

3 March 2010

English only

Commission on Narcotic Drugs

Fifty-third session

Vienna, 8-12 March 2010

Items 9 (d) of the provisional agenda**

Implementation of the international drug control treaties

Other matters arising from the international drug control treaties

Commission on Crime Prevention and Criminal Justice

Nineteenth session

Vienna, 17-21 May April 2010

Item 7 of the provisional agenda***

Use and application of United Nations standards and norms in crime prevention and criminal justice

**Drug control, crime prevention and criminal justice:
A Human Rights perspective******

Note by the Executive Director

Summary

While drug addiction, organized crime and terrorism undermine a host of human rights, responses to these problems can only be effective where they respect and restore the rights of those who are most vulnerable, while treating those accused of criminal offences in a just, fair and humane manner. The present note illustrates how drug control can be better synchronized with the need to protect human rights. The first three sections outline the conceptual and legal foundations that underpin the human rights aspect of drug control, crime prevention and criminal justice; and the fourth section indicates a way forward to mainstreaming human rights in the work of the Office.

* Re-issued for technical reasons.

** E/CN.7/2010/1.

*** E/CN.15/2010/1.

**** This document has not been edited.



Contents

	<i>Page</i>
I. Background	3
The rule of law and human rights	3
The nature of human rights obligations	3
II. Human rights in criminal justice	5
Human rights, criminal laws and sentencing	5
Human rights and due process	8
III. Health, development and human rights	10
IV. Mainstreaming human rights in the work of UNODC	12
V. Conclusion	15

I. Background

The rule of law and human rights

1. *Peace and security, development and human rights* are the three pillars of the United Nations system.¹ These pillars form the foundations for collective security and well-being and are interlinked and mutually reinforcing.² Central to the realization of all three pillars is respect for the *rule of law*.

2. Many forms of transnational organized crime, including illicit drug trafficking and trafficking in persons, frequently lead to serious human rights violations. Strengthened *rule of law* is key to the international community's response to these challenges and is the cornerstone of UNODC's work. The normative foundation of the United Nations' work in the area of the rule of law work is the Charter and the body of international law, including international humanitarian law, international criminal law, international refugee law, and *international human rights law*.³ Responses to drugs, crime and terrorism that are based on the rule of law must therefore also incorporate *human rights* law and principles. Too often, law enforcement and criminal justice systems themselves perpetrate human rights abuses and exclude and marginalize from society those who most need treatment and rehabilitation.⁴

3. Placing human rights at the centre of drug control, crime prevention and criminal justice provides an organizing set of principles that dissolves boundaries between the fields and promotes a single coherent response. Effective drug control cannot exist without fair criminal justice and successful crime prevention. Human rights offer guidance on the delicate balance between the protection of fundamental freedoms and the protection of public health, morals and security. It sets out the broad responsibilities of the State to respect, protect and fulfil the health and well-being of its peoples and specific *due process* guarantees, such as for those suspected or accused of a criminal offence.

4. Such an approach represents more than "added value"; it is a legal obligation. In the 2005 World Summit Outcome, Member States resolved that the promotion and protection of human rights should be both integrated into *national policies* and *mainstreamed* throughout the United Nations system.⁵ That the fight against drugs, crime and terrorism must conform to human rights is clear. The challenge is to understand how these policies may be pursued in a manner that not only respects and protects human rights, but also contributes towards their positive fulfilment.

The nature of human rights obligations

5. The United Nations, its agencies and Member States are bound by overarching obligations under articles 1, 55 and 56 of the Charter to promote "universal respect for, and observance of, human rights and fundamental freedoms."

6. The United Nations acts as guardian of the international crime, terrorism and drug-related treaties.⁶ In addition, the nine core, legally binding, international human rights treaties have been promulgated under the auspices of the United Nations.⁷ The voluntary acceptance by States of legal obligations under the nine core international human rights treaties through ratification and accession gives

concrete expression to the universality of rights. Their human rights provisions must be reflected in all rule of law related activities undertaken by the United Nations, whether concerning drug control, crime prevention or criminal justice.⁸

7. Ratification of human rights treaties and the crime, terrorism and drug-related treaties is widespread. All States have ratified at least one, and 80 per cent of States have ratified four or more of the core human rights treaties. All but two States have ratified the United Nations Convention on the Rights of the Child. Almost 80 per cent of States are party to the United Nations Convention against Transnational Organized Crime and over 70 per cent of States are party to the United Nations Convention against Corruption. Over 95 per cent of Member States are parties to the international drug control conventions.⁹

8. These bodies of treaty law are interdependent and are intended to support elements of the same pillars of peace and security, development and human rights. Nonetheless, references to human rights within the crime, terrorism and drug-related treaties are sparse. This does not mean that human rights law has no application to drugs, crime and terrorism. Rather, where references to human rights do occur in the drug, crime and terrorism conventions, it is clear that the intention is to highlight that international human rights law must be fully respected in their implementation.¹⁰ This is consistent with the core Charter obligation to promote respect for, and observance of human rights.¹¹

9. No treaty, however special its subject-matter, applies in a normative vacuum, as both general international law (including customary international law) and particular concurrent international obligations affect its interpretation and application.¹² This was recognized, for example, in the *travaux préparatoires* of the Convention against Corruption, which indicated that human rights obligations already undertaken by States parties should not in any way be modified by certain provisions of the Convention.¹³ Authoritative interpretation of the crime, terrorism and drug-related treaties also reaffirms that implementation should take place within the framework of international human rights law. The Commission on Crime Prevention and Criminal Justice, for example, has noted that measures taken to combat terrorism must comply with all obligations under international human rights law.¹⁴ The International Narcotics Control Board notes that “due respect for universal human rights, human duties and the rule of law is important for effective implementation of the international drug control conventions”.¹⁵ The General Assembly has repeatedly resolved that countering the world drug problem must be addressed with full respect for all human rights and fundamental freedoms.¹⁶

10. Despite such assertions, actions within the State criminal justice system too often represent one of the greatest challenges to the enjoyment of human rights. This is evidenced in the significant number of international standards that address the area of law enforcement and criminal justice. In addition to legally binding obligations found in treaty law, core justice-related rights are expanded upon in the form of declarations, principles, standards and recommendations, including those promulgated by the United Nations human rights Charter-based bodies. Such instruments have no binding legal effect, but have an undeniable moral force and provide practical guidance to States in their conduct. UNODC works, for example, to implement and operationalize the United Nations standards and norms related to crime prevention and criminal justice, building upon legally binding human rights to promote more effective and fair criminal justice structures.¹⁷

11. As a further step in the effort to meet these obligations, this note sets out some of the human rights relevant to the crime and drug conventions and to the work of UNODC as a whole. It reviews how a human rights perspective could further guide and enhance the work of UNODC and Member States in combating drugs and crime, and advocates for a human rights-based approach to drug and crime control.

