



Joint Open Letter by the UN Working Group on Arbitrary Detention; the Special Rapporteurs on extrajudicial, summary or arbitrary executions; torture and other cruel, inhuman or degrading treatment or punishment; the right of everyone to the highest attainable standard of mental and physical health; and the Committee on the Rights of the Child, on the occasion of the United Nation General Assembly Special Session on Drugs

New York, 19-21 April 2016

15 April 2016

Excellency,

We have the honour to address you in regard to the upcoming General Assembly special session on the world drug problem convening on 19-21 April 2016. We have been following the preparatory process closely since the adoption of Human Rights Council resolution 28/28 and General Assembly resolution 70/181, and the subsequent discussions and negotiations around the existing draft outcome document.

We have welcomed the opportunity to contribute towards this preparatory process and view the UNGASS as an important occasion to reflect upon the achievements and challenges of international drug control, and its impact upon the enjoyment of human rights and fundamental freedoms. The UNGASS is also a vital moment to make bold commitments that ensure the promotion and protection of human rights is central to the development of the upcoming 2019 Political Declaration and Plan of Action on drugs.

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To: H.E. Mogens Lykketoft
President of the UN General Assembly

Cc: Mr. Yury Fedotov
Executive Director
United Nations Office on Drugs and Crime

Secretariat to the Governing Bodies
Division for Treaty Affairs
United Nations Office on Drugs and Crime

As human rights experts of the United Nations system, we are encouraged by the presence of human rights language and standards throughout the current outcome document, which is an important acknowledgment that human rights is central to international drug control. However, in our opinion, the text fails to sufficiently articulate the binding nature of human rights obligations in the context of international drug control and continues to embrace the harmful concept of a ‘drug-free world’. While specific human rights content could not be agreed during the closed negotiations and is thus absent from the outcome document, we would like to remind States that they remain legally bound by their obligations to respect, protect, and fulfil human rights including while developing and implementing their responses to drugs.

As highlighted by the recent ‘Study on the impact of the world drug problem on the enjoyment of human rights’, presented by the UN High Commissioner for Human Rights, policy harms and related barriers to the protection and fulfilment of human rights, such as criminalisation and over-investment in law enforcement, must be reassessed in a meaningful and inclusive way. Any acknowledgement of the need for this vital policy reflection remains absent from the outcome document in its current form.

Throughout our respective mandates, we have examined the human rights impact of international drug control and remain deeply concerned that existing policy approaches contribute to an environment of increased human rights risk, and in many cases, can fuel widespread and systemic abuses.¹ The UNGASS is an important occasion to shine a spotlight on some of these critical issues:

The death penalty for drug offenses, the use of lethal force, and arbitrary executions

Recalling the consistent findings of the UN Human Rights Committee, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, the Special Rapporteur on Torture, and other mandate holders, we would like to reiterate that the death penalty for drug offences does not meet the threshold of ‘most serious crimes’ for the purposes of the International Covenant on Civil and Political Rights.

We again add our voices to calls by the UN Secretary General, the International Narcotics Control Board, and many Member States for the abolition of the death penalty for drug offences. We express our collective disappointment that many States have failed to bring their national policies into accordance with this standard. Despite the political silence in reference to the death penalty in the outcome document, the application of capital punishment for drug-related offenses directly contravenes international human rights law and we urge States to make immediate commitments towards its full abolition.

The arbitrary deprivation of life is not limited to judicial executions and extends to summary executions by military and police, and the unnecessary use of lethal force in the context of drug enforcement. Even though the current outcome document falls short in sufficiently addressing the use of force, States are reminded that they must adhere to international human rights law and existing standards with regard to the use of force in all anti-drug operations. While we welcome the commitment articulated in the outcome document to prevent and reduce drug-related violence, we are seriously concerned that drug enforcement policies can contribute to and worsen violent criminal drug

1 Open Letter by the Special Rapporteur on the right of everyone to the highest attainable standard of mental and physical health, Dainius Pūras, in the context of the preparations for the UN General Assembly Special Session on the Drug Problem (7 December 2015); Concluding Observations of the Committee on the Rights of the Child, Ukraine, CRC/C/UKR/3-4 (2011) para 60; Report of the Working Group on Arbitrary Detention A/HRC/30/36 ; Julie Hannah et al, ‘Human Rights, Drug Control, and the UN Special Procedures’ (International Centre on Human Rights and Drug Policy, 2015)

markets within which homicides increase significantly. We call on States to make bold commitments towards the reduction of violence related to drug enforcement through the strengthening of human rights protections and the rule of law.

