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## Human Rights Council

### Thirty-ninth session

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Agenda items 2 and 8

### Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

### Follow-up to and implementation of the Vienna Declaration and Programme of Action

## Implementation of the joint commitment to effectively addressing and countering the world drug problem with regard to human rights\*

### Report of the Office of the United Nations High Commissioner for Human Rights

#### *Summary*

The present report is submitted pursuant to Human Rights Council resolution 37/42. In the report, the Office of the United Nations High Commissioner for Human Rights discusses the implementation of the joint commitment of States to effectively address and counter the world drug problem with regard to human rights.

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\* The present report was submitted after the deadline in order to reflect the most recent developments.

## I. Introduction

1. In its resolution 37/42, the Human Rights Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to prepare a report on the implementation of the joint commitment to effectively addressing and countering the world drug problem with regard to human rights, and to present it to the Human Rights Council at its thirty-ninth session, and to share the report with the Commission on Narcotic Drugs.
2. The present report is prepared mainly on the basis of submissions received pursuant to a call for inputs, made to States and other stakeholders.<sup>1</sup> In the report, OHCHR discusses human rights aspects of various joint commitments of States, as contained in the outcome document of the thirtieth special session of the General Assembly, on the world drug problem.

## II. Joint commitments on prevention, treatment, other health-related issues and human rights

### A. Prevention of drug abuse

3. In the outcome document of the thirtieth special session, all States committed to take effective, practical, primary and scientific evidence-based prevention measures that protect people, particularly children and youth, from drug use initiation by providing them with accurate information about the risks of drug abuse.<sup>2</sup>
4. On several occasions, human rights treaty bodies have recommended the adoption of preventive measures to address the drug problem, including through awareness-raising programmes and campaigns.<sup>3</sup> Special procedure mandate holders have stated that prevention must be pursued through evidence-based interventions as well as accurate and objective educational programmes and information campaigns.<sup>4</sup>
5. In terms of national practice, Argentina, Cuba, Guatemala, Lebanon, Mexico, Myanmar, Paraguay, Switzerland and the Bolivarian Republic of Venezuela referred to existing prevention and awareness-raising measures. These included programmes to facilitate the communication of information and educational materials on drug use for groups potentially at risk, including children and adolescents, the holding of educational meetings, and evidence-based prevention measures targeting vulnerable groups.<sup>5</sup>
6. In its resolution 61/2, the Commission on Narcotic Drugs recommended that efforts to prevent drug abuse in educational settings should include developing and implementing “comprehensive, scientific evidence-based and tailor-made initiatives and programmes”. In that regard, the Commission invited States to strengthen interaction and partnerships with students, teachers, families and communities and also with the private sector and civil society.
7. The primary message of prevention has been one of complete abstinence from drug use. The Global Commission on Drug Policy stated that there is not only little evidence of the effectiveness of such a message, it may in fact be counterproductive. The Commission recommended that if there were to be public awareness campaigns on youth and drug use, a possible way forward would be to give honest information, encouraging moderation in

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<sup>1</sup> All submissions are available at [www.ohchr.org/EN/HRBodies/HRC/Pages/WorldDrugProblem.aspx](http://www.ohchr.org/EN/HRBodies/HRC/Pages/WorldDrugProblem.aspx).

<sup>2</sup> Recommendation 1 (a)–(c). The outcome document is available at [www.unodc.org/documents/postungass2016/outcome/V1603301-E.pdf](http://www.unodc.org/documents/postungass2016/outcome/V1603301-E.pdf).

<sup>3</sup> See [E/C.12/MKD/CO/2-4](#), [E/C.12/ESP/CO/5](#), [CRC/C/VCT/CO/2-3](#) and [CEDAW/C/SWE/CO/8-9](#).

<sup>4</sup> See [www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=19833&LangID=E](http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=19833&LangID=E).

<sup>5</sup> Submissions from States, submissions from the national human rights institutions of Argentina and the Bolivarian Republic of Venezuela, and the strategy of Myanmar which is available at [www.unodc.org/documents/southeastasiaandpacific/2018/02/Myanmar\\_Drug\\_Control\\_Policy.pdf](http://www.unodc.org/documents/southeastasiaandpacific/2018/02/Myanmar_Drug_Control_Policy.pdf).

youthful experimentation and prioritizing safety through knowledge.<sup>6</sup> Furthermore, pursuant to resolution 61/11 of the Commission on Narcotic Drugs, any prevention measures that include educational programmes should promote non-stigmatizing attitudes and reduce any possible discrimination, exclusion or prejudice which people who use drugs may encounter.<sup>7</sup>

8. The mandatory testing of children for drug use, in educational settings, as a preventive measure, raises human rights concerns.<sup>8</sup> Under articles 3 and 16 of the Convention on the Rights of the Child, taking a child's bodily fluids without his or her consent may be inconsistent with the principle of the best interests of the child, and may violate the right to bodily integrity and constitute arbitrary interference with his or her privacy and dignity. Depending on how such testing occurred, it could also constitute degrading treatment.<sup>9</sup>

## B. Treatment

9. In the outcome document of the thirtieth special session, the General Assembly recognizes that drug dependence can be prevented and treated through, inter alia, effective scientific evidence-based drug treatment, care and rehabilitation programmes.<sup>10</sup> It encourages the voluntary participation of individuals with drug use disorders in treatment programmes, with informed consent, and recommends the prevention of social marginalization and the promotion of non-stigmatizing attitudes. Furthermore, it encourages drug users to seek treatment and care, and States to take measures to facilitate access to treatment.<sup>11</sup> In the outcome document, States also committed to ensuring that women, including pregnant and detained women, who used drugs had access to adequate health services and counselling.<sup>12</sup>

10. Under international human rights law, the right to health contains both freedoms and entitlements, including the right to be free from interference, such as the right to be free from non-consensual medical treatment (see E/C.12/2000/4). All services, goods and facilities for treatment must be available, accessible, acceptable and of good quality. They must be accessible physically as well as financially, and on the basis of non-discrimination.<sup>13</sup>

11. In their submissions, several States provided information on measures related to treatment. Norway focused on availability, accessibility, acceptability and quality, and on fighting stigmatization and discrimination against people who used drugs. Switzerland had developed a national addiction strategy focusing on the quality of life and the health of the individual. The new drug policies of Canada, Lebanon and Myanmar included a public health approach, and were aimed at reducing limitations on accessing and receiving compassionate and evidence-based treatment and at increasing the availability and affordability of treatment options for drug use disorders.<sup>14</sup>

12. The Committee on Economic, Social and Cultural Rights has addressed issues related to the treatment of people who use drugs and has recommended that States incorporate public health, harm reduction and gender-sensitive approaches into national

<sup>6</sup> See [www.globalcommissionondrugs.org/wp-content/uploads/2018/01/GCDP-Report-2017\\_Perceptions-ENGLISH.pdf](http://www.globalcommissionondrugs.org/wp-content/uploads/2018/01/GCDP-Report-2017_Perceptions-ENGLISH.pdf).

<sup>7</sup> Available at <http://undocs.org/E/2018/28>.

<sup>8</sup> See [www.drugs.ie/resourcesfiles/ResearchDocs/Europe/Research/2018/drugtestinginschools.pdf](http://www.drugs.ie/resourcesfiles/ResearchDocs/Europe/Research/2018/drugtestinginschools.pdf) and [www.hrw.org/news/2018/06/22/philippine-school-kids-may-face-mandatory-drug-tests](http://www.hrw.org/news/2018/06/22/philippine-school-kids-may-face-mandatory-drug-tests).

<sup>9</sup> See [www.hrw.org/news/2018/06/22/philippine-school-kids-may-face-mandatory-drug-tests](http://www.hrw.org/news/2018/06/22/philippine-school-kids-may-face-mandatory-drug-tests).

<sup>10</sup> Recommendation 1 (i) and (o).

<sup>11</sup> Recommendation 1 (j).