II. Human rights in criminal justice

Human rights, criminal laws and sentencing

12. International human rights law lays down obligations of governments to act in certain ways or to refrain from certain acts. With respect to the criminal justice system, the State has an obligation to establish criminal law and systems sufficient to deter and respond to attacks on individuals.¹⁸ On the other hand, however, criminal laws must not go so far as to deny individual rights, including due process rights. Indeed, once accused of a criminal offence, an individual benefits from rights-based procedural and substantive safeguards. In this context, the State must establish a balance that ensures both the freedom and the protection of the individual as well as public safety and well-being. For the criminal justice system, this balance can be considered at three levels:

- With respect to what should, or should not, be a criminal offence;
- With respect to criminal justice penalties; and
- In the criminal justice process.

13. With some notable exceptions, (such as the obligation to make all acts of torture a criminal offence and the prohibition on retroactive criminal offences)¹⁹ international human rights law does not usually specify directly what should, or should not, be a criminal offence in national law.²⁰ Similarly, international human rights law does not usually specify directly the appropriate punishment for a particular crime. Again though, this is also subject to important exceptions, such as in the case of children in conflict with the law, the move towards abolition of the death penalty and the prohibition on corporal punishment under the International Covenant on Civil and Political Rights.²¹ This is not to conclude that international human rights law has little to say on these matters. Rather, while the content of criminal laws and criminal penalties are left primarily to the discretion of States, there is the important proviso that criminal law and penalties must always avoid denying the rights of individuals. As such, international human rights law provides an agreed normative framework, against which criminalization and penalties are to be assessed.

14. The question of whether a particular criminal law is inconsistent with international human rights must be assessed on a right-by-right basis. One reason for this is that while some rights (such as freedom of expression, for example) may be limited on the grounds of public safety, order, health, morals and the rights and freedoms of others,²² other rights may not be limited under any circumstances.²³

15. In particular, the balance between State action and individual rights can be different when it comes to vulnerable groups. Indeed, human rights law can be said to have a particular focus on marginal groups, vulnerability, disadvantage and

discrimination.²⁴ Those accused of a criminal offence, those in prison, victims of human trafficking, persons suffering from health disorders, persons who are drug dependent, and broad groups such as women and children,²⁵ all have particular vulnerabilities that human rights law aims to protect. Responses to crime, drugs and terrorism must be sure to protect the rights of vulnerable individuals who risk becoming the subject of criminal law and penalties. What does this mean in practice? While this paper cannot provide an exhaustive list of possible rights violations related to criminal law and sentencing, it can provide some examples.

16. With respect to victims of trafficking in persons, for instance, human rights guidelines are clear that trafficked persons should not be prosecuted for violations of immigration laws or for the activities in which they are involved as a direct consequence of being trafficked.²⁶ Rather, victims of human trafficking must receive assistance and protection.

17. With respect to children who use drugs and abuse alcohol, the United Nations Committee on the Rights of the Child considers that the right of the child to protection²⁷ demands that such children should be treated as victims and not as criminals.²⁸ Indeed, the United Nations Convention on the Rights of the Child — as the only core United Nations human rights treaty to refer specifically to drug use — has a strong focus on protection rather than punishment.²⁹

18. Similarly, as concerns persons vulnerable to HIV/AIDS, the International Guidelines on HIV and Human Rights emphasize that criminal law should not be an impediment to reducing the risk of HIV transmission among injecting drug users, or to provision of HIV-related care and treatment for injecting drug users.³⁰ In particular, Member States should consider the repeal of laws criminalizing the possession, distribution and dispensing of needles and syringes, in favour of the authorization or legalization and promotion of needle and syringe exchange programmes.³¹

19. With respect to human rights and drug laws, such statements do not mean that international human rights law can support a general “right to abuse drugs”.³² The issue is rather whether drug control legislation constitutes an unlawful and disproportionate infringement of human rights and fundamental freedoms. The answer to this question essentially depends on the context. However, a number of human rights-based drug law cases (including cases engaging the right to property and the right to freedom of religion) have found drug-related criminal laws to be legitimate limitations necessary to protect public safety, order, health or morals in the individual, at least in the individual circumstances of the case.³³ This is not inconsistent. As set out above, whether State action is incompatible with international human rights law must be assessed on a right-by-right basis. Criminal laws may at the same time, infringe certain rights but not others.

20. Where the establishment of criminal offences is required by other bodies of international law, such as the international drug conventions, human rights law still continues to apply. The International Narcotics Control Board recognizes that the obligation to establish certain criminal offences is subject to each State party’s constitutional principles and to basic legal concepts, including human rights.³⁴

21. Whether or not an action is defined as a criminal offence in law is not however the only issue at hand. In some countries, administrative (non-criminal) penalties may be as severe, if not more severe, than under criminal law. International human

rights law does not set out specifically what penalty should be applied for what crime. Nonetheless, the principle that the severity of penalties must not be disproportionate to the criminal offence is found in a wide body of human rights-related standards.³⁵ This principle includes the notions that imprisonment should be used as a penalty of last resort, and that the choice between penalties should take into consideration the likelihood of the offender being rehabilitated.³⁶

22. While the principle applies equally to adults and to children, the rule has seen particular development in the context of children in conflict with the law. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”), for example, encompass the “principle of proportionality” whereby any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offender and the offence.³⁷ In particular, the imprisonment of a child shall be used only as a measure of last resort and for the shortest appropriate period of time.³⁸

23. In the context of drug laws and sentencing, the drug-control conventions generally require parties to establish a wide range of drug-related activities as criminal offences under their domestic law. Nonetheless, they permit parties to respond to them proportionally, including through alternatives to conviction or punishment for offences of a minor nature.³⁹ Serious offences, such as trafficking in illicit drugs, must be dealt with more severely and extensively than offences such as possession of drugs for personal use. In this respect, it is clear that the use of non-custodial measures and treatment programmes for offences involving possession for personal use of drugs offer a more proportionate response and the more effective administration of justice.⁴⁰ Moreover, the criminal justice response should not be considered proportionate if it results in the denial of another individual human right. Where imprisonment for possession/use offences precludes access to appropriate drug-dependence treatment, for example, this may constitute a denial of the right to the highest attainable standard of health or even the right to freedom from cruel, inhuman or degrading treatment, rendering the criminal justice response de facto disproportionate.⁴¹

24. Proportionality and strict due process in drug laws are also important weapons in the fight against corruption. Where severe sentences for less serious offences such as personal possession can be passed on a summary or administrative basis, the door may be opened to acts of corruption by individual law enforcement officers, border police or criminal justice officials.

