



**61st Session of the Commission on Narcotic Drugs
4th intersessional meeting:
Thematic Discussion on Supply Reduction and Related Measures**

**22 October 2018
Vienna International Centre**

Statement delivered by

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***Madam Chair,
Excellencies,
Friends and colleagues,***

The Office of the High Commissioner for human rights thanks the Commission on Narcotic Drugs and its Secretariat for inviting the Office to participate at today's intersessional meeting on "preparations for the ministerial segment to be held during the 62nd session of the CND".

At today's intersessional meeting, we are discussing issues related to supply reduction and related measures. In this context, in my presentations I will focus on two issues related to the supply reduction. They are:

- (i) Effective law enforcement and human rights
- (ii) International cooperation in extradition and mutual legal assistance and human rights

(i) Effective law enforcement and human rights

In the outcome document of UNGASS 2016, all States committed themselves to effective drug-related crime prevention and law enforcement measures. It is also a firm commitment of Member States "to respect, protect and promote 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"

While fully recognizing the importance of addressing the serious challenges posed by drug-related offences, OHCHR strongly believes that the most effective manner of addressing drug-related offences is through strengthening the rule of law, ensuring an effective law enforcement and justice system and reducing drug use by adopting a strong public health approach to prevention, harm reduction and other forms of health care and treatment in accordance with international human rights standards.

The drug problem may challenge the adequacy of traditional law enforcement measures in some contexts, and State may need to apply exceptional law enforcement measures in tackling this problem.¹ However, no measure should violate human rights. Compromising on human rights has proven corrosive to the rule of law and conducive to a climate of impunity, and may undermine the effectiveness of any law enforcement measure, and thereby contribute to greater instability in the society. Such compromise can further foster a regime of impunity infecting the whole justice sector and reaching into whole societies, invigorating the rule of violence rather than of law; eroding public trust in public institutions; breeding fear and leading people to despair.²

Madam Chair,

In her recent report to the Human Rights Council, the High Commissioner for Human Rights stated that "the "war on drugs" approach in many States has cost the lives of thousands of people and caused serious human rights violations. In recent years, there have been some

¹ Report of the Special Rapporteur Extrajudicial, summary or arbitrary executions, E/CN.4/2006/53

² <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21593&LangID=E>

alarming tendencies towards a deeper security responses, including militarization of drug law enforcement, by States to counter drug-related crimes. In some instances, this is associated with the progressive militarization of civilian police forces, or allowing specialized police units- mostly composed of the military personnel, to deal with the situation.³

Excessive use of force is more likely to occur when military or special security forces are involved in drug operations. In fact, such militarization process in the “war on drugs” had reportedly led to an increase in excessive use of force and in levels of impunity, and a record number of human rights violations.⁴

Such heavy-handed-security approaches in the drug law enforcement have also disproportionately affected vulnerable groups.⁵ The World Drug Report 2018 reported that globally women who use drugs face significant stigma and discrimination; and also face high levels of violence or harassment from law enforcement officers.⁶

In several States, the people of African descent are disproportionately affected by excessively punitive drug policies and law enforcement efforts. Racial profiling in many countries has made people of African descent a targeted group in the so-called “war on drugs”. The United Nations Working Group of Experts on People of African Descent 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.⁷ Discriminatory nature of the law enforcement measures discredits the justice system and undermines the Sustainable Development Goals 10⁸ and 16⁹.

Madam Chair,

One of the key human rights concerns with regard to law enforcement measures is that some States have adopted a “shoot-to-kill” policy. This policy led to loss of hundreds to thousands lives in many States.

In recent years there have been a number of high-profile pronouncements by officials, sometimes infrequently at the most senior level of Government, that they have given orders for the police or the military to “shoot to kill”, to “shoot on sight”, or to use the “utmost force” in response to the perceived epidemic of drug abuse. But the rhetoric of shoot-to-kill and its equivalents poses a deep and enduring threat to human rights-based law enforcement approaches. The rhetoric of shoot-to-kill serves only to displace clear legal standards with a vaguely defined licence to kill, risking confusion among law enforcement officers, endangering

³ For further information see A/HRC/39/39 – the Report of the High Commissioner on Implementation of the joint commitment to effectively addressing and countering the world drug problem with regard to human rights, September 2018.

