

# Roundtable 3

## Cross-cutting issues: drugs and human rights, youth, women, children and communities

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### Introduction

The drug control system aims at improving the health and welfare of humankind, in full compliance with human rights, based on the recognition that all members of the human family have equal and inherent dignity<sup>1</sup>. For this objective to be achieved, measures taken by States must not be discriminatory or conducive to the stigmatization of persons, especially those with drug use disorders. Such measures should instead, as a matter of priority, facilitate the access of these persons to relevant social and health care services available to the broader population, in conformity with the international drug control conventions and applicable human rights obligations, with special protection afforded to more vulnerable and therefore specially affected groups. A report of the United Nations High Commissioner for Human Rights recently highlighted that renewed efforts are needed to address the impact of the world drug problem on the enjoyment of human rights<sup>2</sup>.

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<sup>1</sup> See preamble and article 1 of the 1948 Universal Declaration of Human Rights.

<sup>2</sup> United Nations High Commissioner for Human Rights, *Study on the impact of the world drug problem on the enjoyment of human rights*, A/HRC/30/65.

## **(i) Addressing drug-related issues in full conformity with the purposes and the principles of the Charter of the United Nations, international law and the Universal Declaration of Human Rights and other relevant international law, including the three drug control conventions**

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### **Stocktaking: what works and what does not work, proposals for addressing the issues and the way forward**

The international drug control conventions seek to limit the use of controlled narcotic drugs and psychotropic substances to medical and scientific purposes and *pari passu* seek to ensure that those drugs, which are useful to the health and well-being of the population, are available for such purposes. Improving access to controlled drugs for medical purposes, including for the relief of pain, across the world appears consistent with the right to the highest attainable standard of health<sup>3</sup> and will require more focused and determined attention of the international community.<sup>4</sup>

States parties to the international drug control conventions committed themselves to take all practicable measures for the prevention of abuse of drugs and for the early identification, treatment, education, after-care, rehabilitation and social reintegration of persons involved with the illicit use of drugs.<sup>5</sup> This obligation requires that institutional arrangements and facilities are in place to offer necessary educational, social and health services to the population, including prevention and education programmes, by qualified and well-trained personnel. It is crucial that these services are effectively available, community-based, voluntary, accessible, non-discriminatory and consider the specific needs of individuals, so as to provide for evidence-based drug dependence treatment for drug dependent persons, and adequate social and health care services for other persons who illicitly use drugs, including for individuals who are in contact with the criminal justice system. The right to health includes the right to be free from torture, non-consensual treatment and experimentation,<sup>6</sup> i.e. nobody should be compelled, in accordance with domestic fundamental principles and relevant legislation, to undergo medical treatment against his or her will.

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<sup>3</sup> See article 12 of the 1966 International Covenant on Economic, Social and Cultural Rights, as well as article 5, subparagraph *e* (iv) of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination, article 12 of the 1979 Convention on the Elimination of All Forms of Discrimination against Women, article 24 of the 1989 Convention on the Rights of the Child, and article 25 of the 2006 Convention on the Rights of Persons with Disabilities.

<sup>4</sup> See International Narcotics Control Board, *Availability of Internationally Controlled Drugs: Ensuring Adequate Access for Medical and Scientific Purposes. Indispensable, adequately available and not unduly restricted* (United Nations document E/INCB/2015/1/Supp.1), 2016. These issues are further addressed in Background note to Roundtable 1.

<sup>5</sup> Article 38 of the 1961 Single Convention on Narcotic Drugs (as amended by its 1972 Protocol) and article 20 of the 1971 Convention on Psychotropic Substances.

<sup>6</sup> Committee on Economic, Social and Cultural Rights, *General Comment N° 14 (2000): The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, paragraph 8.

