in the context of counter-narcotic operations. Several states have favoured the use of force and have relied on the armed forces to undertake tasks related to public safety or have adopted military techniques for law enforcement, including through training and equipment.⁶ The militarized approach of counter-narcotic operations has led to human rights violations, including cases of torture and other ill-treatment, enforced disappearances and extrajudicial executions.

Amnesty International has also documented cases in which people arrested for drug-related offences are often deprived from guarantees of fair trial, including the rights to access legal counsel, interpreters and consular assistance.⁷ People who use or who are suspected of using drugs are at a heightened risk of facing a range of human rights violations and confront further stigma and discrimination stemming from a criminal conviction. In many different countries, people who use drugs have been arbitrarily detained and forcibly subjected to compulsory or coerced treatment, and have on occasion been subjected to torture and other ill-treatment. Amnesty International has also documented human rights violations against women who have been criminalized for their use of drugs during pregnancy.⁸

The International Centre on Human Rights and Drug Policy has consolidated a body of research that examines the ways in which UN human rights mechanisms have engaged on questions related to the protection of human rights in the context of drug policy.⁹ While the body of work emerging from different human rights mechanisms based in Geneva has been essential in developing the normative contours of human rights in relation to drug laws, policies and enforcement, further normative development and institutional commitment is needed to ensure sustained attention to the evolving human rights and drug policy nexus. The Centre, along with many civil society organisations and academics, have repeatedly called for the development of normative standard setting to hold States

³ See, Office of the High Commissioner on Human Rights, “Study on the impact of the world drug problem on the enjoyment of human rights” (4 September 2015) A/HRC/30/65; Organisation of American States “The Drug Problem in the Americas” (2013) OEA/Ser.D/XXV.4.

⁴ Amnesty International, “Death sentences and executions in 2014” (ACT 50/001/2015), 31 March 2015

⁵ Article 6.2 of the International Covenant on Civil and Political Rights. Article 4.2 of the American Convention on Human Rights.

⁶ Amnesty International, “Out of control: torture and other ill-treatment in Mexico” (AMR 41/020/2014), 4 September 2014; Amnesty International, “You killed my son: Homicides by military police in the city of Rio de Janeiro” (AMR 19/2068/2015), 3 August 2015; Amnesty International: “Shadow of impunity: torture in Morocco and Western Sahara” (MDE 29/001/2015), 18 May 2015; Amnesty International, “Secrets and lies: Forced confessions under torture in Uzbekistan” (EUR 62/1086/2015), 15 April 2015;

⁷ Amnesty International, “Flawed justice: Unfair trials and the death penalty in Indonesia”, (ASA 21/2334/2016), 15 October 2015; Amnesty International, “Killing in the name of justice: The death penalty in Saudi Arabia” (MDE 23/2092/2015), 24 August 2015; Amnesty International, “Growing up on death row: The death penalty and juvenile offenders in Iran” (MDE 13/3112/2016), 26 January 2016;

⁸ Amnesty International, “Tennessee ‘fetal assault’ law an assault to women’s health and human rights” (AMR 51/3623/2016), 11 March 2016

⁹ See Julie Hannah, et al ‘Human Rights, Drug Control and the UN Special Procedures’, Briefing paper series (2015, International Centre on Human Rights and Drug Policy). <http://www.hr-dp.org/hrdp-briefing-papers>



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accountable in line with their obligations to ensure the full and effective realisation of human rights while countering the world drug problem.¹⁰

Human rights law is a critical baseline to scrutinise the impact of drug laws, policies and its enforcement. However, pointing to the many abuses taking place at a national level has at points revealed to be insufficient when the laws and policies of so many countries have been developed pursuant to the international drug control conventions.¹¹ What these treaties require States to do entails many risks to human rights, including in relation to crop eradication, investigation, prosecution, sentencing, drug treatment and undue restrictions to the right to privacy, freedom of religion and cultural and indigenous rights.¹²

These risks manifest themselves primarily in the translation of international commitments into national law, policy and action. States must take steps to harmonise their international commitments to address drug-related harms with their concurrent obligations to respect, protect and fulfil human rights. In addition to considering comprehensive reforms of national drug control strategies, it is essential to strengthen existing national institutions to address these risks, including National Human Rights Institutions. Likewise, the international community cannot distance itself from the negative impacts of the international drug control system that have for too long been underserved, and must take further steps to improve existing institutions to address such concerns.