<sup>12</sup> Recommendation 4 (b).

<sup>13</sup> See [www.ohchr.org/Documents/Publications/Factsheet31.pdf](http://www.ohchr.org/Documents/Publications/Factsheet31.pdf).

<sup>14</sup> See [www.canada.ca/en/health-canada/news/2016/12/new-canadian-drugs-substances-strategy.html](http://www.canada.ca/en/health-canada/news/2016/12/new-canadian-drugs-substances-strategy.html), the submissions of Lebanon, Norway and Switzerland and the strategy of Myanmar.

drug strategies, and that they ensure the availability of treatment services that are evidence-based and respectful of the rights of drug users.<sup>15</sup>

13. In its 2017 annual report, the International Narcotics Control Board reminded States of their obligation to provide treatment services to those affected by drug use disorders. The Board also urged States to place more emphasis on treatment and rehabilitation, rather than just focusing on prevention, and to invest in treatment and rehabilitation services.<sup>16</sup>

14. A major obstacle to accessibility of treatment is the criminalization of personal use and possession of drugs. A study shows that over 60 per cent of people who inject drugs have been incarcerated at some point in their lives.<sup>17</sup> The Committee on Economic, Social and Cultural Rights (see E/C.12/PHL/CO/5-6), the United Nations High Commissioner for Human Rights (see A/HRC/30/65), the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (see A/65/255) and the Global Commission on HIV and the Law<sup>18</sup> have recommended that consideration be given to removing obstacles to the right to health, including by decriminalizing the personal use and possession of drugs. Reports also indicate that decriminalizing drug use and possession, together with the provision of a continuum of support, prevention and treatment measures, can result in a decrease in overall drug use and in the drug-induced mortality rate.<sup>19</sup>

15. In its submission, Portugal stated that “criminal sanctions are ineffective and counterproductive and do not address the consequences of drug use”. Its policy on drugs encompasses a model of decriminalization as part of a broader approach designed to dissuade drug use and promote measures directed at public health concerns, with social benefits for all involved. The implementation of a more health- and evidence-based approach has been facilitated by the decriminalization of consumption and possession for personal use of all drugs, in quantities below defined thresholds.<sup>20</sup>

16. In June 2017, 12 United Nations agencies issued a joint statement recommending the review and repeal of punitive laws such as those that criminalize or otherwise prohibit drug use or the possession of drugs for personal use.<sup>21</sup> In their submissions, several civil society organizations recommended decriminalization of drug use.<sup>22</sup>

### C. Harm reduction

17. The General Assembly,<sup>23</sup> the Human Rights Council,<sup>24</sup> the Committee on Economic, Social and Cultural Rights,<sup>25</sup> the Committee on the Rights of the Child,<sup>26</sup> the Committee on

<sup>15</sup> See E/C.12/CAN/CO/6, E/C.12/ESP/CO/5, E/C.12/PHL/CO/5-6, E/C.12/GRC/CO/2, E/C.12/MKD/CO/2-4 and E/C.12/SWE/CO/6.

<sup>16</sup> See [www.incb.org/documents/Publications/AnnualReports/AR2017/Annual\\_Report\\_chapters/Chapter\\_1\\_2017.pdf](http://www.incb.org/documents/Publications/AnnualReports/AR2017/Annual_Report_chapters/Chapter_1_2017.pdf).

<sup>17</sup> Kate Dolan and others, “Global burden of HIV, viral hepatitis, and tuberculosis in prisoners and detainees”, *The Lancet*, vol. 388, issue 10049, pp. 1089–1102. Available at [www.thelancet.com/journals/lancet/article/PIIS0140-6736\(16\)30466-4/fulltext](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(16)30466-4/fulltext).

<sup>18</sup> See [www.undp.org/content/undp/en/home/librarypage/hiv-aids/hiv-and-the-law--risks--rights--health.html](http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/hiv-and-the-law--risks--rights--health.html).

<sup>19</sup> See [www.globalcommissionondrugs.org/wp-content/uploads/2016/11/GCDP-Report-2016-ENGLISH.pdf](http://www.globalcommissionondrugs.org/wp-content/uploads/2016/11/GCDP-Report-2016-ENGLISH.pdf).

<sup>20</sup> Submission from Portugal.

<sup>21</sup> See [www.who.int/gender-equity-rights/knowledge/ending-discrimination-healthcare-settings.pdf](http://www.who.int/gender-equity-rights/knowledge/ending-discrimination-healthcare-settings.pdf).

<sup>22</sup> Submissions from the Global Commission on Drug Policy, the Moroccan Association for the Fight against AIDS, Youth RISE Nigeria and the Russian Civil Society Mechanism for Monitoring of Drug Policy Reforms in Russia.

<sup>23</sup> In its resolution 65/277.

<sup>24</sup> In its resolution 12/27.

<sup>25</sup> In E/C.12/RUS/CO/5, E/C.12/LTU/CO/2, E/C.12/EST/CO/2 and E/C.12/UKR/CO/5.

<sup>26</sup> See the Committee’s general comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health.

the Elimination of Discrimination against Women,<sup>27</sup> the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health<sup>28</sup> and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment<sup>29</sup> have all considered that harm reduction measures are essential for people who use drugs.

18. In 2017, needle and syringe programmes were only available in 93 countries, opioid substitution therapy in 86 countries<sup>30</sup> and drug consumption rooms in 10 countries.<sup>31</sup> People who use drugs continue to be severely impacted by HIV and hepatitis C infections.<sup>32</sup> A 2018 report of the Joint United Nations Programme on HIV/AIDS (UNAIDS) indicates that the risk of acquiring HIV is 22 times higher for people who inject drugs than for people who do not inject drugs.<sup>33</sup>

19. In their submissions, Austria, Myanmar, Norway, Spain and Switzerland indicated that they supported harm reduction as part of their public health strategies. For example, Austria provided needle and syringe exchange facilities at fixed sites, outpatient drug services, client access to treatment for chronic hepatitis C infection, and overdose prevention measures that included awareness-raising, information and advice, and first aid instruction for drug users and for staff. In Myanmar, the new National Drug Control Policy promoted and expanded a comprehensive package of harm reduction measures, which included overdose prevention and treatment.

20. The Kenya National Commission on Human Rights reported that the country's Ministry of Health had prioritized harm reduction strategies for persons who injected drugs, as part of its HIV prevention strategy. However, the Commission stated that enforcement of drug laws had a negative impact on the use of harm reduction services by drug users, because of fear of imprisonment.

21. According to the *World Drug Report 2018*, opioids continue to cause the most harm, accounting for 76 per cent of deaths where drug use disorders are involved.<sup>34</sup> In the United States of America, 64,000 people died from opioid overdose<sup>35</sup> and in Canada there were 2,458 known deaths from opioid overdose, in 2016.<sup>36</sup> Canada has recently adopted measures to counter opioid drug overdose.<sup>37</sup> In Poland, around 17 per cent of people dependent on opioids have access to substitution therapy,<sup>38</sup> while Morocco introduced an opioid substitution programme in 2010.<sup>39</sup>

22. Opioid medications are essential not only for drug dependence treatment but also for pain management.<sup>40</sup> The Committee on Economic, Social and Cultural Rights has expressed concerns at the restricted access to opioid substitution therapy, and has recommended that States take effective measures to guarantee the right to health care among marginalized groups such as persons who inject drugs, including access to opioid substitution therapy.<sup>41</sup> The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable

<sup>27</sup> In CEDAW/C/GEO/CO/4-5 and CEDAW/C/CAN/CO/8-9.

<sup>28</sup> In A/65/255.

<sup>29</sup> In A/HRC/22/53.

<sup>30</sup> Submission from the International Drug Policy Consortium.

<sup>31</sup> Submission from Harm Reduction International.

<sup>32</sup> Submission from the International Drug Policy Consortium.