Several States have established programmes aimed at reducing the adverse health and social consequences associated with illicit drug use.<sup>7</sup> Furthermore, Member States have expressed the need to prevent and treat drug overdoses, including with the potential use of opioid receptor antagonists such as naloxone and other measures based on scientific evidence.<sup>8</sup> In an environment conducive to fostering access to appropriate health care services, and as part of comprehensive public health policies and strategies, many of these programmes are recognized to effectively address and in many cases prevent the transmission of blood-borne diseases, including HIV, tuberculosis, hepatitis C,<sup>9</sup> and other infections related to drug injections and overdose.

State interventions by means of criminal law measures also need to be informed by a health-centered approach, in line with comprehensive public policies. Every State is required to enable its competent organs to prosecute and punish drug-related offences with penalties of proportionate degrees of severity, in accordance with domestic law, and in line with the general principle that penalties shall be proportionate to the offence.<sup>10</sup> The international normative framework is also relevant in ensuring that people in contact with the criminal justice system for drug offences have access to justice and legal aid,<sup>11</sup> and in guiding police procedures, notably in dealing with persons who illicitly use drugs, in ensuring the application of policies of non-discrimination and the removal of obstacles to the access of persons who illicitly use drugs to social and health services, as well as in creating a socially safe environment.<sup>12</sup> Persons who illicitly use drugs or suffer from drug use disorders, who are in contact with the criminal justice system only because of that circumstance or condition, should be provided with treatment and care rather than with punishment.<sup>13</sup>

International standards and norms on crime prevention and criminal justice have been developed by the international community to foster the use of non-custodial measures at all stages of the criminal justice continuum, from pre-trial to post-sentencing,<sup>14</sup> which are also relevant for drug-related criminal proceedings, in line with the international drug control conventions. Imprisonment

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<sup>7</sup> See paragraph 8(b)(i), General Assembly resolution A/RES/S-20/3, annex, of 8 September 1998 (Declaration on the Guiding Principles of Drug Demand Reduction), and paragraph 4(a) of the Plan of Action on International Cooperation Towards an Integrated and Balanced Strategy to Counter the World Drug Problem, 2009. See also the set of nine interventions that constitute the comprehensive package for HIV prevention, treatment and care for people who inject drugs, as set out in the WHO, UNODC, UNAIDS *Technical Guide for Countries to Set Targets for Universal Access to HIV Prevention, Treatment and Care for Injecting Drug Users*, World Health Organization, Geneva, rev. 2012.

<sup>8</sup> Commission on Narcotic Drugs resolution 55/7.

<sup>9</sup> See General Assembly resolution 65/277, Commission on Narcotic Drugs resolution 56/6 and the Joint Ministerial Statement of the 2014 High-Level Review by the Commission on Narcotic Drugs of the Implementation by Member States of the Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem.

<sup>10</sup> See International Narcotics Control Board, *Report of the International Narcotics Control Board for 2007*, United Nations document E/INCB/2007/1, para. 18. Also of interest, see UNODC, *Drug control, crime prevention and criminal justice: A Human Rights perspective*, United Nations document E/CN.7/2010/CRP.6-E/CN.15/2010/CRP.1

<sup>11</sup> See, e.g., the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (General Assembly resolution 67/187, annex) or the Basic Principles on the Role of Lawyers (Basic Principles on the Role of Lawyers (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990)

<sup>12</sup> See, e.g., the Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169, annex).

<sup>13</sup> UNODC, *From Coercion to Cohesion: Treating drug dependence through health care, not punishment*, Discussion paper, 2010.