25. At the extreme end of the scale of punishment, the use of the death penalty for those convicted solely of drug-related or economic offences raises grave human rights concerns. The International Covenant on Civil and Political Rights specifies that in countries which have not abolished the death penalty, the sentence of death may be imposed only for the “most serious crimes”.⁴² The concept of “most serious crimes” is limited to those where it can be shown that there was an intention to kill which resulted in the loss of life.⁴³ The weight of opinion indicates that drug offences (such as possession and trafficking) and those of a purely economic nature do not meet this threshold.⁴⁴ Moreover, States that have abolished the death penalty are prohibited to extradite any person to another country where he or she might face capital punishment.⁴⁵

26. Despite such prohibitions, a considerable number of the 47 retentionist States that continue to use capital punishment⁴⁶ have carried out executions for drug offences in recent years. In some of these countries, drug offenders constitute a significant proportion of total executions.⁴⁷ As an entity of the United Nations system, UNODC advocates the abolition of the death penalty and calls upon Member States to follow international standards concerning prohibition of the death penalty for offences of a drug-related or purely economic nature.

27. Overall, while human rights law does not usually direct the content of criminal laws or penalties per se, it does demand strict scrutiny to ensure that laws do not deny the rights of individuals. In the case of drug laws in particular, obligations to establish offences under the international drug conventions must be fulfilled while at the same time respecting a range of rights, including the right to health, to the protection of the child, to private and family life, to non-discrimination, to the right to life, the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment, and the right not to be subjected to arbitrary arrest or detention.⁴⁸ As noted by the United Nations High Commissioner for Human Rights, drug laws frequently overemphasize criminalization and punishment while underemphasizing treatment and respect for human rights.⁴⁹

Human rights and due process

28. In addition to its preoccupation with vulnerable and marginal groups, international human rights law has a specific concern for the manner in which the State achieves its goals.⁵⁰ In international human rights law, the end, no matter how legitimate, can never justify abusive means.

29. This is particularly true when it comes to the criminal justice system. Indeed, rights are an essential component of the rule of law, which itself requires equality before the law, accountability to the law, fairness in the application of the law, legal certainty, avoidance of arbitrariness and procedural and legal transparency.⁵¹ Such principles and the specific due process requirements of international human rights law apply irrespective of whether the indictment involves robbery, homicide, drug-related crime, corruption, trafficking in persons, transnational organized crime, or offences involving acts of terrorism.

30. Building on articles 10 and 11 of the Universal Declaration, the International Covenant on Civil and Political Rights sets out many of the core rights of the accused, including the right to be presumed innocent until proved guilty, the right to have adequate time and facilities for the preparation of a defence, the right to be tried without undue delay, and the right to have any conviction reviewed by a higher tribunal.⁵² This right to a fair and public hearing by a competent, independent and impartial tribunal is applicable in any case regarding the determination of criminal charges against individuals, or of their rights and obligations in law.⁵³

31. In particular, human rights law demands that whenever a person is deprived of liberty, the detained person has the right to take proceedings before a court, in order that the court may decide without delay on the lawfulness of the detention and order release if the detention is not lawful. This right also applies to administrative, social care or public health procedures, including those that result in deprivation of liberty for the purposes of drug dependence treatment.⁵⁴ As set out above, the question of

lawfulness of detention must itself be determined on the basis that imprisonment should be used only as a penalty of last resort.⁵⁵

32. Even where the crime is of a particularly serious nature, such rights must continue to be respected. All aspects of counter-terrorism law and practice, for example, must be in compliance with international human rights law, including the right to a fair trial.⁵⁶ In practice, safeguards such as a timely judicial hearing to determine the legality of detention, the use of military courts only for military persons for offences of a military nature, equality of arms for the prosecution and the accused, full disclosure of prosecution materials, and freedom from political influence are basic elements for securing the right to a fair trial in terrorism cases.⁵⁷

33. Due process guarantees must also be respected in all actions under the universal drugs and crime conventions. A number of convention provisions that are important in law enforcement terms nonetheless require careful judicial oversight in order to protect against the possibility of human rights infringement. Powers of seizure and confiscation of “drugs, substances and equipment” and “proceeds of crime”⁵⁸, for example, must be applied in a non-arbitrary, proportionate manner and — depending upon the nature of the procedure in national law — in conformity with the right to a fair trial.⁵⁹

34. Further standards for the operation of criminal justice systems can be found in the United Nations standards and norms in crime prevention and criminal justice, including the Code of Conduct for Law Enforcement Officials, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the Standard Minimum Rules for the Treatment of Prisoners, the Basic Principles on the Independence of the Judiciary, and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.⁶⁰ Such standards make it clear that practices such as extra-judicial killing by law enforcement officers in drug enforcement operations, imprisonment without trial, denial of meals, forced labour, isolation and chaining, violence and beatings in detention centres for drug dependence “treatment” are absolutely prohibited.⁶¹ Indeed, where practices amount to torture, such acts should constitute a criminal offence under national law.⁶² State obligations to protect persons from such acts further extend to protection from acts carried out by private entities such as non-state treatment centres or security firms.⁶³

35. The protection of the well-known prohibition on torture and cruel, inhuman or degrading treatment or punishment also includes the obligation not to return individuals to another country where they may be exposed to such practices.⁶⁴ Moreover, the prohibition on torture is complemented by the positive requirements of the Covenant on Civil and Political Rights to treat all persons deprived of liberty with “humanity and respect for the inherent dignity of the person”.⁶⁵

36. Human dignity is inextricably linked to the principle of non-discrimination. Effective law enforcement and criminal justice processes must ensure that law enforcement activities, such as searches and arrests are evidence-based and are not carried out solely on the grounds of considerations such as racial characteristics.⁶⁶ Deployment of law enforcement officers for purposes, such as drug law enforcement must not disproportionately burden neighbourhoods or communities exclusively on the basis of racial or ethnic profiles.

37. In bringing those responsible for crimes related to illicit drug trafficking and terrorism to justice, Member States must ensure that the means employed are fully

consistent with the rule of law and due process rights. UNODC's criminal justice technical assistance programmes must directly support Member States to respect, protect and fulfil relevant human rights in the development of criminal laws, criminal penalties and criminal justice processes. Part IV of this paper includes concrete proposals for the mainstreaming of human rights in the criminal justice work of UNODC.

III. Health, development and human rights

38. The protection of rights within the criminal justice system is a key component of collective security and well-being. However, responses to crime, drugs and terrorism engage a far wider repertoire of human rights than those concerned solely with law enforcement and criminal justice systems. In particular, responses to these challenges must also respect, protect and contribute to the fulfilment of rights, such as the right to the highest attainable standard of physical and mental health, the right not to be subject to arbitrary or unlawful interference with private or family life, and the right to development.⁶⁷

39. The right to the highest attainable standard of health is not to be understood as a right to be healthy. Rather, it is a right to an available, accessible, acceptable and high quality health system, to timely and appropriate health care and to the underlying determinants of health. While States parties may move progressively towards the realization of the right to health according to resource availability, the right also implies a number of immediate core obligations, such as the guarantee that it will be exercised without discrimination of any kind and that retrograde steps will not be taken.⁶⁸

40. From a human rights perspective, the right to health applies equally to drug-dependence as it does to any other health condition.⁶⁹ Drug dependence is considered a multi-factorial health disorder that often follows the course of a relapsing and remitting chronic disease.⁷⁰ In this respect, "nothing less" must be provided for the treatment of drug dependence than for other recognized illnesses. Indeed, dependent drug users, particularly injecting drug users, not only suffer from the condition itself but also — in the absence of effective programmes — are at heightened risk of HIV and other blood-borne infections.