From agreed language to institutional commitments

For over twenty years, the General Assembly has consistently stated that countering the world drug problem must be carried out in full conformity with international human rights law. This position was central to the outcome document of the last UNGASS on drugs held in 1998,¹³ every omnibus resolution on drug control from the General Assembly since then,¹⁴ and the 2009 Political Declaration and Plan of Action.¹⁵ The UNGASS outcome document also recognises the commitment to implement drug policies

¹⁰ More information on the guidelines project available here: <http://www.hr-dp.org/guidelines-on-drug-control-and-human-rights>

¹¹ Constitutional Court of the Republic of Indonesia, Judgement No. 2-3/PUU-V/2007, particularly article 3.24 and 3.25, where the judges argued that the application of death penalty is not only in line with but also justified by the 1988 Convention; Rodolfo Stavenhagen, 'Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples: Mission to Colombia' (2004) E/CN.4/2005/88/Add.2, para 46;

¹² Special Rapporteur on the right to health, Dainius Pūras, 'Open Letter to UNODC Executive Director, Yury Fedotov' (December 2015), *hereafter*: Dainius Puras Open Letter, 2015 http://www.unodc.org/documents/ungass2016/Contributions/UN/RapporteurMentalHealth/SR_health_letter_UNGASS_7.12.15.pdf; Office of the High Commissioner for Human Rights, 'Study on the impact of the world drug problem on the enjoyment of human rights', UN Doc. A/HRC/30/65 (4 September 2015); Report of the Working Group on Arbitrary Detention, A/HRC/30/36 (10 July 2015) paras 57-62; Organisation of American States, 'Report on the Drug Problem in the Americas' OEA/Ser.D/XXV.4 (2013)

¹³ See Paragraph 2 of the Political Declaration on Global Drug Control, on Report of the Commission on Narcotic Drugs acting as preparatory body for the special session of the General Assembly devoted to the fights against illicit production, sale, demand, traffic and distribution of narcotic drugs and psychotropic substances and related activities on its second session, UN Doc A/S-20/4, chapter V, section A, adopted at the UN General Assembly Twentieth Special Session on World Drug Problems, 8 – 10 June 1998..

¹⁴ UN General Assembly Resolution 68/197, A/RES/68/197 (18 December 2013); UN General Assembly Resolution 67/193, A/RES/67/193 (20 December 2012); Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem, adopted by the General Assembly in its resolution 64/182, A/RES/64/182 (18 December 2009)

¹⁵ UN Commission on Narcotic Drugs, Report on the fifty-second session, Economic and Social Council Official Record 2009, Supplement No. 8 .



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in conformity with all human rights, although crucial references to human rights are absent from the text and where present, they lack explicit and clear articulations of operational commitments to their realisation.¹⁶

To date, the language contained in General Assembly resolutions has not moved beyond this general commitment. So far, there has been no investigation of what countering the world drug problem in conformity with human rights means in practice, or what the implications are for the international drug control and human rights systems.

Multiple human rights mechanisms have raised their concern about specific violations committed in the context of drug control, including UN treaty bodies like the Human Rights Committee¹⁷ and the Committee Against Torture,¹⁸ and UN special procedures ranging from the Special Rapporteurs on the right to health¹⁹, torture and other ill-treatment²⁰, the use of mercenaries²¹, and violence against women,²² and from the Working Group on Arbitrary Detention.²³ As the International Centre on Human Rights and Drug Policy has noted, there is a need to build on this body of work in order to help provide a comprehensive analysis of the human rights implications of the current system of international drug control.

The 2015 high level panel at the UN Human Rights Council was an important step in mainstreaming the need to analyse the international drug control system through the lens of human rights and to improve the institutional framework on human rights and drug control within the international system. It was, disappointingly, considered a one-time only high-level engagement. The commitment to this important institutional endeavour must be renewed and sustained in order to build bridges with the processes that are currently being led by Vienna-based institutions. It is therefore necessary to leverage the UNGASS on drugs as a means toward developing institutional commitments within the United Nations to ensure system-wide coherence and to promote a human rights based approach to the international system of drug control.

We therefore propose the following institutional commitments that should emerge from the UNGASS process, which build and support other recommendations already submitted by our civil society partners. These are modest steps that, taking into account the difficulties of the negotiations thus far, should serve as a solid basis for a human rights centred approach in the new Political Declaration and Plan of Action in 2019. The recommendations are not intended to single out any country or any specific

¹⁶ Amnesty International, “States must reaffirm their commitment to human rights during the next UN Special Session on Drugs and halt violations committed in the name of drug control”, 23 February 2016 (IOR 40/3491/2016)

¹⁷ See for example Human Rights Committee (8 July 2005), Concluding observations: Thailand, UN Doc. CCPR/CO/84/THA, para. 14; Human Rights Committee (15 November 2000), Concluding Observations: Peru, UN Doc. CCPR/CO/70/PER, para. 13;

¹⁸ See for example Committee Against Torture (24 June 2013), Concluding observations: Guatemala, UN Doc. CAT/C/GTM/CO/5-6, para. 20; Committee Against Torture (20 January 2011), Concluding observations: Cambodia, UN Doc. CAT/C/KHM/CO/2, para. 20

¹⁹ Dainius Puras Open Letter, 2015; Report of the Special Rapporteur on the right to health, Anag Unnd Grover, A/65/255 (6 August 2010).

²⁰ Report of the Special Rapporteur on torture, Juan Mendes, A/HRC/22/53 (1 February 2013), paras 40 – 44; Report of the Special Rapporteur on torture, Manfred Nowak, A/HRC/10/44 (14 January 2009), paras 49 – 74

²¹ Report of the Special Rapporteur on the use of mercenaries, E/CN.4/2004/15 (24 December 2003), para 57

²² Report of the Special Rapporteur on violence against women, A/68/340 (21 August 2013) paras 23-24

²³ UN Working Group on Arbitrary Detention Report, A/HRC/30/36 (10 July 2015) paras 57 – 62.