<sup>33</sup> See [www.unaids.org/sites/default/files/media\\_asset/miles-to-go\\_en.pdf](http://www.unaids.org/sites/default/files/media_asset/miles-to-go_en.pdf).

<sup>34</sup> See [www.unodc.org/wdr2018/prelaunch/WDR18\\_Booklet\\_1\\_EXSUM.pdf](http://www.unodc.org/wdr2018/prelaunch/WDR18_Booklet_1_EXSUM.pdf).

<sup>35</sup> Submissions from the International Drug Policy Consortium and the International Network of People Who Use Drugs.

<sup>36</sup> See [www.globalcommissionondrugs.org/wp-content/uploads/2017/09/2017-GCDP-Position-Paper-Opioid-Crisis-ENG.pdf](http://www.globalcommissionondrugs.org/wp-content/uploads/2017/09/2017-GCDP-Position-Paper-Opioid-Crisis-ENG.pdf), p. 5.

<sup>37</sup> Submission from the Canadian HIV/AIDS Legal Network.

<sup>38</sup> Submission from the Polish Drug Policy Network.

<sup>39</sup> Submission from the Moroccan Association for the Fight against AIDS.

<sup>40</sup> See [www.joannecsete.com/documents/lancet-july-2010.pdf](http://www.joannecsete.com/documents/lancet-july-2010.pdf).

<sup>41</sup> See E/C.12/SWE/CO/6, E/C.12/LTU/CO/2, E/C.12/PHL/CO/5-6, E/C.12/BLR/CO/4-6, E/C.12/IDN/CO/1 and E/C.12/POL/CO/6.

standard of physical and mental health has urged national authorities to consider scaling up available opioid replacement therapies for people who use drugs (see A/HRC/20/15/Add.2).

#### **D. Access to treatment in prisons and other custodial settings**

23. The outcome document of the thirtieth special session calls for the implementation of treatment-related initiatives in prisons and other custodial settings,<sup>42</sup> and also for access to health care, social services and treatment for those in prison or pretrial detention.<sup>43</sup>

24. The Committee against Torture has expressed concerns regarding insufficient health services for prisoners with substance addiction. The Committee recommended that the provision of medical services to prisoners, particularly those who are addicted to drugs, should be ensured, and that all measures necessary to implement the United Nations Standard Minimum Rules for the Treatment of Prisoners should be taken.<sup>44</sup> The Committee on the Elimination of Discrimination against Women recommended “gender-sensitive and evidence-based drug treatment services to reduce harmful effects for women who use drugs, including harm reduction programmes for women in detention”.<sup>45</sup> The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment recommended the introduction of effective drug-replacement therapy in detention centres.<sup>46</sup>

25. Furthermore, various human rights treaty bodies have observed that detention settings are high-risk environments for HIV, hepatitis C and tuberculosis transmission and have recommended that States ensure access to harm reduction services in prison.<sup>47</sup> At the end of 2016, in prison or places of detention, opioid substitution therapy was only available in 52 countries, while only 8 countries provided needle and syringe programmes.<sup>48</sup> The International Association for Hospice and Palliative Care noted in its submission that access to controlled medicines for palliative care should also be available in custodial settings.

### **III. Joint commitments on effective law enforcement and human rights**

26. In the outcome document of the thirtieth special session, all States committed themselves to effective drug-related crime prevention and law enforcement measures.<sup>49</sup>

27. In recent years there have been some alarming tendencies towards a deeper militarization of the responses by States to counter drug-related crimes. In some instances, this is associated with the progressive militarization of civilian police forces. Several institutional reforms and new laws have come into force in Latin American countries which have facilitated militarization processes in the context of drug operations. Submissions indicated that excessive use of force is more likely to occur when military or special security forces are involved in drug operations. Such approaches have disproportionately affected vulnerable groups and has repeatedly resulted in serious human rights violations.<sup>50</sup>

28. The Special Rapporteur on extrajudicial, summary or arbitrary executions stated that various threats, which included drug dealing, challenged the adequacy of traditional law

<sup>42</sup> Recommendation 1 (k) and (o).

<sup>43</sup> Recommendation 4 (b) and (m).

<sup>44</sup> See CAT/C/CPV/CO/1.

<sup>45</sup> See CEDAW/C/GEO/CO/4-5, para. 31 (e).

<sup>46</sup> See [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23193&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23193&LangID=E).

<sup>47</sup> See CERD/C/CAN/CO/21-23, CEDAW/C/CAN/CO/8-9, A/HRC/23/41/Add.1, CAT/OP/PRY/2, E/C.12/POL/CO/6, E/C.12/SWE/CO/6, E/C.12/LTU/CO/2, CEDAW/C/GEO/CO/4-5 and A/HRC/13/39/Add.3.

<sup>48</sup> Submission from Harm Reduction International.

<sup>49</sup> Recommendation 3.

<sup>50</sup> Submissions from the Centre for Legal and Social Studies and the Mexican Commission for the Defence and Promotion of Human Rights.

enforcement measures. He affirmed that the use of lethal force by law enforcement officers must be regulated within the framework of human rights law and its standard of strict necessity, and that the rhetoric of shoot to kill should never be used (see E/CN.4/2006/53).

29. Since the “war on drugs” was announced in the Philippines in 2016, there have been reports of thousands of extrajudicial killings of people allegedly involved with the drug trade and drug use. The Commission on Human Rights of the Philippines reported that impunity had been virtually guaranteed, because of the President’s pronouncements that police officers responsible for the killing of individuals suspected of involvement in the drug trade would not face prosecution during his tenure, and, if ever prosecuted, would be pardoned.<sup>51</sup> In February 2018, the Prosecutor of the International Criminal Court opened a preliminary examination into crimes allegedly committed in the Philippines in the context of the recent “war on drugs” campaign.<sup>52</sup>

30. In May 2018, the Government of Bangladesh deployed the Rapid Action Battalion, a specialized police unit which has made excessive use of force and has a history of responsibility in the high rate of extrajudicial killings (see CCPR/C/BGD/CO/1), to counter the drug problem. The Battalion has been accused of killing over 200 people during the so-called “war on drugs”. The United Nations High Commissioner for Human Rights has condemned alleged extrajudicial killings and urged authorities in Bangladesh to bring perpetrators of serious human rights violations to justice.<sup>53</sup>

31. The Inter-American Commission on Human Rights recognized that the militarization of many areas of Mexico in the “war on drugs” had led to an increase in excessive use of force and in levels of impunity, and a record number of human rights violations.<sup>54</sup> Special procedures and other human rights mechanisms have documented international crimes and severe violations of human rights in Mexico between 2006 and the present, in the context of the so-called “war on drugs”.<sup>55</sup>

32. The “war on drugs” approach in many other States has cost the lives of thousands of people and caused serious human rights violations. The Secretary-General of the United Nations has said that it is “vital that we examine the effectiveness of the war-on-drugs approach and its consequences for human rights”.<sup>56</sup> The United Nations High Commissioner for Human Rights has emphasized that the right to life should be respected and protected by law enforcement agencies in their efforts to address drug-related crimes, and only proportional force should be used, when necessary (see A/HRC/30/65). Special procedure mandate holders have stated that “allegations of drug-trafficking offences should be judged in a court of law, not by gunmen on the streets”.<sup>57</sup>

33. Similarly, the International Narcotics Control Board has stated that extrajudicial responses to drug-related criminality are in clear violation of the international drug control conventions, which require that drug-related crime be addressed through formal criminal justice responses, as well as of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which require adherence to internationally recognized fair trial and due process norms and standards.<sup>58</sup>

<sup>51</sup> Submissions by the Commission on Human Rights of the Philippines and Human Rights Watch.

<sup>52</sup> See <https://www.icc-cpi.int/Pages/item.aspx?name=180208-otp-stat>.

<sup>53</sup> See <https://ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23178&LangID=E>.

<sup>54</sup> See [www.oas.org/es/cidh/informes/pdfs/mexico2016-es.pdf](http://www.oas.org/es/cidh/informes/pdfs/mexico2016-es.pdf).