41. Accordingly, the right to health calls for access to measures such as counselling, advice, clean needles and syringes, and drug dependence psychosocial and pharmacological treatment, including, where appropriate, opioid-agonists therapy (or long lasting opioid-agonists).⁷¹ Such requirements are fully compatible with those of the international drug control conventions. The International Narcotics Control Board notes that governments should adopt measures that may decrease the sharing of hypodermic needles among injecting users in order to limit the spread of HIV/AIDS.⁷² It is also of the view of the Board that the implementation of drug substitution and maintenance treatment does not constitute a breach of treaty provisions, whatever substance is used for such treatment in line with established national sound medical practice.⁷³

42. Access to health-care services, treatment and care is particularly important if drug users are deprived of their liberty, including both individuals in administrative custody and in prisons. In light of the vulnerability of detained persons, prison

authorities have a special responsibility to ensure the physical and mental health of prisoners.⁷⁴ This obligation does not only extend to headline issues such as HIV/AIDS and drug-dependence treatment. Injection drug use, shared use of other injection equipment, tattooing and fights all increase the risk of hepatitis B and C transmission. Prison overcrowding and poor hygiene and facility cleanliness increase the risk of tuberculosis. A failure to provide the requisite conditions and medical care for detained persons, including appropriate treatment for drug-dependence, can constitute a violation of the right to health and the prohibition on inhuman or degrading treatment.⁷⁵

43. At the other end of the spectrum from denial of treatment, international human rights law is also concerned with forced or coerced treatment or testing. Non-voluntary treatment or testing engages a range of possible rights, including the right to health, the right to freedom from inhuman or degrading treatment, the right to liberty and security of person, and the right not to be subjected to arbitrary or unlawful interference with privacy.⁷⁶ Under the right to health, the starting point is that any treatment or testing for drugs shall be subject to full informed consent.⁷⁷ International human rights law does, however, allow some exceptions in narrowly defined circumstances.

44. With respect to drug (or alcohol or DNA) testing, the taking of bodily samples against a suspect's will may be permissible in order to investigate a criminal offence.⁷⁸ However, in prison settings, mandatory or random drug testing may raise concerns under the right to health due to its potential to increase unsafe injection practices and risk of HIV and hepatitis C transmission.⁷⁹

45. With respect to drug treatment, in line with the right to informed consent to medical treatment (and its "logical corollary", the right to refuse treatment), drug dependence treatment should not be forced on patients.⁸⁰ Only in exceptional crisis situations of high risk to self or others can compulsory treatment be mandated for specific conditions and for short periods that are no longer than strictly clinically necessary. Such treatment must be specified by law and subject to judicial review.⁸¹ Where treatment is offered as an alternative to imprisonment or penal measures for drug possession/use, although this involves a degree of coercion, the patient is entitled to reject treatment and to choose the penal measure instead.⁸² Such measures should never preclude, however, the access of those subject to detention or other penal measures to appropriate treatment for drug-dependence, where required.

46. Treatment for drug dependence (whether voluntary or compulsory) must be evidence-based, according to established principles of medicine. Detention and/or isolation for the purposes of "forced detoxification" are unlikely to be effective. Rather, drug-dependence treatment should involve comprehensive pharmacological and psychosocial interventions. Under no circumstances should anyone subject to compulsory treatment be given experimental forms of treatment, or punitive interventions under the guise of drug-dependence treatment.⁸³

47. The right to the highest attainable standard of health further intersects with the international drug control conventions in the area of access to controlled medicines. The Single Convention on Narcotic Drugs of 1961, as amended by the 1972 Protocol, establishes a dual drug control obligation: to ensure adequate availability of narcotic drugs, including opiates, for medical and scientific purposes, while at the same time preventing the illicit production of, trafficking in and use of

such drugs.⁸⁴ The World Health Organization estimates that each year tens of millions of patients, including 5.5 million cancer and 1 million AIDS patients suffer moderate to severe pain without adequate treatment.⁸⁵ The existence of restrictive laws and insufficient training of health-care professionals plays a significant role in the under-utilization of controlled medicines.⁸⁶ From a human rights perspective, governments have an obligation to provide essential medicines, including opioid analgesics, as part of their minimum core obligations under the right to health.⁸⁷

48. Finally, responses to crime, drugs and terrorism should take into account the right to development, as proclaimed by the Vienna Declaration and Programme of Action and by General Assembly resolution.⁸⁸ The right to development is the right to participate in a process that expands the capabilities or freedom of individuals to improve their well-being and capabilities.⁸⁹ It implies that development is realized in a rights-based manner that is transparent, accountable, participatory and non-discriminatory, as well as equitable and just. Alternative development is an important component of a balanced and comprehensive drug control strategy.⁹⁰ Its ultimate aim is not solely a reduction in illicit crops, but rather broad based development leading to sustainable illicit crop reductions.

49. The right to development is concerned both with development ends and development means.⁹¹ However, where development assistance is conditional on reductions in illicit drug crop cultivation, or where crop eradication of plants containing narcotic or psychotropic substances is carried out through indiscriminate means, the livelihood of farmers is being seriously compromised. Instead, it is the underlying factor that needs to be eradicated, i.e. poverty. The Commission on Narcotic Drugs has urged Member States to ensure that alternative development programmes and eradication measures fully respect international standards, including human rights.⁹² In practice, this means that farmers' rights to development and sustainable livelihood are non-negotiable and that all measures related to crop eradication must address poverty reduction and the overall improvement in the socio-economic situation of small-farmer households. Any eradication measures must be properly sequenced in the context of people-centred, sustainable alternative livelihood development.⁹³

IV. Mainstreaming human rights in the work of UNODC

50. UNODC is the guardian of several key international conventions and protocols governing drugs and crime, placing it uniquely at the intersection of peace and security, development and human rights. It is the lead office for the delivery of legal assistance in preventing terrorism, and is the promoter of the United Nations standards and norms in crime prevention and criminal justice. As the risk of human rights violations in the name of action against drugs and crime increases,⁹⁴ so it is ever more crucial that UNODC promotes a holistic approach to its fundamental obligations in the areas of security, development and human rights. In the fight against drugs and crime, it remains crucial that criminal justice standards and norms are implemented to respect these obligations and international instruments in order for them not to be used to excessively limit or restrict individual, fundamental rights and freedoms.

