



**63rd Session of the Commission on Narcotic Drugs
2-6 March 2020,
Vienna International Centre**

**Item No. 3: General Debate
3 March 2020**

Statement delivered by

**Leigh Toomey
Vice Chair
Working Group on Arbitrary Detention**

Dear Chair,

Excellencies

Distinguished delegates

On behalf of the United Nations Working Group on Arbitrary Detention, I thank the Commission on Narcotic Drugs for inviting the Working Group to speak under item 3 of the General Debate of the 63rd session of the Commission.

The Working Group welcomes the commitment of UN 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”.¹

In the 2019 Ministerial Declaration, UN Member States expressed concern regarding responses to the world drug problem that are “not in conformity with applicable international human rights obligations”. Such responses represent “a challenge to the implementation of joint commitments of States based on the principle of common and shared responsibility”.²

Punitive drug policies continue to be used in many States, despite being ineffective in reducing drug trafficking or addressing non-medical drug use and supply. Such policies have resulted in the widespread use of arbitrary detention in the context of drug control.

Evidence shows that the so-called “war on drugs” has failed to address the drug problem. Abusive, repressive, and disproportionate drug control policies and laws are counterproductive, while also violating human rights, undercutting public health, and wasting vital public resources.

¹ Ministerial Declaration on “Strengthening our actions at the national, regional and international levels to accelerate the implementation of our joint commitments to address and counter the world drug problem”, 14 March 2019, Vienna; UNGASS Outcome Document 2016, Chapter 4.

² Ibid, page 3.

Dear Chair,

The former Commission on Human Rights established the mandate of the Working Group on Arbitrary Detention in March 1991 to investigate cases of detention imposed arbitrarily or otherwise inconsistently with the international standards in the Universal Declaration of Human Rights (UDHR) or in the international legal instruments accepted by the States concerned.³

In determining whether deprivation of liberty is arbitrary, the Working Group refers to five categories outlined in its Methods of Work, namely: 1) when it is impossible to invoke any legal basis justifying the deprivation of liberty; 2) when the deprivation of liberty results from the exercise of certain rights guaranteed by the UDHR or the International Covenant on Civil and Political Rights; 3) when the right to fair trial has been seriously violated; 4) when asylum-seekers, immigrants or refugees are subjected to prolonged administrative detention without the possibility of administrative or judicial review; and 5) when the deprivation of liberty constitutes a violation of international law on the grounds of discrimination of any kind.

In fulfilling its mandate, the Working Group adopts opinions on alleged cases of arbitrary detention brought to it from individuals around the world; conducts country visits at the invitation of the relevant Government; addresses communications to Governments on allegations involving arbitrary detention; develops deliberations on topics concerning arbitrary detention, and carries out follow-up of the implementation of its opinions.

In 2015, in its annual report to the Human Rights Council (A/HRC/30/36), the Working Group noted with concern the 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 occurs across criminal and administrative settings, particularly when procedural safeguards are absent, causing a

³ UNCHR Res 1991/42, Question of Arbitrary Detention, 5 March 1991, E/CN.4/RES/1991/42, para 2.

disproportionate impact on women, children, minority groups and people who use drugs.

The Working Group has also expressed concern about the frequent use of various forms of administrative detention that entail restrictions on fundamental rights. In particular, detention imposed to control people who use drugs, especially when framed as a health intervention, can lead to involuntary commitment or compulsory drug treatment that is inconsistent with the international drug control conventions and international human rights law.

In September 2019, the Human Rights Council, in its resolution 42/22, requested the Working Group to prepare a study on “arbitrary detention relating to drug policies to ensure that upholding the prohibition thereon is included as part of an effective criminal justice response to drug-related crimes, in accordance with international law, and that such a response also encompasses legal guarantees and due process safeguards”.

Dear Chair,

In the outcome document of the thirtieth special session of the General Assembly on the World Drug Problem in 2016 (UNGASS 2016), 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**” (recommendation (o), chapter 4).

In 2019, on the occasion of the High-Level Ministerial Segment of this Commission, the Working Group issued a statement that outlined measures that States may consider to prohibit arbitrary arrest and detention in the context of drug control efforts.

I will briefly highlight some of those measures.

- The absolute prohibition of arbitrary deprivation of liberty and the safeguards to prevent it apply to everyone, including for those arrested, detained or charged with drug-related offences, as well as for those undergoing compulsory rehabilitation programs for drug addiction. States must take immediate measures to address all instances of arbitrary detention as a consequence of drug control laws and policies.
- 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 sentences, frequent delays in the judicial system, poor monitoring of inmate status and release entitlements, and the failure to grant parole. States should consider measures to ease overcrowding including alternatives to detention, such as diversion, community service, and administrative and monetary sanctions.
- The principle of proportionality must continue to be a guiding principle in drug-related matters. Criminalization of drug use or consumption and minor drug offences should be avoided by all States. In order to meet the requirement of proportionate sentencing, States should revise their penal policies and drug legislation with the aim of reducing minimum and maximum penalties. These measures can contribute to implementation of the 2030 Sustainable Development Goals.
- During the criminal justice process, members of vulnerable and marginalized groups who use drugs, people of African descent, indigenous peoples, persons with disabilities, and lesbian, gay, bisexual, transgender and intersex (LGBTI) persons often face discrimination, including arbitrary arrest and detention. States should prohibit discriminatory practices in the arrest and detention of all individuals, including during drug control efforts.

- Evidence shows that "treatment" in many treatment centers includes painful, unmedicated withdrawal, beatings, military drills, verbal abuse, and sometimes scientific experimentation without informed consent. Forced labor, without pay or at extremely low wages, is used as "rehabilitation," with detainees punished if work quotas are not met. These abuses are flagrant violations of the right to be free from torture, cruel, inhuman, or degrading treatment and punishment and the right to health. Reported human rights abuses in drug rehabilitation centers ("rehab"), run by private individuals or organizations in many countries, are a disturbing development that must be investigated and remedied.

- Denial of medical treatment and/or the absence of access to medical care in custodial settings may constitute cruel, inhuman or degrading treatment or punishment. Equally, subjecting persons to treatment or testing without their consent may constitute a violation of the right to physical integrity. Such practices must be eliminated.

Dear Chair,

As mentioned earlier, the Working Group was requested by the Human Rights Council in September 2019 to prepare a study on "arbitrary detention relating to drug policies." The Working Group will submit a report on the study to the Council at its forty-seventh session in 2021. We will also bring the report to the attention of this Commission.

In early 2020, the Working Group initiated consultations with States, international and regional organizations, including UN agencies, in particular UNODC, and civil society organizations. All stakeholders are invited to submit information, including by responding to a questionnaire available on the Working Group's website, by 1 April 2020.

Through the study, we expect to provide further guidance to States on practical measures to prohibit arbitrary arrest and detention in the context of drug policy.

Dear Chair,

In concluding, we acknowledge that the cross-cutting approach of UNGASS 2016 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 UN system, including human rights, peace and security and the Sustainable Development Goals.

Within its mandate, the Working Group on Arbitrary Detention stands ready to support States and other stakeholders, including civil society organisations and affected communities, in promoting and protecting human rights while addressing the drug problem, and in implementing the human rights commitments in the Outcome Document UNGASS 2016 and 2019 Ministerial Declaration.

Thank you.