<sup>55</sup> See A/HRC/26/36; A/HRC/28/68/Add.3; [www.fidh.org/IMG/pdf/mexique715anglais-1\\_final.pdf](http://www.fidh.org/IMG/pdf/mexique715anglais-1_final.pdf), p. 15; and the submission from the Mexican Commission for the Defence and Promotion of Human Rights.

<sup>56</sup> See [www.un.org/press/en/2017/sgsm18585.doc.htm](http://www.un.org/press/en/2017/sgsm18585.doc.htm).

<sup>57</sup> See [www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20388&LangID=E](https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20388&LangID=E).

<sup>58</sup> See [www.incb.org/incb/en/publications/annual-reports/annual-report-2017.html](http://www.incb.org/incb/en/publications/annual-reports/annual-report-2017.html), para. 256.

## IV. Joint commitments on effective criminal justice responses to drug-related crimes and human rights

34. In the outcome document of the thirtieth special session, all States committed to “promote and implement effective criminal justice responses to drug-related crimes to bring perpetrators to justice that ensure legal guarantees and due process safeguards pertaining to criminal justice proceedings, including practical measures to uphold the prohibition of arbitrary arrest and detention and of torture and other cruel, inhuman or degrading treatment or punishment and to eliminate impunity ... and ensure timely access to legal aid and the right to a fair trial”.

### A. The right to a fair trial: legal guarantees and due process safeguards

35. The right to equality before courts and tribunals and to a fair trial is a key element of human rights protection. Article 14 of the International Covenant on Civil and Political Rights is aimed at ensuring the proper administration of justice, and to this end guarantees a series of specific rights.<sup>59</sup>

36. “The right to be presumed innocent until proved guilty according to law”, as set forth in article 14 of the Covenant, is an essential element of the right to a fair trial. The use of legal presumptions in some countries, whereby persons found with amounts of drugs above specified thresholds, or in possession of keys to a building or vehicle where drugs have been found, are presumed to be guilty of drug trafficking, has been condemned as reversing the burden of proof in criminal proceedings, and may amount to a violation of the right to a fair trial. Some States also rely on statements made by suspects during police interrogation without a lawyer present as evidence to convict, even when the defendants argued that those statements were made under coercion.<sup>60</sup> In many cases, foreign nationals charged with drug trafficking abroad were not given fair trials.<sup>61</sup>

37. The large volume of drug-related offences for possession and drug use has led States to seek methods to move cases more quickly through the criminal justice system. This has resulted in growth of the use of “trial waiver” systems. In such systems, trials are being replaced by legal regimes that encourage suspects to admit guilt and waive their right to a full trial.<sup>62</sup> Although trial waiver systems do succeed in moving multiple cases through criminal justice systems, the price is often less procedural protection and judicial oversight.<sup>63</sup> Furthermore, the trial waiver system in drug-related cases poses particular challenges, including incentives to use pretrial detention as a bargaining chip to encourage guilty pleas and other trial waivers. The Inter-American Commission on Human Rights has noted that the growth in the use of trial waivers has eroded procedural protection and access to legal representation.<sup>64</sup>

### B. Prohibition of arbitrary arrest and detention

38. A number of submissions highlighted continued issues concerning arbitrary arrest and detention in the context of drug control.<sup>50</sup> The Working Group on Arbitrary Detention noted with concern increasing, and in some cases, systematic, instances of arbitrary detention as a consequence of drug control laws and policies. Arbitrary detention for drug offences or drug use can occur across criminal and administrative settings, particularly

<sup>59</sup> See Human Rights Committee, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial.

<sup>60</sup> Submission from Amnesty International.

<sup>61</sup> Submission from the Justice Project of Pakistan.

<sup>62</sup> See [www.fairtrials.org/wp-content/uploads/2017/12/Report-The-Disappearing-Trial.pdf](http://www.fairtrials.org/wp-content/uploads/2017/12/Report-The-Disappearing-Trial.pdf).

<sup>63</sup> Submission from Fair Trials.

<sup>64</sup> See [www.oas.org/en/iachr/reports/pdfs/pretrialdetention.pdf](http://www.oas.org/en/iachr/reports/pdfs/pretrialdetention.pdf).



when procedural safeguards are absent, causing a disproportionate impact on women, children, minority groups and people who use drugs (see A/HRC/30/36).<sup>65</sup>

39. The Working Group on Arbitrary Detention has also expressed concern about the frequent use of various forms of administrative detention that entail restrictions on fundamental rights, and considers to be worthy of attention detentions that are imposed as a means of controlling people who use drugs, especially when such detentions are framed as health interventions. The Working Group has held that administrative drug detention justified on the basis of health grounds can lead to involuntary commitment or compulsory drug treatment that is inconsistent with either international drug control conventions or international human rights law (see A/HRC/30/36).

### C. Prohibition of torture and other ill-treatment

40. Torture and cruel, inhuman and degrading treatment, including sexual abuse, by security forces has been reported in some States as means of investigating drug-related crimes and obtaining confessions and information from individuals accused of drug crimes. In some cases, law enforcement officials have intentionally withheld opioid substitution treatment from drug-dependent suspects as a way of obtaining confessions or other information (see A/HRC/30/65).<sup>66</sup> The Human Rights Committee has noted that such physical and mental pain and suffering associated with withdrawal symptoms may amount to torture or ill-treatment (see CCPR/C/RUS/CO/7). The denial of methadone treatment in custodial settings has been considered to be a violation of the right to be free from torture and ill-treatment, in certain circumstances (see A/HRC/22/53).

41. In treatment centres in Latin American countries, human rights violations including torture and ill-treatment have been reported.<sup>67</sup> Similar concerns relating to torture and ill-treatment have been reported in compulsory drug detention and rehabilitation centres in East and South-East Asian countries.<sup>68</sup> The Committee against Torture has also expressed concerns about reports of poor conditions in private drug rehabilitation centres and ill-treatment inflicted upon persons admitted to them (see CAT/C/GTM/CO/5-6).

42. The Committee against Torture has expressed concerns regarding the use of solitary confinement as a “management method” in “compulsory isolation drug treatment centres”. The Committee recommended abolishing all forms of administrative detention, which confine individuals without due process and make them vulnerable to abuse (see CAT/C/CHN/CO/5). Caning as a punishment in drug trafficking cases has also been reported, which violates the human rights prohibition of cruel and inhuman punishment.<sup>69</sup>

### D. Eliminating prison overcrowding and violence

43. In the outcome document of the thirtieth special session, all States committed to addressing and eliminating prison overcrowding and violence.<sup>70</sup>

44. United Nations human rights mechanisms have expressed concern about the unnecessary and disproportionate use of the criminal justice system for drug-related offences. In accordance with the International Drug Policy Consortium, some legal policies and practices lead to overcrowding of prisons and other places of deprivation of liberty, including tougher law and order approaches, mandatory use of pretrial detention, disproportionate lengths of sentence, frequent delays in the judicial system, poor

<sup>65</sup> See also E/CN.4/1998/44/Add.2, A/HRC/27/48/Add.3 and A/HRC/16/47/Add.2.

<sup>66</sup> See also the submissions from the Centre for Legal and Social Studies.

<sup>67</sup> Submission from Open Society Foundations. See also [www.opensocietyfoundations.org/publications/treatment-or-torture-applying-international-human-rights-standards-drug-detention](http://www.opensocietyfoundations.org/publications/treatment-or-torture-applying-international-human-rights-standards-drug-detention).

<sup>68</sup> See <https://idhdp.com/media/1083/compulsory-drug-detention-in-east-southeast-asia.pdf>.

<sup>69</sup> Submission from Amnesty International.

<sup>70</sup> Recommendation 4 (m).

monitoring of inmate status and release entitlement, and the failure to grant parole.<sup>71</sup> They have recommended that efforts to ease overcrowding include alternatives to deprivation of liberty, such as mediation, diversion, community service, and administrative and monetary sanctions (see A/68/261).