51. UNODC, as part of the United Nations Secretariat, has an obligation to promote and protect human rights guarantees in the implementation of its mandate and in its activities and programmes in practice.⁹⁵ In the 2005 World Summit Outcome, Member States resolved that the promotion and protection of human rights should be both integrated into national policies and mainstreamed throughout the United Nations system.⁹⁶ In this respect, the Commission on Narcotic Drugs has requested that UNODC work closely with the competent United Nations entities, including the United Nations human rights agencies.⁹⁷

52. With its clear mandate in the areas of law enforcement, health services and criminal justice institutions, UNODC has the potential to make a significant move from human rights commitments to implementation. UNODC is uniquely placed to advance human rights at the operational level through strong partnerships with institutions that may not otherwise be reached by the United Nations system (including border control services, prisons and police). UNODC's field office network allows significant scope for influencing national policies and priorities as they relate to human rights. Mainstreaming human rights implies integrating a human rights perspective and references within all three areas of UNODC's work, namely; normative, operational and knowledge creation, throughout the life cycle of a project.

53. In seeking to apply a human rights-based approach to UNODC's work, the thematic areas dealing with drug control, criminal justice and crime prevention will each develop a guidance note from a human rights perspective, starting with the thematic areas of Transnational Organized Crime and Illicit Trafficking, Health and Human Development, and Justice. These guidance notes will aim to: (a) outline possible human rights implications of the mandated tasks, and (b) provide avenues to maximize the realization of human rights as part of the implementation of the thematic programmes. To this end, practical examples will be drawn from existing, validated good practices as well as from evaluation findings.

54. At the normative level, UNODC's work on norms and standards in criminal justice form a solid basis into which a human rights-based approach can be built at a multilateral policymaking level. To this end, UNODC will explore the inclusion of a standing section on the human rights implications of its work in the annual report of the Executive Director to the governing bodies. This would make human rights a standing item on the agenda of the two Commissions, thereby allowing Member States to directly engage in the issue through their responses to the Executive Director's report. UNODC will also continue to actively engage and consult non-governmental and civil society organizations (NGO/CSO) in their work and in that of its governing bodies allowing for effective NGO/CSO contributions to the policy debate around human rights, drug control, criminal justice and crime prevention.

55. A number of important steps should be taken to mainstream a human rights-based approach into UNODC's operational activities, including in the development of its projects as well as of regional and thematic programmes. To this end, the project cycle management and results-based management guidelines for project preparation should be amended to require managers to take into consideration the likely human rights implications of their planned activities. Furthermore, UNODC should build human rights aspects and implications into its evaluation guidelines. In due course, it will also be necessary to carry out an in-depth evaluation of the

human rights implications of UNODC's work in selected thematic areas with the aim of developing good practice guidelines.

56. Furthermore, relevant national human rights legislation and international obligations stemming from the nine ratified core human rights instruments should be cross-referenced and cited in UNODC project documents. The outputs of the established human rights jurisprudence machinery that are relevant to a particular country or thematic area should also be specifically mentioned in project/programme documents. During the monitoring phase of the project implementation cycle, disaggregated data should be provided in relation to such obligations and legislation. The in-house review mechanisms already in place (for example, thematic programme reviews) should also systematically consider the human rights implications of the programmes that they oversee.

57. Some projects may have potential negative human rights impacts. For instance projects aimed at enhancing the capacity of Member States to provide drug dependence treatment, when executed in an environment where there are questions about the human rights accorded to patients may inadvertently prolong such situations. In many cases, such impacts are foreseeable to an extent and with proper planning, such negative consequences can be minimised and opportunities created to maximize human rights gains. In cases of drug dependence treatment, UNODC projects purposefully engage with the governments concerned, advocating and lobbying for improvements in the treatment systems in order to advance the case for respecting patients' rights. By piloting methodologies based on validated good practices and demonstrating their relative efficiency and effectiveness, other methods that do not operate within a rights based framework are discarded.

58. The point above underscores an important dimension of UNODC's technical assistance work. A majority of UNODC's technical assistance projects aim at replicating validated good practices which are effective precisely because they accord opportunities to maximize the enjoyment of human rights. Another concrete example is offered in the area of drug abuse prevention where the focus of UNODC's work is on maximizing youth participation in the planning, executing and evaluating prevention programmes. Not only does this result in more effective prevention, but it also amounts to an expansion in the rights to free expression and participation enjoyed by the target group.

59. UNODC will consider using, where appropriate, the Human Rights Impact Assessment (HRIA) as a predictive tool for assessing the potential human rights impact of a policy or programme, with the aim of informing decision makers and affected persons. By helping to identify the nature and extent of the potential impact, the HRIA facilitates the adjustment of the proposed policy, mitigating the negative and maximizing the positive human rights impacts. HRIA is a combined tool for risk assessment, civil society engagement and decision-making, geared towards ensuring, from the outset, that human rights are at the centre of all policy and programmes. This is a relatively new and developing area and not without its difficulties, but one which could be of significant value for UNODC as a mechanism to mainstream human rights and operationalize human rights commitments and responsibilities. To this end, the HRIA includes a wide range of activities intended to identify and manage human rights risk and to evaluate human rights impact, positive and negative, throughout the life of each project.

60. As mentioned above, a respect for human rights is built into the very nature of technical assistance provided by the UNODC; however there is a need to build explicit human rights training into ongoing headquarters focused human resource development plans. This, along with requesting sustained support for UNODC-wide training on human rights, are two additional elements that will be pursued. This will also ensure that key staff are trained in programme planning within a human rights framework to systematically address human rights issues and their implications as part of the technical assistance they develop. A minimal core capacity should be instituted at UNODC Headquarters with a clear mandate for developing the normative tools to mainstream human rights aspects into UNODC operations and to act as the key interlocutor with other United Nations and multilateral agencies and with civil society.

61. Mainstreaming human rights into UNODC's work in a systematic and institutionalized manner through full implementation of the above recommended measures will need to be backed by adequate resources. This could require further extrabudgetary resources. It is critical that UNODC identify the resource requirements in order not only to mainstream human rights, but also to sustain and monitor the human rights impact of its work in various areas. In doing so, and in line with the increasing decentralization of operational planning, implementation, oversight and reporting, a corresponding capacity development will also be required at the field office level.

V. Conclusion

62. This paper marks a step forward in the process of anchoring UNODC's work to the bedrock of human rights. As noted in the report of the Executive Director to the CND in 2008, "Making drug control 'fit for purpose': Building on the UNGASS decade",⁹⁸ drug control needed to be better synchronized with human rights. The present report illustrates how this is being done. Thus, the first second and third sections of this note have dealt with the conceptual and legal foundations of looking at drug control, crime prevention and criminal justice from a human rights perspective; and the fourth section shows the practical way forward to mainstream human rights in the Office and in its technical assistance programmes.