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human rights concern, but are to fill clear institutional and normative gaps in the current international drug control and human rights systems.

1. 'International guidelines on human rights while countering the world drug problem'

The UNGASS outcome document states that not only the UN drug control conventions, but also other applicable international conventions form the cornerstone of international drug control. However, the UNGASS process to date has revealed an obvious lack of agreement or understanding of the applicable law and standards that flow from the wider international legal framework. The legal 'cornerstone' of drug control, in other words, is not properly articulated.

The international drug control conventions must be interpreted and implemented in accordance with international human rights law. Since the 1961 Single Convention on Narcotic Drugs was adopted, the UN human rights legal and institutional framework has further developed and contains a vast body of jurisprudence that must now be brought to bear to truly understand the nature of State obligations under international law in the context of drug control. This is especially important given the near absence of human rights references throughout the drug control conventions.

With this in mind, and with so many aspects of human rights engaged by drug control, having guidelines helping States to better ensure the fulfilment of their human rights obligations in the drug control context would be of critical added value. Such guidelines would, in addition, serve as a benchmark against which to measure States' laws and policies in light of their human rights obligations while implementing drug policies.

Any process of developing such guidelines should involve affected individuals and communities, civil society organisations and experts from various disciplines. The guidelines would thus facilitate a human rights compliant approach to the understanding of drug control and would provide a perspective grounded in existing legal obligations.

2. Building sustainable human rights accountability for drug control, including through an annual thematic debate at the Human Rights Council

In October 2015, the Human Rights Council adopted resolution 28/28, which called for a high level panel discussion on the "impact of the world drug problem on the enjoyment of human rights" and requested a study from the Office of the High Commissioner for Human Rights (OHCHR) on this matter.²⁴ This resolution was the first time the Council formally engaged on questions of human rights in the context of drug policy, and was a welcomed and vitally important development. However, the resolution lacked explicit recognition of the human rights abuses experienced by individuals and communities across the globe.

The OHCHR's subsequent study was based on written contributions from 35 civil society organisations, including academic bodies, 8 UN agencies and National Human Rights Institutions and 24 States, and is the first attempt by the High Commissioner's office to address, in a comprehensive manner, the complex links between drug policy and human rights.²⁵ The study was an important step towards more

²⁴ Human Rights Council Resolution 28/28, 'Contribution of the Human Rights Council to the special session of the General Assembly on the world drug problem of 2016', A/HRC/Res/28/28 (2 April 2015) para. 1.

²⁵ OHCHR Report on "Study on the impact of the world drug problem on the enjoyment of human rights", UN Doc. A/HRC/30/65 (4 September 2015), para. 2. See also www.ohchr.org/EN/HRBodies/HRC/Pages/WorldDrugProblem.aspx



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substantive engagement, and should serve as a basis to further operationalise a human rights framework in drug policy so as to sustain the Council's engagement on the issue.

The Human Rights Council must now build upon this important study and recognise that drug policy in its current form presents an enduring challenge to the meaningful protection and realisation of human rights. In order to build sustainable human rights accountability for drug control, the Council should commit, among other possible measures, to convening an annual thematic debate on human rights and drug policy to enable an inclusive and continuing forum for discussion as a means to ensure that human rights are widely considered and included in the development of the new Political Declaration and Plan of Action in 2019. This opportunity must be utilised to leverage a more effective and human rights based response to the world drug problem in the decades to come.

3. Establishing an independent, expert advisory group to review the UN drug control architecture and its system-wide coherence

In the process leading to the UNGASS on drugs, several civil society organizations and Member States have proposed the establishment of an independent, expert advisory group to further review the existing tensions between the UN drug control conventions and other areas of international law, including human rights law.²⁶ This advisory group, as has been the previous experience of similar groups, would have the mandate to propose recommendations to the General Assembly on how to overcome existing tensions between different areas of international law and ensure UN system-wide coherence on drug policy.

The International Centre on Human Rights and Drug Policy and Amnesty International support this recommendation and call on Member States and relevant UN bodies, including the Secretary General and the President of the General Assembly, to utilise the context of the UNGASS on drugs to establish such an advisory group as it would have the ability to provide significant input for the negotiation of the next Political Declaration and Plan of Action in 2019.

²⁶ See: 'UNGASS 2016: Background memo on the proposal to establish an expert advisory group' (Transnational Institute, 2015)
http://www.unodc.org/documents/ungass2016//Contributions/Civil/IDPC/International_Drug_Policy_Consortium_UNGASS-asks_External_04-2015_ENGLISH.pdf; Martin Jelsma, "UNGASS 2016: Prospects for Treaty Reform and UN System-Wide Coherence on Drug Policy" (Transnational Institute, 2015)
http://www.unodc.org/documents/ungass2016//Contributions/Civil/Transnational_Institute/Jelsma_United_Nations_final.pdf