45. Human rights mechanisms have also expressed concerns regarding violence in prisons associated with prison congestion and have recommended enhanced efforts to prevent inter-prisoner violence by addressing the factors that contribute to it, such as overcrowding (see, for example, CAT/C/BLR/CO/5).

46. The Special Rapporteur on violence against women, its causes and consequences has reported that, in many countries, there has been a disproportionate increase in the rates of imprisonment of women, including for low-level drug-dealing offences (see A/68/340).<sup>72</sup> In several Latin American countries, women convicted of drug-related offences make up more than half of the female prison population. Very high levels of incarceration of women can also be found in East and South-East Asia.<sup>73</sup>

47. The United Nations High Commissioner for Human Rights has recommended several measures for addressing overincarceration and overcrowding. These include adopting a proactive and holistic approach; ensuring respect for detainees' right to challenge detention, and ensuring provision of assistance by legal counsel and access to legal aid; using places of detention only for the purpose for which they are fit; using pretrial detention only as a last resort; developing and implementing alternatives to custodial measures during pretrial and post-conviction; reviewing penal policies and legislation to ensure proportionate sentencing; providing effective rehabilitation services to contribute to reducing reoffending rates; and ensuring the existence and proper functioning of independent oversight and complaints mechanisms (see A/HRC/30/19 and A/HRC/36/28).

48. The outcome document of the thirtieth special session recommended: (a) alternative and additional measures; and (b) proportionate sentencing.<sup>74</sup> Both issues are relevant in addressing prison overcrowding.

## 1. Alternative and additional measures

49. The United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) provide a set of basic principles to promote the use of non-custodial measures, as well as minimum safeguards for persons subject to alternatives to imprisonment. The Tokyo Rules are intended to promote greater community involvement in the management of criminal justice, specifically in the treatment of offenders, and to promote among offenders a sense of responsibility towards society.

50. The Tokyo Rules provide that the dignity of the offender subject to non-custodial measures shall be protected at all times. In the implementation of non-custodial measures, the offender's rights shall not be restricted further than what was authorized by the competent authority that rendered the original decision. Since human rights violations may occur in the implementation of alternative measures, such as in community service, it is vital that offenders have recourse to a formal complaints system, set out clearly in legislation.

51. The Special Rapporteur on violence against women, its causes and consequences (see A/68/340) and the Committee on the Elimination of Discrimination against Women (see CEDAW/C/AUS/CO/8) have called on States to develop gender-sensitive alternatives to incarceration, and to promote community-based sentencing for female offenders. The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) provide comprehensive standards for the

<sup>71</sup> See A/HRC/11/2/Add.2, A/HRC/16/47/Add.3, CCPR/CO/81/BEL, CAT/C/CRI/CO/2, A/HRC/16/47/Add.3, A/HRC/7/3/Add.3, A/65/255, A/HRC/10/44, and Human Rights Committee general comment No. 35 (2014) on liberty and security of person.

<sup>72</sup> See also [www.unodc.org/wdr2018/prelaunch/WDR18\\_Booklet\\_5\\_WOMEN.pdf](http://www.unodc.org/wdr2018/prelaunch/WDR18_Booklet_5_WOMEN.pdf).

<sup>73</sup> See also the submission from the Centre for Legal and Social Studies.

<sup>74</sup> Recommendation 4 (j)–(k).

treatment of women prisoners and offenders, and address various issues including alternatives to incarceration.

52. In their submissions, stakeholders referred to several alternative and additional measures to incarceration. In the Russian Federation, a person who voluntarily applies for treatment in connection with the consumption of narcotic drugs or psychotropic substances is exempted from “administrative responsibility” for this offence. In Sweden, the sanction for personal use of drugs is a fine, not imprisonment. In some countries in West Africa, including Cape Verde, Senegal and Togo, there is a choice between imprisonment and a fine, for low-level offences. In Cambodia, people who use drugs and drug traffickers have been sentenced to community service, given the serious overcrowding in prisons. In Costa Rica, the Public Defender’s Office has sought to divert women who use drugs away from the criminal justice system and to offer them services such as counselling, drug treatment and job training. Probation has also been used in some countries.<sup>75</sup>

53. In some States, “drug courts”<sup>76</sup> offer people accused of drug use a choice between imprisonment and treatment. Given that the decision to undertake treatment is made under the threat of imprisonment, coercion may influence such a decision. The Inter-American Commission on Human Rights considered that drug courts which offer treatment as an alternative to imprisonment fail to conform to a public health approach and do not tackle mistreatment and human rights violations that occur in treatment centres, which are rarely investigated.<sup>77</sup>

54. Drug courts are claimed to reduce incarceration rates and to represent a more humane approach than in the criminal justice process. However, the Special Rapporteur on the independence of judges and lawyers, and other stakeholders, noted in their submissions that there was no credible evidence to support such claims. Furthermore, they stated that the drug court system caused considerable harm to participants and frequently resulted in serious human rights violations. Such violations were exacerbated by racial and gender biases.<sup>78</sup>

55. The propensity for human rights violations in the context of drug courts is such that the London School of Economics and Political Science has cautioned against the continued roll-out of drug courts in countries where oversight and monitoring mechanisms are absent.<sup>79</sup>

## 2. Proportionate sentencing and decriminalization of certain crimes

56. Proportionate sentencing is an essential requirement of an effective and fair criminal justice system. It requires that custodial sentences be imposed as a measure of last resort and applied proportionately to meet a pressing societal need (see E/CN.4/2006/7 and CAT/OP/MDV/1). In many States, low-level offences such as small-scale drug dealing or trafficking are punished with harsher penalties than other serious crimes, raising questions about proportionate sentencing.<sup>80</sup> Furthermore, simple possession of drugs for personal use can result in significant terms of mandatory imprisonment.<sup>81</sup>

<sup>75</sup> Submissions from the Russian Federation, Sweden, Penal Reform International, the Washington Office on Latin America, EQUIS Justicia para las Mujeres, the International Drug Policy Consortium and Dejusticia. See also [http://fileserv.idpc.net/library/Drug-laws-in-West-Africa\\_ENGLISH.PDF](http://fileserv.idpc.net/library/Drug-laws-in-West-Africa_ENGLISH.PDF).

<sup>76</sup> See [www.opensocietyfoundations.org/sites/default/files/drug-courts-equivocal-evidence-popular-intervention-20150518.pdf](http://www.opensocietyfoundations.org/sites/default/files/drug-courts-equivocal-evidence-popular-intervention-20150518.pdf).

<sup>77</sup> See [www.oas.org/en/iachr/reports/pdfs/PretrialDetention.pdf](http://www.oas.org/en/iachr/reports/pdfs/PretrialDetention.pdf) and submissions from the Centre for Legal and Social Studies and Fair Trials.

<sup>78</sup> Submissions from the Special Rapporteur on the independence of judges and lawyers, Fair Trials, Open Society Foundations and the London School of Economics. See also [http://physiciansforhumanrights.org/assets/misc/phr\\_drugcourts\\_report\\_singlepages.pdf](http://physiciansforhumanrights.org/assets/misc/phr_drugcourts_report_singlepages.pdf).

<sup>79</sup> Submission from the London School of Economics.

<sup>80</sup> Submissions from Penal Reform International and Fair Trials.

<sup>81</sup> Submissions from Penal Reform International and Human Rights Watch. See also [www.tni.org/files/download/dlr20\\_1.pdf](http://www.tni.org/files/download/dlr20_1.pdf).

57. The Human Rights Committee has stated that where measures limit a right protected under the International Covenant on Civil and Political Rights, such as the right to personal liberty, States “must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights” (see CCPR/C/21/Rev.1/Add.13). The Inter-American Court of Human Rights<sup>82</sup> and the European Court of Human Rights<sup>83</sup> have also highlighted the importance of proportionate sentencing.