Notes

- ¹ United Nations General Assembly Resolution 60/1, para. 9.
- ² United Nations General Assembly Resolution 60/1, para. 9.
- ³ See Guidance Note of the Secretary-General on the UN Approach to Rule of Law Assistance. April 2008, page 2.
- ⁴ See Report by the Executive Director of the United Nations Office on Drugs and Crime as a contribution to the review of the twentieth special session of the General Assembly. UN Doc. E/CN.7/2008/CRP.17, 7 May 2008.

- ⁵ United Nations General Assembly Resolution 60/1, para. 126.
- ⁶ The 13 major legal instruments and additional amendments dealing with terrorism are available at: <http://www.un.org/terrorism/instruments.shtml>. The 1961 Single Convention on Narcotic Drugs, the 1971 Convention on Psychotropic Substances and the 1998 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the United Nations Convention against Transnational Organized Crime and the Protocols Thereto, and the United Nations Convention against Corruption are available at: <http://www.unodc.org/unodc/en/treaties/index.html?ref=menuaside>.
- ⁷ The nine core international human rights treaties are: the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (173 State Parties as at 02/03/2010), the International Covenant on Civil and Political Rights (ICCPR) (165 State Parties as at 02/03/2010), the International Covenant on Economic, Social and Cultural Rights (ICESCR) (160 State Parties as at 02/03/2010), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (186 State Parties as at 02/03/2010), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (146 State Parties as at 02/03/2010), the Convention on the Rights of the Child (CRC) (193 State Parties as at 02/03/2010), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) (42 State Parties as at 02/03/2010), the International Convention for the Protection of All Persons from Enforced Disappearance (not yet in force) (18 State Parties as at 02/03/2010), and the Convention on the Rights of Persons with Disabilities (CRPD) (80 State Parties as at 02/03/2010).
- ⁸ For a review of the United Nations Organization as a human rights duty bearer see Darrow, M., Arbour, L. (2009). *The Pillar of Glass: Human Rights in the Development Operations of the United Nations*. 103 *American Journal of International Law* 446.
- ⁹ See <http://treaties.un.org>.
- ¹⁰ An article common to a number of the conventions against terrorism, for example, states that any person against whom proceedings are carried out shall be guaranteed all rights and guarantees, including under *international human rights law*. An article common to the Smuggling of Migrants and Trafficking in Persons Protocols also provides that nothing in the Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including *international human rights law*.
- ¹¹ Article 103 Charter states “In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.”
- ¹² See International Law Commission, Study Group on Fragmentation, *Fragmentation of International Law*. Available at http://untreaty.un.org/ilc/sessions/55/fragmentation_outline.pdf.
- ¹³ Report of the Ad Hoc Committee for the Negotiation of a Convention against Corruption on the work of its first to seventh sessions. 7 October 2003. UN Doc. A/58/422/Add.1, page 3.
- ¹⁴ See Report on the thirteenth session of the United Nations Commission on Crime Prevention and Criminal Justice. UN Doc. E/2004/30, at p.7.
- ¹⁵ Annual Report of International Narcotics Control Board 2007, (E/INCB/2007/1), Chapter (1), para. 38. See also the Commentary to the 1998 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, page 49, para. 3.3 providing that measures stricter than those required by the Convention must be subject always to public international law and in particular, to norms of human rights.
- ¹⁶ United Nations General Assembly Resolution 63/197, para. I.
- ¹⁷ United Nations Office on Drugs and Crime, *Compendium of United Nations standards and norms in crime prevention and criminal justice*. New York, 2006.

- ¹⁸ See, for example, European Court of Human Rights. Application No 23452/94. 28 October 1998 in which the court stated that the right to life (Article 2 (1) European Convention on Human Rights and Fundamental Freedoms) included the obligation to put in place “effective criminal-law provisions to deter the commission of offences against the person backed up by law-enforcement machinery for the prevention, suppression and sanctioning of breaches of such provisions”.
- ¹⁹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Adopted by General Assembly resolution 39/46 of 10 December 1984, Article 4. International Covenant on Civil and Political Rights, Adopted by General Assembly resolution 2200A (XXI) of 16 December 1966, Article 15 (1).
- ²⁰ It should be noted however that international human rights law does require redress for violations of human rights and that this may imply in turn the promulgation of appropriate criminal laws sufficient to deter and respond to certain violations.
- ²¹ Concerning the prohibition on corporal punishment see Concluding Observations of the United Nations Human Rights Committee, UN Doc. CCPR/C/GRD/CO/1, 14 August 2009, para. 11. Concerning the prohibition on the use of the death penalty see Report of the Secretary-General, Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty. UN Doc. E/2005/3, 9 March 2005. Concerning children in conflict with the law see United Nations Standard Minimum Rules for the Administration of Juvenile Justice. (“The Beijing Rules”). Adopted by General Assembly Resolution 40/33 of 29 November 1985.
- ²² See, for example, Article 18 (3), International Covenant on Civil and Political Rights.
- ²³ Such as the right not to be subject to torture or cruel, inhuman or degrading treatment or punishment. See Article 7, International Covenant on Civil and Political Rights. See also Human Rights Committee, General Comment No.7, 30 May 1982 and Committee Against Torture, General Comment 2, Implementation of article 2 by States Parties, UN Doc. CAT/C/GC/2/CRP.1/Rev.4 (2007), para. 1 (on absolute prohibition against torture). See also See also A. Cassese International Law, Oxford, 2005, on norms of *jus cogens*, pp 198-213.
- ²⁴ See, for example, address by Professor Paul Hunt, UN Special Rapporteur on the right to the highest attainable standard of health to IHRA 19th International Conference, Barcelona, 11 May 2008.
- ²⁵ “Children” are defined by international human rights law to be those under eighteen years of age. See Article 1, United Nations Convention on the Rights of the Child.
- ²⁶ See Guideline 2, Recommended Principles and Guidelines on Human Rights and Human Trafficking. UN Doc. E/2002/68/Add.1, 20 May 2002.
- ²⁷ United Nations Convention on the Rights of the Child, Articles 3 and 33.
- ²⁸ United Nations Committee on the Rights of the Child. Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding Observations, 23 November 2005. UN Doc. CRC/C/DNK/CO/3, page 10 and CRC/C/RUS/CO/3, page 17.
- ²⁹ United Nations Convention on the Rights of the Child, Article 33. See also Office of the United Nations High Commissioner for Human Rights. Legislative History of the Convention on the Rights of the Child: Volume II. Available at: <http://www.reliefweb.int/rw/lib.nsf/db900SID/PANA-7DHDUL?OpenDocument>.
- ³⁰ See Guideline 4, International Guidelines on HIV and Human Rights. Available at: http://data.unaids.org/Publications/IRC-pub07/jc1252-internguidelines_en.pdf.
- ³¹ See Guideline 4d, International Guidelines on HIV and Human Rights and WHO, UNODC and UNAIDS Policy Brief: Provision of sterile injecting equipment to reduce HIV provision.

