



**61st Session of the Commission on Narcotic Drugs
3rd intersessional meeting**

**Thematic Discussion on cross cutting issues: drugs, and human rights, youth, children,
women and communities (UNGASS 2016 outcome document, Chapter 4)**

**27 September 2018
Vienna International Centre**

Presentation of

***Zaved Mahmood
Human Rights and Drug Policy Advisor
Thematic Engagement, Special Procedure and the Right to Development Division
Office of the United Nations High Commissioner for Human Rights, Geneva***

*Madam Chair,
Excellencies,
Friends and colleagues,*

The Office of the High Commissioner for human rights thanks the Commission on Narcotic Drugs for inviting the Office to participate at today's intersessional meeting on cross-cutting issues: drugs, and human rights, youth, children, women and communities, as included in the Chapter 4 of UNGASS 2016 outcome document.

In the presentation, I will discuss three key areas.

- Why is human rights relevant in the discussion of drug policy?
- What are the role of UN human rights mechanisms in the drug policy debate?
- What are findings and recommendations of the recent report (A/HRC/39/39) of the High Commissioner on joint commitments and human rights?

The relevance of human rights in the discussion of drug policy

Despite some shortcomings¹, human rights are at the core of the outcome document of UNGASS 2016. The document included human rights and related principles throughout its text. In the introductory paragraph of Chapter 4 of the Outcome Document, all Member States of the United Nations reiterated their commitments “to respecting, protecting and promoting all human rights, fundamental freedoms and the inherent dignity of all individuals and the rule of law in the development and implementation of drug policies”.²

This is not the first time that human rights are mentioned in the context of the drug policy debates at the United Nations. In fact, human rights has never been an issue of ‘far distance’ in the debate on the drug policy. In the 2009 Political Declaration, all members States reaffirmed their unwavering commitment to ensure that all aspects of drug control efforts (demand reduction, supply reduction and international cooperation) are addressed 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.³ And indeed, human rights is one of key principles of the Charter of the United Nations. The United Nations, its agencies

¹ Statement by Mr. Zeid Ra'ad Al Hussein, United Nations High Commissioner for Human Rights at the United Nations Work on the World Drug Problem; See <https://www.un.org/ruleoflaw/wp-content/uploads/2016/01/Statement-by-Mr.-Zeid-OHCHR.pdf>; Also see

“Tackling the world drug problem: UN experts urge States to adopt human rights approach”, statement issued by special procedure mandate holders of the UN Human Rights Council on 18 April 2016, See <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=19833&LangID=E> .

² <https://www.unodc.org/documents/postungass2016/outcome/V1603301-E.pdf> , page 14

³ <https://www.unodc.org/documents/ungass2016/V0984963-English.pdf>, page 7

and Member States are bound by overarching obligations under articles 1⁴, 55⁵ and 56⁶ of the United Nations Charter to promote “universal respect for, and observance of, human rights and fundamental freedoms.”

Our Office note the fact that these human rights commitments reflected in various resolutions adopted by this Commission in recent years. For example, the Commission’s resolution 61/7 on addressing the specific needs of vulnerable members of society⁷, resolution 61/11 on promoting non-stigmatizing attitudes⁸ and many other resolutions of the Commissions are not only based on three drug conventions, but also on relevant human rights treaties, principles and norms. Our Office urges the Commission to continue further rigorously pursue the promotion and protection of human rights in addressing and countering the world drug problem.

Madam Chair,

This takes me to the next part of my present. **How are UN human rights mechanisms contributing to the implementation of joint commitment of States in addressing the world drug problem?**

In March 2015, Human rights Council adopted resolution 28/28 entitled “Contribution of the Human Rights Council to the special session of the General Assembly on the world drug problem of 2016.”⁹ Pursuant to this resolution of the Council, in 2015, our office prepared and published first-ever comprehensive report on the human rights impact of the world drug problem.¹⁰ The 2015 report addressed the impact of the world drug problem in five main human rights areas: the right to health, rights relating to criminal justice, the prohibition of discrimination including, in particular against ethnic minorities and women, the rights of the child and the rights of indigenous peoples. The OHCHR also organised a panel discussion for the Human rights Council on this in topic at the Council in 2015. The summary of the panel¹¹ and our office’s 2015 report shared with this Commission as a contribution for the preparation of UNGASS 2016.