58. The principle of proportionality is also relevant to pretrial detention, which is mandatory in several States for drug offences.<sup>84</sup> The Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has stated that “long periods of pretrial custody contribute to overcrowding in prisons” and that “from the standpoint of preventing ill-treatment, this raises serious concerns for a system already showing signs of stress” (see CAT/OP/BEN/1). The Committee against Torture has recommended that pretrial detention be used only as a last resort, “for the shortest time possible, and only for the most serious offences” (see CAT/C/54/2). The Inter-American Commission on Human Rights has noted that drug-related offences that are subject to mandatory pretrial detention regimes violate the suspect’s human rights and further inflate prison populations.<sup>85</sup>

59. A wide range of drug-related offences are punishable by death, in over 30 States. Amnesty International reported that drug-related executions accounted for approximately 30 per cent of all executions recorded in 2017.<sup>86</sup> In accordance with article 6 (2) of the International Covenant on Civil and Political Rights, States that have not abolished the death penalty may only impose it for the “most serious crimes”, which has been consistently interpreted as meaning intentional killing. The Human Rights Committee has consistently stated that drug-related offences do not meet the threshold of “most serious crimes” (see CCPR/C/PAK/CO/1, CCPR/C/THA/CO/2 and CCPR/C/KWT/CO/3). The International Narcotics Control Board has encouraged all States that retain the death penalty for drug-related offences to commute death sentences that have already been handed down and to consider the abolition of the death penalty for drug-related offences.

60. In order to meet the requirement of proportionate sentencing, States should revise their penal policies and legislation with the aim of reducing minimum and maximum penalties and decriminalizing the personal use of drugs and minor drug offences, which would also contribute to reducing the total prison population.

## V. Joint commitments on women, youth, children, vulnerable members of society and communities

### A. Women

61. In the outcome document of the thirtieth special session, all States committed to identifying and addressing risk factors and conditions that continued to make women and girls vulnerable to exploitation and participation in drug trafficking.<sup>87</sup> States also committed to mainstreaming a gender perspective in — and ensuring the involvement of women at all stages of — the development, implementation, monitoring and evaluation of drug policies and programmes.<sup>88</sup>

<sup>82</sup> See [www.corteidh.or.cr/docs/casos/articulos/seriec\\_16\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_16_ing.pdf).

<sup>83</sup> For example in *Dickson v. United Kingdom* (application No. 44362/04) and *Boulois v. Luxembourg* (application No. 37575/04)

<sup>84</sup> See [www.wola.org/sites/default/files/downloadable/Drug%20Policy/2011/TNIWOLA-Systems\\_Overload-def.pdf](http://www.wola.org/sites/default/files/downloadable/Drug%20Policy/2011/TNIWOLA-Systems_Overload-def.pdf).

<sup>85</sup> See [www.oas.org/en/iachr/reports/pdfs/PretrialDetention.pdf](http://www.oas.org/en/iachr/reports/pdfs/PretrialDetention.pdf).

<sup>86</sup> Submission from Amnesty International.

<sup>87</sup> Recommendation 4 (d).

<sup>88</sup> Recommendation 4 (g).

62. The *World Drug Report 2018* highlighted the importance of gender- and age-sensitive drug policies, and explored the particular needs and challenges of women.<sup>89</sup> Globally, women who use drugs face significant stigma and discrimination in accessing harm reduction programmes, drug dependence treatment and basic health care. They may face high levels of violence or harassment from law enforcement officers.<sup>90</sup>

63. In terms of national practice, Spain reported that it was aiming to improve the integration of gender-specific aspects in all its prevention and assistance programmes, including the prevention and early detection of gender-related violence against women who were drug-dependent or at places where drugs were consumed.<sup>91</sup> New drug strategies in Argentina, Ireland, Lebanon and Myanmar provided various gender-sensitive programmes.<sup>92</sup> The Plurinational State of Bolivia adopted a new presidential decree with a specific focus on the rights of women deprived of liberty, including those convicted for drug-related crimes.<sup>93</sup>

64. Civil society organizations recommended practical measures for the implementation of gender-related joint commitments contained in the outcome document of the thirtieth special session. These included, inter alia, ensuring that all drug treatment and rehabilitation services were non-discriminatory and evidence-based, and met women's needs, including pregnant women's specific medical, psychological and social needs; and ensuring that women involved in civil or criminal proceedings had access to fair trials, including timely access to legal representation.<sup>94</sup>

65. The Committee on the Elimination of Discrimination against Women has addressed drug issues and women, on several occasions. For example, the Committee has expressed concerns about the high level of drug addiction experienced by women in the Sri Lankan fisheries industry, and has recommended the provision of health and counselling support to women with drug addictions, in line with its general recommendation No. 34 (2016) on the rights of rural women (see CEDAW/C/LKA/CO/8). The Committee has expressed concerns about "the excessive use of incarceration as a drug-control measure against women and the ensuing female overpopulation in prison" in Canada (see CEDAW/C/CAN/CO/8-9). It has recommended that Ukraine should intensify the implementation of strategies to combat drug consumption among women, in line with its general recommendation No. 24 (1999) on women and health (see CEDAW/C/UKR/CO/8). The Committee also recommended that Kyrgyzstan ensure equal rights and opportunities for women who faced intersecting forms of discrimination, including women who used drugs (see CEDAW/C/KGZ/CO/4). It recommended that Georgia provide gender-sensitive and evidence-based drug treatment services to reduce harmful effects for women who used drugs (see CEDAW/C/GEO/CO/4-5).

## B. Youth and children

66. In the outcome document of the thirtieth special session, all States are committed to addressing the specific needs of children and youth.<sup>95</sup>

67. Since its inception, the Committee on the Rights of the Child has addressed issues related to protecting children from the illicit use of narcotic drugs and psychotropic substances, pursuant to article 33 of the Convention on the Rights of the Child, and has

<sup>89</sup> See [www.unodc.org/wdr2018/prelaunch/WDR18\\_Booklet\\_5\\_WOMEN.pdf](http://www.unodc.org/wdr2018/prelaunch/WDR18_Booklet_5_WOMEN.pdf).

<sup>90</sup> Joint submission from the Washington Office on Latin America, EQUIS Justicia para las Mujeres, the International Drug Policy Consortium and Dejusticia; and submission from Release.

<sup>91</sup> Submission from Spain.

<sup>92</sup> Strategies of Ireland and Myanmar; and submissions from Lebanon and the *Defensor del Pueblo* of Argentina.

<sup>93</sup> Decree No. 3030; and submission from Acción Semilla.

<sup>94</sup> Submission from the National Advocates for Pregnant Women, endorsed by Amnesty International and others.

<sup>95</sup> Recommendation 4 (f). For statistical purposes, the United Nations uses the term "youth" to refer to persons aged between 15 and 24.

made consistent recommendations in this regard.<sup>96</sup> The Committee has consistently recommended that States address the incidence of drug use by children and adolescents by, inter alia, providing children and adolescents with accurate and objective information, as well as life skills education, on preventing substance abuse, including with respect to tobacco and alcohol, and developing accessible and youth-friendly drug dependence treatment and harm reduction services (see, for example, CRC/C/PER/CO/4-5). The Committee has also addressed drugs issues in its general comments — on HIV and the rights of the child, adolescent health, children in street situations, the right to health, and the right to freedom from all forms of violence.