<sup>14</sup> See the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) in General Assembly resolution 45/110, annex, as well as the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) in General Assembly resolution 65/229, annex. See also the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), in General Assembly resolution 40/33, annex.

is also considered to be an ineffective and counterproductive response for drug-related offences of a minor nature, as opposed to education, health care, treatment and rehabilitation.<sup>15</sup>

In particular, the authorities investigating, prosecuting or adjudicating criminal cases should be empowered to discharge the offender in appropriate circumstances and to impose non-custodial measures for minor cases.<sup>16</sup> This entails the need for a comprehensive national normative framework to be in place and for relevant public officials to be sensitized and trained about the application of non-custodial measures. The Tokyo Rules foresee that in appropriate cases, various schemes such as case-work, group therapy, residential programmes and specialized treatment, conducted by professionals with suitable training and practical experience, should be among the range of non-custodial measures available to effectively meet the needs of offenders.<sup>17</sup> These Rules also foresee that the failure of a non-custodial measure should not automatically lead to the imposition of a custodial measure.<sup>18</sup> The increased application of non-custodial measures as alternatives to conviction or punishment, to persons affected by drug use disorders who have committed offences, requires that public health and justice authorities actively and routinely collaborate with a view to promoting the rehabilitation and reintegration into society of those persons.<sup>19</sup>

When the criminal justice system comes into play, offenders with drug use disorders retain their right to access the services described above. Such services may be provided as a complete alternative to conviction or to punishment, both for personal consumption-related offences and "appropriate cases of a minor nature".<sup>20</sup> These services can also not be denied to those imprisoned for more serious drug offences or other types of offences, who should enjoy the same standards of health care that are available in the community, and should receive continuity of treatment and care, including for HIV and drug dependence.<sup>21</sup>

In line with international law and relevant standards and norms, United Nations agencies encourage States parties to adopt a health and rule of law centered approach for dealing with the world drug problem, which should include tailoring their public policies to the goal of improving public health and the safety of all individuals, with particular attention to interventions addressed to persons who illicitly use drugs and persons with drug use disorders.<sup>22</sup> The role of criminal justice institutions in this regard should be considered and its collaboration with its health counterparts increased, including by resorting more frequently to non-custodial measures and alternatives to punishment or conviction in drug-related offences. States should also consider measures to ensure that significant

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<sup>15</sup> See UNODC, *From Coercion to Cohesion: Treating drug dependence through health care, not punishment*, p. 3-5.

<sup>16</sup> Rule 5.1 of the Tokyo Rules.

<sup>17</sup> Rules 13.1 and 13.2 of the Tokyo Rules.

<sup>18</sup> Rule 14.3 of the Tokyo Rules.

<sup>19</sup> See Commission on Narcotic Drugs resolution 58/5.

<sup>20</sup> See article 3, paragraph 4, of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, and article 36, subparagraph 1(b) of the 1961 Single Convention on Narcotic Drugs (as amended by its 1972 Protocol) and article 22, subparagraph 1(b) of the 1971 Convention on Psychotropic Substances.

<sup>21</sup> Nelson Mandela Rule 24.

<sup>22</sup> See contributions available at: < [http://www.unodc.org/ungass2016/en/contribution\\_UN\\_Entities.html](http://www.unodc.org/ungass2016/en/contribution_UN_Entities.html)>.

distinctions exist between penalties for major players in drug trafficking, and small players, such as women being used as couriers; and judges be allowed to use discretion in sentencing, to foster rehabilitation and social reintegration, as appropriate and in consistency with the international drug control conventions.

## Questions for discussion

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- **What are the main challenges to implementing a health centered approach to drug-related policies?**
- **What are the main factors that justice systems should consider in providing for sanctions to drug-related offences that are proportionate to their gravity?**
- **What actions are required to increase the offer of alternatives to conviction or punishment for personal consumption-related offences and other drug-related offences of a minor nature? What effective models on such alternatives can be shared?**
- **What can be done to improve national legal and institutional frameworks on drug control, in conformity with international law, to render them fit to better promote and protect the health and welfare of humankind?**

## (ii) Drugs and youth, women, children and communities

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### **Stocktaking: what works and what does not work, proposals for addressing the issues and the way forward**

It is crucial to note that while public policies on drug control are addressed to all persons, the impact of the drug problem is not distributed evenly. In order to avoid discrimination, gender, age, economic situation and other factors must be considered in the formulation of related policies and programmes as well as in the collection and analysis of relevant data.