In March this year, the Human Rights Council adopted second resolution 37/42 on issues related to drug policy and human rights, entitled “*Contribution to the implementation of the joint commitment to effectively addressing and countering the world drug problem with regard to human rights*”.¹² In resolution 37/42, the Human rights Council requested the Office of the High Commissioner for Human Rights to prepare and submit a report on the implementation

⁴ “The Purposes of the United Nations are [.....] to achieve international co-operation[....] in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.”, Article 1, the Charter of the United Nations. <http://www.un.org/en/sections/un-charter/chapter-i/index.html>

⁵ “[...]the United Nations shall promote: [.....] universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”, Article 55, the Charter of the United Nations. <http://www.un.org/en/sections/un-charter/chapter-i/index.html>

⁶ “All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.” Article 56, Article 1, the Charter of the United Nations. <http://www.un.org/en/sections/un-charter/chapter-i/index.html>

⁷ See Report on the sixty-first session (8 December 2017 and 12–16 March 2018); available at : <http://undocs.org/E/2018/28>, page 8

⁸ Ibid, page 28

⁹ http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/28/28

¹⁰ A/HRC/30/65, See www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Pages/ListReports.aspx

¹¹ A/HRC/31/45, See www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Pages/ListReports.aspx

¹² See <https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session37/Pages/ResDecStat.aspx>

of the joint commitment of States to effectively address and counter the world drug problem with regard to human rights. The Council also requested the Office to share the report with this Commission as a contribution to your work in this field and in preparation for the sixty-second session of the Commission.

The Council also encourages the High Commissioner and relevant international human rights mechanisms to continue, within their respective mandates and through the appropriate established channels with the Commission on Narcotic Drugs, their contribution to addressing the human rights implications of the world drug problem (Operational Paragraph 6, A/HRC/RES/37/42)

On 14 September, the Deputy High Commissioner for Human Rights presented the report to the Council. The Office recently shared the report with the Secretariat of the Commission. The report is now available at the Commission's website on "preparations for the 2019 ministerial segment".¹³ All submissions for the preparation of the report are also available online.¹⁴

The report discusses human rights aspects of joint commitments of States on a wide range of areas. These include prevention and treatment of drug abuse, law enforcement and criminal justice system, international cooperation, alternative development, measuring drug policy from human rights perspective- as well as joint commitments on women, youth, children, vulnerable members of society and communities- as agreed in the outcome document of UNGASS2016.

Throughout the text, the report shows that how various UN human rights mechanisms, including human rights treaty bodies and special procedure mandate holders of the Human Rights Council, have addressed human rights issues in the context of drug policy in the last few decades; and provided recommendations to States in the development and implementation of national drug policies, laws and programmes in line with their human rights obligations under international law.

In recommendation 4(a) of the Outcome Document of UNGASS 2016, States committed to enhance the knowledge of policymakers and the capacity of relevant national authorities on various aspects of the world drug problem in order to ensure that national drug policies fully respect all human rights and fundamental freedoms, among other issues.¹⁵ In this regard, States further encourage cooperation with and among relevant United Nations entities, within their respective mandates. The Office expects that the recent report of the High Commissioner will also contribute to enhance knowledge and capacity of national authorities and other stakeholders to advance human rights in the formulation and implementation of drug policies.

Madam Chair,

In the following, let me provide few examples of **findings and recommendations of the report A/HRC/39/39**.

Criminal Justice and Prison System

¹³ http://www.unodc.org/documents/commissions/CND/2019/Contributions/UN_Entities/OHCHR.pdf

¹⁴ <https://www.ohchr.org/EN/HRBodies/HRC/Pages/WorldDrugProblemHRC39.aspx>

¹⁵

Access to treatment in prisons and other custodial settings

The UNGASS 2016 outcome document calls for the implementation of treatment-related initiatives in prisons and other custodial settings, and also for access to health care, social services and treatment for those in prison or pre-trial detention. The report stated that on several occasions, while examining State parties' report, the Committee against Torture has 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. 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". 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. Furthermore, noting that detention settings are high-risk environments for HIV, hepatitis C and tuberculosis transmission, various human rights treaty bodies have recommended that States ensure access to harm reduction services in prison. It is also reported that in many countries disproportionate numbers of racial, ethnic or other minorities are detained or imprisoned for drug related offences.

Example of OHCHR's work in the field: The report provided an example of our work in this area. OHCHR and UNDP in Cambodia are jointly implementing — a project on "Access to Justice without Barriers for Persons with Disabilities that 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.

Eliminating prison overcrowding and violence

In the outcome document, all States committed to addressing and eliminating prison overcrowding and violence. United Nations human rights mechanisms have expressed concern about the unnecessary and disproportionate use of the criminal justice system for drug-related offences. The report found that some legal policies and practices lead to overcrowding of prisons and other places of deprivation of liberty: These includes:

- Tougher law and order approaches
- Mandatory use of pretrial detention,
- Disproportionate lengths of sentence,
- Frequent delays in the judicial system,
- Poor monitoring of inmate status and release entitlement, and
- The failure to grant parole.