Available at: <http://www.unodc.org/documents/hiv-aids/provision%20of%20sterile%20injecting%20equipment.pdf>.

- ³² This position was also reiterated by Professor Hamid Ghodse, President of the International Narcotics Control Board, in his statement at the high-level segment of the 52nd session of the Commission on Narcotic Drugs on 11 March 2009.
- ³³ The United Nations Human Rights Committee has found, for example, that a law prohibiting the possession and use of a narcotic drug did not constitute a violation of the right to freedom of religion for an individual who was a member of a religious minority to which the drug was an essential part of the practice of his religion. See United Nations Human Rights Committee. Communication No. 1474/2006, 14 November 2007. UN Doc. CCPR/C/91/D/1474/2006. The European Court of Human Rights has also found that the temporary seizure of a commercial airliner by a government in the general interest of combating international drug trafficking was not a violation of the right to peaceful enjoyment of possessions. See European Court of Human Rights. Application 18465/91, 5 May 1995.
- ³⁴ International Narcotics Control Board, Annual Report, 2001. UN Doc. E/INCB/2001/1, Para. 211.
- ³⁵ See, for example, Report of the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990, Chapter 19. "Management of criminal justice and development of sentencing policies", at p.164. UN Doc. A/CONF.144/28/Rev.1. At the regional level, see Charter of Fundamental Rights of the European Union, Article 49, "Principles of legality and proportionality of criminal offences and penalties".
- ³⁶ *Ibid.* A/CONF.144/28/Rev.1.
- ³⁷ Rule 5, United Nations Standard Minimum Rules for the Administration of Juvenile Justice. ("The Beijing Rules"). Adopted by General Assembly Resolution 40/33 of 29 November 1985.
- ³⁸ See Article 37 (b), United Nations Convention on the Rights of the Child.
- ³⁹ See Annual Report of International Narcotics Control Board 2007, E/INCB/2007/1. Chapter (1), para. 13.
- ⁴⁰ See Annual Report of International Narcotics Control Board, 1996, E/INCB/1996/1, Chapter (1), para. 23 and 26 and Annual Report 2007, E/INCB/2007/1, Chapter (1), para. 60.
- ⁴¹ See Article 12, International Covenant on Economic, Social and Cultural Rights, Article 12. See also Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to the 10th Session of the Human Rights Council, at para. 71. A/HRC/10/44.
- ⁴² See Article 6 (2), International Covenant on Civil and Political Rights.
- ⁴³ See Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions. UN Doc. A/HRC/4/20, 29 January 2007. At para. 53.
- ⁴⁴ See Concluding Observations of the United Nations Human Rights Committee, UN Doc. CCPR/CO/84/THA, 8 July 2005, para. 14, and Report of the United Nations Human Rights Committee, UN Doc. A/50/40, 3 October 1995, para. 449. See also Report of the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc. E/CN.4/2004/7, 29 December 2007, paras. 51-53. See also press release of the United Nations High Commissioner for Human Rights, 10 March 2009. See also letter of the United Nations Special Rapporteurs on the question of torture and the right of everyone to the enjoyment of the highest attainable standard of physical and mental health to the Chairperson of the 52nd Session of the Commission on Narcotic Drugs, 10 December 2008, available at: http://www.hrw.org/sites/default/files/related_material/12.10.2008%20Letter%20to%20CND%20fromSpecial%20Rapporteurs.pdf.

- ⁴⁵ Ibid. Letter of the United Nations Special Rapporteurs on the question of torture and the right of everyone to the enjoyment of the highest attainable standard of physical and mental health to the Chairperson of the 52nd Session of the Commission on Narcotic Drugs.
- ⁴⁶ As of 31 December 2008. See Report of the Secretary-General on Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty (E/2010/10).
- ⁴⁷ See for example United Nations Human Rights Council. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions. UN Doc. A/HRC/11/2/Add.1, 29 May 2009. At p. 173 and United Nations Human Rights Committee, Concluding Observations. UN Doc. CCPR/CO/75/VNM/Add.2, at para. 1.
- ⁴⁸ See Article 12, International Covenant on Economic, Social and Cultural Rights, Article 19 and 33, United Nations Convention on the Rights of the Child, and Articles 2, 6, 9, and 17 International Covenant on Civil and Political Rights.
- ⁴⁹ See press release of the United Nations High Commissioner for Human Rights, 10 March 2009.
- ⁵⁰ In the context of development, see for example the Report of the independent expert of the right to development, UN Doc. A/55/306, 17 August 2000.
- ⁵¹ See Report of the Secretary-General, The rule of law and transitional justice in conflict and post-conflict societies. UN Doc. S/2004/616, 23 August 2004.
- ⁵² See Article 14, International Covenant on Civil and Political Rights.
- ⁵³ See United Nations Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial. UN Doc. CCPR/C/GC/32, 23 August 2007, para. 15.
- ⁵⁴ See Article 9 International Covenant on Civil and Political Rights and United Nations Human Rights Committee, General Comment No. 8 on right to liberty and security of person. 30 June 1982. See also Report of the United Nations Working Group on Arbitrary Detention, UN Doc. E/CN.4/2004/3, 15 December 2003, at para. 74.
- ⁵⁵ See Report of the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990, Chapter 19. "Management of criminal justice and development of sentencing policies", at p.164. UN Doc. A/CONF.144/28/Rev.1
- ⁵⁶ United Nations General Assembly. Protection of human rights and fundamental freedoms while countering terrorism. Note by the Secretary-General. 6 August 2008. UN Doc. A/63/223, para. 45.
- ⁵⁷ Ibid. para. 45.
- ⁵⁸ See for example, 1961 Single Convention on Narcotic Drugs, Article 37, United Nations Convention against Corruption, Article 31, and United Nations Convention against Transnational Organized Crime, Article 12.
- ⁵⁹ See for example, European Court of Human Rights, Application No. 19955/05, 23 September 2008. See also Report of the independent Expert. The right of everyone to own property alone as well as in association with others. UN Doc. E/CN.4/1995/19/Add.1, 1 February 1994.
- ⁶⁰ United Nations Office on Drugs and Crime, Compendium of United Nations standards and norms in crime prevention and criminal justice. New York, 2006.
- ⁶¹ See inter alia Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 5, and Standard Minimum Rules for the Treatment of Prisoners, Rules 20, 31, and 33. See also Articles 7 and 8(3)(a) International Covenant on Civil and Political Rights.
- ⁶² United Nations Convention against Torture, Article 4.