Women affected by drug use disorders are more vulnerable and more stigmatised than men. They suffer from co-occurring mental health disorders to a greater extent than men and they are more

likely to have been victims of violence and abuse in their history.<sup>23</sup> Nonetheless, their access to treatment for drug dependence, which should be tailored to their needs, is hindered in practice: while one out of three drug users is a woman, only one out of five drug users in treatment is a woman.<sup>24</sup> There is scarce research on the factors that make women and girls vulnerable to initiating the use of drugs and on related effective drug prevention, although existing research indicates that factors may differ by gender and that not all drug prevention programmes are equally effective for both girls and boys. Women who inject drugs also face a range of gender-specific barriers to accessing HIV-related services; research, services, guidelines, training programmes and surveillance concerning people who inject drugs remain overwhelmingly gender neutral or male-focused.<sup>25</sup>

This inequality also manifests itself in prison settings: although women only constitute 6.8 per cent of the world's prisoners, the female prison population has increased by 50% since 2000, while the equivalent figure for the male prison population is 18%.<sup>26</sup> A large number of women offenders worldwide are imprisoned for minor drug related offences, are recruited by drug trafficking criminal groups to act as drug couriers to smuggle drugs across borders or to perform low level, but high-risk tasks. These women are usually minor players and often become involved in drug trafficking as a result of manipulation, coercion, poverty or their own drug use disorder.<sup>27</sup> The Bangkok Rules specifically refer to substance abuse treatment programmes and recommend that the provision of gender-sensitive, trauma-informed, women-only substance abuse treatment programmes in the community and that women's access to such treatment should be improved, for crime prevention as well as for diversion and alternative sentencing purposes.<sup>28</sup>

Mainstreaming a gender perspective into the formulation and implementation of drug control policies and programmes requires sex-disaggregated data and information on the pathways to women's involvement in illicit drug use and drug-related offences. It also requires the adoption of measures to ensure that laws and institutions dealing with health, law enforcement and justice aspects of drug control are sensitive to and address the differentiated needs and circumstances of women and men, and to increase women's representation in such institutions.<sup>29</sup>

Human rights standards further require that special attention be afforded to the protection of children<sup>30</sup> from drug use and prevention of the use of children in the illicit production and trafficking of such substances.<sup>31</sup> Children with substance abuse problems present a significant health challenge, as research demonstrates that early non-medical drug use contributes to higher

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<sup>23</sup> UNODC, *2015 World Drug Report*, p. 17; and World Health Organization, *Gender disparities in mental health*, available at: < [http://www.who.int/mental\\_health/media/en/242.pdf](http://www.who.int/mental_health/media/en/242.pdf)>.

<sup>24</sup> UNODC, *2015 World Drug Report*, p. 17.

<sup>25</sup> See the joint UNODC, UNWomen, WHO and INPUD Policy Brief, *Women who inject drugs and HIV: Addressing specific needs*, available at: < [https://www.unodc.org/documents/hiv-aids/publications/WOMEN\\_POLICY\\_BRIEF2014.pdf](https://www.unodc.org/documents/hiv-aids/publications/WOMEN_POLICY_BRIEF2014.pdf)>.

<sup>26</sup> Institute for Criminal Policy Research, *World Prison Population List* (11th edition), World Pre-Trial / Remand Imprisonment List.

<sup>27</sup> UNODC, *Handbook for Prison Managers and Policymakers on Women and Imprisonment*, 2008, p. 114.

<sup>28</sup> Rule 62 of the Bangkok Rules.

<sup>29</sup> UN Women, *A gender perspective on the impact of drug use, the drug trade and drug control regimes*, 2014.

<sup>30</sup> As in article 1 of the Convention on the Rights of the Child, a child means every human being below the age of eighteen years.