⁴ For example see www.oas.org/es/cidh/informes/pdfs/mexico2016-es.pdf.

⁵ See A/HRC/39/39, paragraphs 26-33

⁶ 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.

⁷ See 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.

⁸ Especially Target 10.2: “empower and promote the social, economic and political inclusion of all, irrespective of age, sex, disability, race, ethnicity...” See also http://www.globalcommissionondrugs.org/wp-content/uploads/2018/09/ENG-2018_SDGPaper_WEB.pdf, page 6

⁹ SDG 16 – Peace, justice and strong

innocent persons, and rationalizing mistakes, while avoiding the genuinely difficult challenges that may have posed by the relevant threat.¹⁰

In accordance the *United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*¹¹, for lethal force to be considered lawful it must be used in a situation in which it is necessary for self-defence or the defence of another's life. The State's legal framework must thus "strictly control and limit the circumstances" in which law enforcement officers may resort to lethal force. Non-lethal tactics for capture or prevention must always be attempted if feasible. No derogation is permitted from the right to life¹² and none is needed.

In addition to the legal arguments, it should also be noted that the consequences of mistakenly killing innocent persons on the basis of shoot-to-kill policies are potentially highly counter-productive. They include a loss of public confidence in the law enforcement officials, damage to community relations where a particular community has been effected by the drug problem and an undermining of the willingness of members of the relevant community to cooperate with the law enforcement services in the future.

The UN Special Rapporteur on Extrajudicial, summary and arbitrary execution recommended that the use of lethal force by law enforcement officers must be regulated within the framework of human rights law. The rhetoric of shoot-to-kill should never be used. It risks conveying the message that clear legal standards have been replaced with a vaguely defined licence to kill.¹³

(II) International Cooperation: extradition and mutual legal assistance

Madam Chair,

Now I will turn to the second issue i.e. international Cooperation, in particular extradition and mutual legal assistance

UNGASS Outcome Documents recommended States to strengthen regional, sub regional and international cooperation in criminal matters, as appropriate, including judicial cooperation in the areas of, inter alia, extradition, mutual legal assistance and transfer of proceedings, in accordance with the international drug control conventions and other international legal instruments and national legislation.¹⁴ In this regard, it is also important to mention that the 2009 Political Declaration and the Plan of Action also mentioned this and recommended to "advance cooperation in the areas of extradition, mutual legal assistance and law enforcement, consistent with relevant and applicable international human rights obligations."¹⁵

The international human rights law prohibits return or transfer of an individual to a jurisdiction where he or she faces a real risk of being subjected to a violation of the right to life or torture, inhuman and degrading treatment. These prohibitions are absolute and cannot be derogated from in any circumstances. Moreover, the protection against expulsion in international human rights law,

¹⁰ See Report of the Special Rapporteur E/CN.4/2006/53

¹¹ Available at : <https://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>

¹² Human Rights Committee, general comment No. 29, "Derogations from provisions of the Covenant during a state of emergency" (2001), paragraph 15.

¹³ see E/CN.4/2006/53

¹⁴ Paragraph (i) of Chapter 3

¹⁵ Paragraph 54 (e)

In accordance with article 3 of the Convention against Torture, “[n]o State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture”. It adds that “[f]or the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights”.

In accordance with Article 16 (1) of the International Convention for the Protection of All Persons from Enforced Disappearance, “[n]o State Party shall expel, return (“refouler”), surrender or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance”.