68. Guatemala, Ireland, Lebanon, Mexico, Myanmar, Paraguay and the Russian Federation reported that they had undertaken drug prevention and treatment measures aimed at children and youth.<sup>97</sup>

69. The consequences of a criminal record for a drug-related offence for a young person include discrimination, stigmatization, and reduced prospects for access to higher education and employment. Children of parents incarcerated for a drug-related offence may also suffer harm and face stigma.<sup>98</sup> The best interests of the child should be taken into account when a parent is charged with a drug-related offence, and non-custodial measures should be considered.<sup>99</sup>

## C. Other vulnerable members of societies<sup>100</sup>

### 1. Minorities and indigenous peoples

70. Pursuant to article 18 of the International Covenant on Civil and Political Rights, religious minorities and indigenous peoples have the right to manifestations of their freedom of religion or belief. This has been found, in some cases, to include the use of controlled substances in religious and ceremonial practices when there is a historical basis for doing so (see A/HRC/30/65). The right of indigenous people to use controlled crops, such as coca leaf, in their traditional, cultural and religious practices is also supported by the United Nations Declaration on the Rights of Indigenous Peoples (arts. 11, 24 and 31) and the Indigenous and Tribal Peoples Convention, 1989 (No. 169) (arts. 3.2, 5 (a) and 23).<sup>101</sup> The Special Rapporteur on the rights of indigenous peoples has recommended that “indigenous peoples that might be affected should be consulted on anti-drug policies and operations” and that “guarantees should be given that the lives, cultures, lands and natural resources of the indigenous peoples are not violated as a result of such operations” (see A/HRC/33/42/Add.2).

71. The Committee on the Elimination of Racial Discrimination was concerned at the reported disproportionately high rate of incarceration of indigenous persons and persons belonging to minority groups in Canada, particularly African-Canadians, due to various reasons, including drug policies. The Committee recommended that Canada address the root causes of such overrepresentation of African-Canadians and indigenous persons at all levels of the justice system by, inter alia, re-examining drug policies and providing evidence-based alternatives to incarceration for non-violent drug users (see CERD/C/CAN/CO/21-23).

72. The Working Group of Experts on People of African Descent has stated that people of African descent are disproportionately affected by excessively punitive drug policies. In addition, racial profiling in many countries has made people of African descent a targeted

<sup>96</sup> See [www.ncbi.nlm.nih.gov/pmc/articles/PMC5473055/](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC5473055/).

<sup>97</sup> Submission from States and *Defensoría del Pueblo*. See also <https://health.gov.ie/wp-content/uploads/2018/07/Reducing-Harm-Supporting-Recovery-2017-2025.pdf>.

<sup>98</sup> Submission from Students for Sensible Drug Policy.

<sup>99</sup> Submission from Quakers.

<sup>100</sup> Recommendation 4 (f). See also Commission on Narcotic Drugs resolution 61/7, available at <http://undocs.org/E/2018/28>.

<sup>101</sup> See E/2009/43-E/C.19/2009/14, and the submissions of Maloca International and the Transnational Institute.

group in the so-called “war on drugs”. The Working Group called for an end to racism, racial discrimination, xenophobia, Afrophobia and related intolerance, including their manifestations in the adoption and implementation of international and national drug policies.<sup>102</sup>

73. The new drug strategy of Ireland is aimed at improving the capacity of services to accommodate the needs of people from specific minority communities who use drugs, including the Traveller community.<sup>103</sup>

## **2. Persons with disabilities**

74. In many States, punitive drug policies do not recognize the unique vulnerability of persons with psychosocial disabilities who use drugs. Such policies affect them negatively by not providing appropriate drug dependence treatment and harm reduction prevention services.

75. The Committee on the Rights of Persons with Disabilities has addressed this issue in its reviewing of the State party reports of Peru and the Russian Federation. The Committee expressed concern regarding the Peruvian law that permits involuntary detention of persons with a “perceived disability”, that is, “persons with a drug or alcohol dependence”, and recommended the repeal of the related legal provision (see CRPD/C/PER/CO/1). The Committee recommended that the Russian Federation revise its current legislation and practices regarding drug policy and preventive measures, which had a negative impact on persons with disabilities (see CRPD/C/RUS/CO/1).

## **3. Lesbian, gay, bisexual, transgender and intersex persons**

76. Lesbian, gay, bisexual, transgender and intersex persons who use drugs are disproportionately impacted by drug policies in many countries, and experience a range of harms flowing from drug use and drug-induced mental trauma. Lesbian, gay, bisexual, transgender and intersex persons who use drugs may not seek support or treatment from health-care providers because of previous or anticipated experiences of discrimination.<sup>104</sup> The new drug strategy of Ireland proposes targeted interventions for lesbian, gay, bisexual, transgender and intersex persons.<sup>105</sup>

# **VI. Joint commitments on alternative development, international cooperation, measuring drug policies and human rights**

## **A. Alternative development**

77. In the outcome document of the thirtieth special session, all States reiterated their commitment to “alternative development”.<sup>106</sup> Alternative development is “a process to prevent and eliminate the illicit cultivation of plants containing narcotic drugs and psychotropic substances through specifically designed rural development measures in the context of sustained national economic growth and sustainable development efforts in countries taking action against drugs, recognizing the particular sociocultural characteristics of the target communities and groups, within the framework of a comprehensive and permanent solution to the problem of illicit drugs” (see General Assembly resolution S-20/4).

<sup>102</sup> See [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19852&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19852&LangID=E), A/HRC/33/61/Add.2, and the submission from For Alternative Approaches to Addiction — Think and Do Tank.

<sup>103</sup> See <https://health.gov.ie/wp-content/uploads/2017/07/Reducing-Harm-Supporting-Recovery-2017-2025.pdf>.

<sup>104</sup> Joint submission from the Global Forum on MSM and HIV, and the Federatie van Nederlandse Verenigingen tot Integratie van Homoseksualiteit.

<sup>105</sup> Strategy of Ireland, p. 47; and see [http://opensiuc.lib.siu.edu/gs\\_rp/182](http://opensiuc.lib.siu.edu/gs_rp/182).

<sup>106</sup> Recommendation 7 (a)–(g).

78. The United Nations Guiding Principles on Alternative Development, of 2013, provide that alternative development should take place “taking into account the promotion and protection of human rights”.<sup>107</sup>

79. The United Nations Development Programme has observed that the displacement of populations because of measures to eradicate illicit crops exacerbates the poverty and insecurity of poor farmers, with a disproportionate impact on rural, ethnic minority and indigenous people.<sup>108</sup> Individuals in these rural communities are holders of the rights set out in the International Covenant on Economic, Social and Cultural Rights, including the right to work and to earn a decent living for themselves and their families, the right to have an adequate standard of living including adequate food, clothing and housing, the right to social security, the right to health and the right to education.<sup>109</sup>

80. In terms of the design of alternative development programmes, the participation of those affected, including women, minorities and indigenous peoples, should be essential. Sequencing is crucial, and alternative livelihoods should be functioning and providing an adequate standard of living before eradication of illicit crops starts.<sup>110</sup>

81. Eradication of illicit crops should not negatively affect the environment or the health and welfare of farmers, their families or other stakeholders. The Committee on the Rights of the Child, the Special Rapporteurs on the right to health, the rights of indigenous peoples and the right to food have all objected to aerial spraying for crop eradication because of the harm it can cause to farmers and their children, as well as to environment.<sup>111</sup>

## B. International cooperation

82. The outcome document of the thirtieth special session recommended that United Nations agencies and other international stakeholders assist States in effectively addressing “the health, socioeconomic, human rights, justice and law enforcement aspects of the world drug problem”.<sup>112</sup> In its resolutions 71/211 and 72/198, the General Assembly encouraged all relevant United Nations bodies and specialized agencies to identify operational recommendations in the outcome document of the thirtieth special session that fell within their area of responsibility and specialization and to commence implementing those recommendations.

83. UNDP is supporting the development of international guidelines on human rights and drug control, together with the International Centre on Human Rights and Drug Policy, UNODC and OHCHR.<sup>113</sup> UNODC has undertaken activities to implement the joint commitments with regard to human rights. These include working with OHCHR and Colombia to ensure human rights are incorporated into the national drug policy of Colombia.<sup>114</sup> OHCHR and UNDP in Cambodia are jointly implementing Access to Justice without Barriers for Persons with Disabilities — a project aimed at enhancing the capacity of duty bearers to better understand the obstacles of persons with disabilities, including those who use drugs, in accessing justice.