<sup>31</sup> Article 33 of the Convention on the Rights of the Child.

likelihood of future drug use disorder incidents in those children. Of particular concern are children living with an adult who illicitly uses drugs or has a drug use disorder, children living and working on the street, orphans, particularly children in conflict areas, and children in contact with the justice system. It is also very difficult to collect reliable data on children in those situations, especially in countries where not all births are recorded, and to provide tailored drug prevention and drug treatment services. In addition to this, the scientific literature suffers from particular gaps when it comes to what is effective in preventing drug use and substance abuse in children and youth particularly at risk, as well as with regard to effective and safe treatment, care and rehabilitation services for children and youth that have been exposed to drugs at a young age. Furthermore, the access of children who inject drugs to effective HIV prevention services is challenging considering the high levels of stigma, fear and the age-related barriers and parent/guardian consent requirements that impede access to HIV testing, to needle and syringe programmes or to HIV and drug dependence treatment and care. In countries where such barriers do not exist HIV services are not youth friendly and not tailored to respond to the needs of young people.

Within the justice system, children are vulnerable to become victims of crime and to be involved in the commission of crimes themselves, while still in a formative age. Frequently, they are exploited by gangs and organized criminal groups in the illicit drug market. In many countries, the majority of children in detention either have substance abuse problems or have committed drug-related offences. Overreliance on deprivation of children's liberty and insufficient application of drug treatment programmes or other alternatives to detention are common challenges, despite the existence of an international obligation that deprivation of liberty should be a measure of last resort and be applied only for the shortest appropriate period of time.<sup>32</sup>

Preventive, restorative, and rehabilitative approaches are the recommended means to address children with drug use disorders that are in contact with the justice system<sup>33</sup>. However, many countries still lack adequate drug prevention and child protection laws, policies and measures, aimed at deescalating the problem of illicit drug use among children. Specialized institutions and professionals are often missing and inter-institutional communication and cooperation are common challenges. In many countries, gaps persist in the engagement of the family, community, media and civil society, as well as with regard to available data and statistics on the extent of the problem and the performance of the child protection, health, education and the justice systems in dealing with children with drug use problems who are alleged offenders or victims.

The problems faced by vulnerable groups are accentuated in poor environments, making the presence of State institutions in all dimensions, notably social, justice and health services, respectful of human rights and the rule of law, and the offer of sustainable livelihoods,<sup>34</sup> indispensable in the whole extent of a State's territory. For example, rural communities and indigenous peoples are

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<sup>32</sup> Convention on the Rights of the Child, article 37. See also Rules 13 and 19 of the Beijing Rules.

<sup>33</sup> See inter alia article 40 of the Convention on the Rights of the Child

<sup>34</sup> In this regard, see Background note to Roundtable 5.

often disproportionately affected by measures to prevent illicit cultivation and eradication of plants containing narcotic drugs and psychotropic substances, thus requiring particular attention to ensure compliance with human rights law and sensitivity to issues such as traditional licit uses or the protection of the environment.<sup>35</sup> Issues related to health, drug and alcohol abuse should be factors considered in the development of crime prevention action plans with the involvement of a range of community actors.<sup>36</sup> The recognition of the community as a locus and resource for many relevant interventions rooted on evidence, including community-based drug dependence treatment and care, including HIV prevention and treatment, is essential for the creation of a non-stigmatizing as well as supportive, protective and cohesive environment.

## Questions for discussion

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- **What are the main obstacles to formulating and implementing gender-sensitive policies in the area of drug control, and what measures could address them?**
- **What are the main factors to be considered in dealing with children at particular risk of drug use and children exposed to drug use at a very young age? And what factors are relevant in addressing children with drug use disorders that are in contact with the justice system?**
- **What measures have been taken to ensure better access for women to prevention, treatment and care (including HIV prevention and care) services?**
- **What steps could be taken to improve the quality and range of social and health services to vulnerable groups?**

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<sup>35</sup> See article 14, paragraph 2, of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

<sup>36</sup> Subparagraph 3(c)(v) of the Guidelines for cooperation and technical assistance in the field of urban crime prevention, in Economic and Social Council resolution 1995/9, annex.