Other human rights treaties do not explicitly enshrine the non-refoulement principle, but it has been derived from the prohibition of torture, for instance in article 7 of ICCPR and article 3 of ECHR. In General Comment No. 20, addressing the prohibition on torture, cruel treatment or punishment under article 7 of ICCPR, the Human Rights Committee observed that “states parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement”.¹⁶

The United Nations Working Group on Arbitrary Detention has issued a legal opinion on “Preventing Arbitrary Detention in the Context of International Transfer of Detainees, in particular in counter terrorism”. The Working Group states that Governments should (in addition to the risk of torture) “include the risk of arbitrary detention in the receiving State per se among the elements to be taken into consideration when asked to extradite, deport, expel or otherwise hand a person over to the authorities of another State, particularly in the context of efforts to counter terrorism. To remove a person to a State where there is a genuine risk that the person will be detained without legal basis, or without charges over a prolonged time, or tried before a court that manifestly follows orders from the executive branch” would be incompatible with international human rights obligations.¹⁷

International legal instruments also enshrine the principle of non-discrimination in the context of extradition and mutual legal assistance. They provide that where a State receiving an extradition or mutual legal assistance request has “substantial grounds” to believe that this request is made for discriminatory reasons, it shall not be obliged to comply with the request.

Extradition and mutual legal assistance in the death penalty cases

A wide range of drug-related offences are punishable by death, in over 30 countries. 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”, i.e. intentional killing. The Human Rights Committee has consistently stated that drug-related offences do not meet the threshold of “most serious crimes”.¹⁸

¹⁶[www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/a\)GeneralCommentNo20Prohibitionoftortureorothercruelinhumanordegradingtreatmentorpunishment\(article7\)\(1992\).aspx](http://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/a)GeneralCommentNo20Prohibitionoftortureorothercruelinhumanordegradingtreatmentorpunishment(article7)(1992).aspx)

¹⁷ Report of the Working Group on Arbitrary Detention, A/HRC/4/40, paragraphs 38-58

¹⁸ See CCPR/C/PAK/CO/1, CCPR/C/THA/CO/2 and CCPR/C/KWT/CO/3

In accordance with international human rights law, countries that have abolished the death penalty may not remove, either by deportation or extradition, individuals from their jurisdiction if it may be reasonably anticipated that they will be sentenced to death, without ensuring that the death sentence would not be carried out.

Drawing from international human rights law and jurisprudence, in his report to the General Assembly on “moratorium on the death penalty”, the United Nations Secretary-General recommended that the “States that have received an extradition request on a capital charge should reserve explicitly the right to refuse extradition in the absence of effective and credible assurances from relevant authorities of the requesting State that the death penalty will not be carried out. The requesting States should provide and respect such effective and credible assurances, if requested to do so”.¹⁹

Abolitionist countries should also refuse mutual legal assistance where the proceedings in the requesting country could result in the imposition of capital punishment. There are several ways whereby the provision of assistance by a State might contribute to the use of the death penalty in the receiving State. Examples include, but are not limited to: (a) the provision of, inter alia, intelligence and evidence in a specific case; (b) the ongoing provision of resources to tackle transnational crimes such as drug-trafficking; (c) the provision of financial and technical support for strengthening rule of law institutions; and (d) the provision of chemical and other materials, which could be used for executions.²⁰

It is unquestionable that States have to cooperate with each other in various criminal matters. However, moral, political and legal dilemma merge when abolitionist States provide assistance to retentionist States, and that such assistance leads to the use of the death penalty. Even though the individual facing the death penalty in such cases may not be in the jurisdiction of the abolitionist State, such assistance may amount to complicity in the imposition of the death penalty, and will engage the responsibility of the abolitionist State under Article 16 of the International Law Commission’s Articles on State Responsibility.²¹

Madam Chair,

The joint commitment to effectively addressing and countering the world drug problem is a call for action, but not to any action: according to the world’s leaders there are other ways, better ways; evidence-based, scientific ways, of combating drug abuse and trafficking – ways that do not make matters worse. In a few weeks’ time, the Universal Declaration of Human Rights turns 70. This anniversary provide a unique opportunity to reflect on and strengthen the relationship between drug control efforts and human rights.

Thank you.

¹⁹ See A/69/288, paragraph 68

²⁰ See the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, submitted in accordance with Assembly resolution 65/208 (A/65/275, paragraph 79-86)

²¹ See article 16 of the draft articles on responsibility of States for internationally wrongful acts, prepared by the International Law Commission.