The High Commissioner for Human Rights has recommended several measures for addressing over incarceration and overcrowding. These include

- adopting a proactive and holistic approach;
- ensuring respect for detainees' right to challenge detention,
- 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

With regard to women, the report found that in many countries, there has been a disproportionate increase in the rates of imprisonment of women, including for low-level drug-dealing offences. For example, 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.

An example of OHCHR's work in addressing prison overcrowding: In its 2014 report on prison conditions in Tunisia, the Office recommended, inter alia, that Tunisia reform its drug policy to adopt the principle of progressive sanctions for crimes of drug consumption, particularly for first time offenders. In April 2017, the Tunisian parliament adopted an amended version of its national drug law; which now allows judicial discretion in sentencing for drug consumption, including the possibility of imposing alternative measures, such as suspended sentence or a fine. This constitutes a welcome development and is expected to have a significant impact on reducing prison overcrowding in the country. OHCHR will continue to advocate for wider review of Tunisian drug law and policy; and provide technical support to Tunisian authorities for the further inclusion of human rights based approach to the national drug law and policy.¹⁶

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

Alternative measures

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. The Tokyo Rules provide that the dignity of the offender subject to non-custodial measures shall be protected at all times.

The Special Rapporteur on violence against women, its causes and consequences and the Committee on the Elimination of Discrimination against Women have called on States to develop gender-sensitive alternatives to incarceration, and to promote community-based sentencing for female offenders.

In their submissions, stakeholders referred to several alternative and additional measures to incarceration.

¹⁶www.unodc.org/documents/commissions/CND/CND_Sessions/CND_61/Statements/61st_CND_General_Debate_Statement_OHCHR.pdf

- 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 (Russian Federation).
- In some States, sanction for personal use of drugs is a fine, not imprisonment.
- In some countries in West Africa, there is a choice between imprisonment and a fine, for low-level offences.
- In other States, people who use drugs and drug traffickers have been sentenced to community service, given the serious overcrowding in prisons.
- 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.

Drug Courts

In some States, “drug courts” offer people accused of drug use a choice between imprisonment and treatment. Drug courts are claimed to reduce incarceration rates and to represent a more humane approach than in the criminal justice process. 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. 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. The propensity for human rights violations in the context of drug courts is such that the report cautioned against the continued roll-out of drug courts in countries where oversight and monitoring mechanisms are absent. The report recommended 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.

Proportionate sentencing and decriminalization of certain crimes

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. The report found that 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. Furthermore, simple possession of drugs for personal use can result in significant terms of mandatory imprisonment.

The principle of proportionality is also relevant to pretrial detention, which is mandatory in several States for drug offences. The Human Rights treaty bodies 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”.

Death Penalty

The report found that 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. 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”. 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. We welcome the recent legal amendments with regard to the use of the mandatory death penalty in Iran and Malaysia, and the new drug policy strategy of Myanmar that has announced the abolition of the death penalty for drug offences, but more is needed to fully abolish the death penalty in these countries.

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.

Practical measures to uphold the prohibition of arbitrary arrest and detention and of torture

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”. (recommendation (o) of the UNGASS2016 Outcome Document)

A number of submissions highlighted continued issues concerning arbitrary arrest and detention in the context of drug control. Arbitrary detention for drug offences or drug use can occur across criminal and administrative settings, particularly when procedural safeguards are absent, causing a disproportionate impact on women, children, minority groups and people who use drugs (see A/HRC/30/36).

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). 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).

Recommendations of the report on these areas are reflected in the following slide:

PEOPLE WHO USE DRUGS DO NOT LOSE THEIR HUMAN RIGHTS



Decriminalize the personal use and possession of drugs.



End the death penalty for drug-related offences.



Ensure harm reduction measures are available to drug users, including in prisons.



End impunity for those responsible for **extrajudicial killings** and **torture of drug suspects**.



Ensure proportionate sentencing of people convicted of drug-related offences.



End prosecution of children for drug offences.



Prefer alternatives to imprisonment for minor, non-violent offences.



Allow indigenous peoples to use drugs when part of their **traditional or religious practices**.



End discrimination and stigmatisation of drug users.



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

Distinguished Delegates,

Report A/HRC/39/39 includes several findings and recommendation with regard to other issues; such as gender, youth, children, vulnerable members of society and communities; law enforcement, alternative development and measuring the data on drug policy from human rights perspective. I will reflect on these issues in forthcoming intersessional meetings.

However, let me make three general but crucial points regarding role of different stakeholders.

- **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. In this regard, the report recommended that 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.
- 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 report recommended that 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.
- 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 report recommended that civil society organizations should be protected from any intimidation, threat, harassment or reprisal.

Thank you, Madam Chair.