- ⁶³ Nowak, M., MacArthur, E. *The United Nations Convention Against Torture: A Commentary*, Oxford, 2008, Article 1 para. 117 (p. 78). See also United Nations Human Rights Committee General Comment No. 20, 10 March 1992, para. 2.
- ⁶⁴ See United Nations Human Rights Committee, General Comment No. 20 concerning prohibition of torture and cruel treatment or punishment, 10 March 1992, para. 9.
- ⁶⁵ Ibid. para. 2, referring to Article 10 (1) International Covenant on Civil and Political Rights.
- ⁶⁶ See United Nations Human Rights Committee. Communication No. 1493/2006, UN Doc. CCPR/C/96/D/1493/2006, 17 August 2009.
- ⁶⁷ See Article 12, International Covenant on Economic, Social and Cultural Rights, Article 17, International Covenant on Civil and Political Rights and the Declaration on the Right to Development, Adopted by General Assembly resolution 41/128 of 4 December 1986.
- ⁶⁸ See United Nations Committee on Economic, Social and Cultural Rights. General Comment No. 14 on the right to the highest attainable standard of health. UN Doc. E/C.12/200/4, 11 August 2000.
- ⁶⁹ Report of the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. UN Doc. A/HRC/10/44, 14 January 2009, at para. 71.
- ⁷⁰ United Nations Office on Drugs and Crime and World Health Organization, Principles of Drug Dependence Treatment, Discussion paper, March 2008, at p.1.
- ⁷¹ See Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, UN Doc. A/HRC/4/28/Add.2, 28 February 2007, at para. 62. See also United Nations Committee on Economic, Social and Cultural Rights, Concluding Observations, UN Doc. E/C.12/UKR/CO/5, 4 January 2008, para. 51.
- ⁷² Annual Report of the International Narcotics Control Board 2007, E/INCB/2003/1. Chapter (2), para. 222.
- ⁷³ Ibid, at para. 222.
- ⁷⁴ See Rules 22 to 26, Standard Minimum Rules for the Treatment of Prisoners. See also International Covenant on Economic, Social and Cultural Rights, Article 12.
- ⁷⁵ Report of the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. UN Doc. A/HRC/10/44, 14 January 2009, at para. 57. See also European Court of Human Rights. Application No. 50390/99, Judgment of 29 April 2003.
- ⁷⁶ Article 12, International Covenant on Economic, Social and Cultural Rights and Article 7, 9 and 17 International Covenant on Civil and Political Rights.
- ⁷⁷ Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest standard of physical and mental health. UN Doc. A/64/272, 10 August 2009, paras. 88-91.
- ⁷⁸ A non-consensual measure (such as force-feeding) which is of clinical necessity under established principles of medicine and in compliance with procedural guarantees will not, in principle, breach the right to freedom from inhuman or degrading treatment. Further, neither the right to privacy nor the right to freedom from inhuman or degrading treatment prohibit action such as taking of blood or saliva samples against a suspect's will in order to investigate a criminal offence. See for example, European Court of Human Rights, Application No. 54810/00 (2006).
- ⁷⁹ United Nations Office on Drugs and Crime, World Health Organization and Joint United Nations Programme on HIV/AIDS. HIV/AIDS prevention, care, treatment and support in prison settings: A framework for an effective national response. New York, 2006.

- ⁸⁰ See for example Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest standard of physical and mental health. UN Doc. A/64/272, 10 August 2009, paras. 88-91 and United Nations Office on Drugs and Crime and World Health Organization, Principles of Drug Dependence Treatment, Discussion paper, March 2008.
- ⁸¹ United Nations Office on Drugs and Crime and World Health Organization, Principles of Drug Dependence Treatment, Discussion paper, March 2008, Principle 4: Drug dependence treatment, human rights and patient dignity.
- ⁸² Ibid. It should be noted that treatment as an alternative or in addition to penal measures is specifically foreseen under the 1988 Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which states that Parties may provide, either as an alternative or in addition to conviction or punishment, measures for the treatment, education, aftercare, rehabilitation or social reintegration of the offender.
- ⁸³ See Note 80.
- ⁸⁴ Report of the International Narcotics Control Board for 1995: Availability of Opiates for Medical Needs. Special Report prepared pursuant to Economic and Social Council resolutions 1990/31 and 1991/43.
- ⁸⁵ World Health Organization Briefing note: Access to Controlled Medications Programme, February 2009. Available at: http://www.who.int/medicines/areas/quality_safety/ACMP_BrNoteGenrl_EN_Feb09.pdf.
- ⁸⁶ See statement by the President of the International Narcotics Control Board to the Economic and Social Council, July 2009. Available at: http://www.incb.org/documents/President_statements_09/2009_ECOSOC_Substantive_Session_published.pdf.
- ⁸⁷ See United Nations Committee on Economic, Social and Cultural Rights. General Comment No. 14 on the right to the highest attainable standard of health. UN Doc. E/C.12/200/4, 11 August 2000, para. 43. See also Human Rights Council. Access to medicine in the context of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. UN Doc. A/HRC/12/L.23, 25 September 2009.
- ⁸⁸ See Vienna Declaration and Programme of Action, Adopted by the World Conference on Human Rights in Vienna on 25 June 1993 and United Nations General Assembly, Declaration on the Right to Development, adopted by Resolution 41/128. UN Doc. A/RES/41/128.
- ⁸⁹ See Report of the independent expert of the right to development, UN Doc. A/55/306, 17 August 2000.
- ⁹⁰ Action Plan on International Cooperation on the Eradication of Illicit Drug Crops and on Alternative Development, adopted by the United Nations General Assembly Special Session in Resolution S-20/3. Measures to enhance international cooperation to counter the world drug problem (2008), paras. 17 and 18. See also report of the fifty-second session of the Commission on Narcotic Drugs. UN Doc. E/2009/28, at p.17.
- ⁹¹ See for example African Commission on Human and People's Rights, Decision on Communication 276/2003, February 2010, at para. 277.
- ⁹² Commission on Narcotic Drugs, Report of the fifty-second session. Political declaration and plan of action on international cooperation towards an integrated and balanced strategy to counter the world drug problem, para. 24. UN Doc. E/2009/28.
- ⁹³ Economic and Social Council Resolution 2008/26 on promoting sustainability in alternative development as an important part of drug control strategy in States where illicit crops are ground to produce drugs, UN Doc. E/RES/2008/26, Annex.

- ⁹⁴ Report by the Executive Director of the United Nations Office on Drugs and Crime. 1 March 2009, UN Doc. E/CN.7/2009/CRP.4-E/CN.15/2009/CRP.4.
- ⁹⁵ For a review of the United Nations Organization as a human rights duty bearer see Darrow, M., Arbour, L. (2009). The Pillar of Glass: Human Rights in the Development Operations of the United Nations. 103 *American Journal of International Law* 446.
- ⁹⁶ United Nations General Assembly Resolution 60/1, para. 126.
- ⁹⁷ Commission on Narcotic Drugs Resolution 51/12.
- ⁹⁸ E/CN.7/2008/CRP.17.
-