<sup>107</sup> See General Assembly resolution 68/196.

<sup>108</sup> Submission from UNDP; submission from the Moroccan Association for the Fight against AIDS, p. 2.

<sup>109</sup> See also A/HRC/WG.15/5/2.

<sup>110</sup> See UNODC/CND/2008/WG.3/2.

<sup>111</sup> See CRC/C/COL/CO/3, A/HRC/4/32/Add.2, A/HRC/7/11/Add.3 and A/HRC/4/30/Add.1. See also the Transnational Institute submission.

<sup>112</sup> Recommendation 6 (a).

<sup>113</sup> See [www.undp.org/content/undp/en/home/blog/2017/human-rights-and-drug-control--we-must-provide-solutions-that-le.html](http://www.undp.org/content/undp/en/home/blog/2017/human-rights-and-drug-control--we-must-provide-solutions-that-le.html). See also the UNDP submission.

<sup>114</sup> Submission from UNODC.



84. OHCHR participated in intersessional meetings organized by the Commission on Narcotic Drugs on the human rights commitments in the outcome document of the thirtieth special session. OHCHR also participated in the general debates of the sixty-first session of the Commission, highlighting human rights issues related to the world drug problem.<sup>115</sup>

85. The Council of Europe's Pompidou Group has initiated work to explore the application of human rights standards and tests as a basis for national and local-led initiatives to incorporate human rights into drug policy development, monitoring and evaluation. This work has resulted in the report entitled "Drug policy and human rights in Europe: managing tensions, maximising complementarities".<sup>116</sup>

### C. Measuring drug policies from a human rights perspective

86. Ensuring that governments are held responsible for protecting human rights through drug laws, policies and strategies requires tracking data and conducting regular assessments of the human rights situation as it relates to drug control. On several occasions, human rights treaty bodies have recommended that States provide data, statistics and information on issues related to human rights in drug control efforts.<sup>117</sup> There is a growing realization that the traditional indicators regarding arrests, seizures and criminal justice responses are inadequate to show the real impact of drug policies on communities. The success of drug control strategies should be measured through an assessment of the impact of drug control efforts in the enjoyment of human rights and other critical aspects such as security, health and socioeconomic development.<sup>118</sup>

87. States are encouraged to collect up-to-date, comprehensive, disaggregated and transparent data on drug control efforts. The data gathered should be used by States to analyse the impact of drug control efforts on the enjoyment of human rights, and to enhance compliance with international human rights norms and standards in the administration of drug policies.

88. The outcome document of the thirtieth special session recommends that States consider including information, on a voluntary basis, concerning, inter alia, the promotion of human rights, when furnishing information to the Commission on Narcotic Drugs pursuant to the three international drug control conventions and the relevant Commission resolutions.<sup>119</sup> OHCHR has developed a set of human rights indicators for the realization of human rights,<sup>120</sup> and guidance on a human rights-based approach to data collection in the implementation of the Sustainable Development Goals.<sup>121</sup> Both can provide guidance in strengthening and streamlining existing data-collection and analysis tools in drug control efforts.

## VII. Conclusions and recommendations

**89. The cross-cutting approach of the outcome document of the thirtieth special session of the General Assembly, of 2016, on the world drug problem, constitutes a new and better linkage of the objective of drug control — protection of the health and welfare of humanity — with the key priorities of the United Nations system, including the Sustainable Development Goals. States should make greater efforts to more comprehensively implement the outcome document in accordance with their human rights obligations.**

<sup>115</sup> See E/2018/28-E/CN.7/2018/13.

<sup>116</sup> See <https://rm.coe.int/drug-policyandhumanrights-in-europe-eng/1680790e3d>.

<sup>117</sup> See CEDAW/C/MDV/CO/4-5, CEDAW/C/MKD/CO/4-5, CEDAW/C/ITA/CO/6, CRC/C/KWT/CO/2, CRC/C/MDG/CO/3-4, E/C.12/DEU/CO/5 and E/C.12/MCO/CO/2-3.

<sup>118</sup> See [https://cdpe.org/measuring\\_drug\\_policy\\_outcomes\\_intersections\\_with\\_human\\_rights\\_and\\_the\\_sustainable\\_development\\_goals\\_sdgs/#](https://cdpe.org/measuring_drug_policy_outcomes_intersections_with_human_rights_and_the_sustainable_development_goals_sdgs/#) and the Global Drug Policy Observatory submission.

<sup>119</sup> Recommendation 4 (h).

<sup>120</sup> See [www.ohchr.org/EN/Issues/Indicators/Pages/documents.aspx](http://www.ohchr.org/EN/Issues/Indicators/Pages/documents.aspx).

<sup>121</sup> See [www.ohchr.org/EN/NewsEvents/Pages/DataForSustainableDevelopment.aspx](http://www.ohchr.org/EN/NewsEvents/Pages/DataForSustainableDevelopment.aspx).

90. People who use drugs should be treated with dignity and humanity in treatment centres. Harm reduction and evidence-based treatment should be available and delivered only by trained health personnel. States should also undertake rigorous and independent monitoring of treatment centres to ensure treatment takes place on a voluntary basis with informed consent and individuals are not confined there against their will. Any allegation of torture or other ill-treatment in treatment centres should be investigated. Any treatment centres that do not meet human rights standards should be closed.

91. States should consider doing away with drug courts, and allowing regular courts to consider alternative, non-custodial measures for persons accused of minor, non-violent drug-related offences. Mandatory minimum sentences for drug-related offences should be repealed and replaced by sentencing guidelines that are proportionate and give sufficient flexibility to judges regarding sentencing decisions. The death penalty should be abolished for all crimes, including for drug offences.

92. Law enforcement in drug control efforts should be consistent with States' human rights obligations. Law enforcement officials should always adhere to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Measures consistent with international standards should be considered in addressing prison overcrowding and overincarceration, including alternatives to incarceration and applying the principle of proportionality.

93. States should make concerted efforts to combat impunity by conducting prompt, independent, impartial and effective investigations into serious human rights violations and bringing alleged perpetrators to justice. Cooperation with international judicial or other mechanisms, such as the International Criminal Court, responsible for investigating and prosecuting heinous crimes under international law, should be also ensured.

94. "Alternative development" should take place with the participation of local communities, including farmers, women, minorities and indigenous peoples. Alternative livelihoods should be secured before removing existing livelihoods earned from cultivation of illicit crops, thereby contributing to the full enjoyment of human rights and fundamental freedoms.

95. States should adapt their drug policies to address the specific needs of women, children and youth, and members of groups in a situation of vulnerability such as minorities, indigenous peoples, persons with disabilities, and lesbian, gay, bisexual, transgender and intersex persons.

96. International and regional human rights mechanisms, including human rights treaty bodies and special procedures of the Human Rights Council, consistently address human rights issues related to drug control efforts. States and other actors involved in addressing the world drug problem, such as the Commission on Narcotic Drugs and the International Narcotics Control Board, should consider the findings, views and recommendations of these human rights mechanisms, and should encourage and assist States in the implementation of the recommendations.

97. At the national level, national human rights institutions and other independent State bodies, such as ombudspersons for children, also play important roles in monitoring the human rights aspects of drug control efforts. They can provide human rights guidance to national authorities for the development and the implementation of national drug policies and laws. The participation and capacity of national human rights institutions should be encouraged and strengthened in order to implement the joint commitments made in the outcome document of the thirtieth special session.

98. The outcome document of the thirtieth special session recognizes the importance of including civil society and affected communities in the design, implementation and/or evaluation of drug policies and programmes. Civil society organizations and representatives of affected groups play a significant role in analysing drugs issues, in delivering services and in evaluating the human rights impact of drug policies. The participation of civil society organizations should be

**encouraged and their capacities strengthened in order to implement the joint commitments of the outcome document. Civil society organizations should be protected from any intimidation, threat, harassment or reprisal.**

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