Criminalisation

The criminalisation of drug consumption and possession for personal use has contributed to a range of negative consequences for the health, security, and human rights of individuals and communities across the globe. There is clear evidence that criminalisation drives those most in need away from vital health interventions or places them in prison with significant implications for public health.² Worldwide, criminalisation has fuelled incarceration rates, contributing to overcrowded prisons and overtaxed criminal justice systems, placing individuals at increased risk of arbitrary detention and inhuman or degrading treatment while incarcerated. Treating low level drug possession for personal use as a criminal act intensifies discrimination by placing individuals in increased conflict with the law, which negatively affects their chances for employment, education and other opportunities for social inclusion.

In many parts of the world, drugs have been used as grounds to police poor, racial and ethnic minority communities in grossly discriminatory ways, with negative consequences for public safety and community well-being. Equally, drug convictions disproportionately impact minority communities and women, with sentencing regimes out of step with international human rights standards.³ In addition, the social exclusion and stigma experienced by women involved with drugs places them at increased risk for sexual violence and physical abuse at the hands of both private and State actors.

In recent years, States have explored decriminalisation regimes as a means to improve the safety and well-being of their communities, with documented, positive outcomes for health and public safety. In keeping with these domestic policy successes, and with the recommendations of United Nations agencies⁴ and as a step towards the fulfilment of the right to health, drug use and possession should be decriminalized and depenalized. This should be accompanied with increased investment in treatment, education, and other interventions as discussed further below. Within the scope of our respective mandates, we will continue to examine the ways in which criminalisation acts as a barrier to the full and effective realisation of human rights and encourage States to prioritise this discussion in the post-UNGASS era.

Incarceration and arbitrary detention

As previously mentioned, drug enforcement fuels rising incarceration rates and overburdened criminal justice and prison systems are unable to guarantee essential human rights safeguards or provide acceptable standards of care and living in both pre and post-conviction environments. Conditions such as overcrowding, denial of essential medical services—including harm reduction—create an environment where torture or cruel, inhuman, and degrading treatment is more likely to

2 Special Rapporteur on the right to health A/65/255

3 Report of the Working Group on Arbitrary Detention A/HRC/30/36; Special Rapporteur on Violence Against Women A/HRC/17/26/Add.5

4 WHO, Consolidated guidelines on HIV prevention, diagnosis, treatment and care for key populations, 2014; UNDP, Addressing the Development Dimensions of Drug Policy, 2015

occur.⁵ Likewise, arbitrary detention for drug use or drug related offences may occur across criminal and administrative settings, particularly when procedural safeguards are absent.⁶

We welcome the unequivocal commitment to take practical measures to uphold the prohibition of arbitrary detention, and torture and all forms of cruel, inhuman and degrading treatment in the pursuit of criminal justice within the current outcome document. This political commitment paves the way towards bold new reforms for domestic criminal justice systems in the post-UNGASS decade.

While the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances allows for alternatives to conviction and punishment for some offenses, it is essential to underline that conviction and punishment are late stages in the criminal justice process, and of no help to those in pre-trial detention, where individuals face increased risk for human rights abuses, particularly where procedural guarantees are absent.⁷ Within the scope of our respective mandates, we will continue to monitor the ways in which the pursuit of drug control through the administration of justice interacts with the full spectrum of human rights guaranteed to those who come into conflict with the law for drug offenses.

Some of the most egregious forms of human rights abuses take place in compulsory drug detention centres administered by both State and non-State actors. During its country visits, the Working Group on Arbitrary Detention has noted worrisome instances of arbitrary detention in the context of compulsory confinement of drug users and people who are suspected of using drugs. We stress that compulsory detention regimes and forced labour are not scientifically valid means to treat drug dependence thus inherently arbitrary.⁸ Drug consumption or dependence is not sufficient justification for detention. Involuntary confinement of those who use or are suspected of using drugs should be avoided.⁹ In this connection, we wish to reiterate our previous calls, and support those of other UN independent experts, and UN agencies for the closure of all compulsory drug detention and rehabilitation centres. These centres are not only manifestly contrary to human rights law and standards but have proven ineffective in the treatment of drug dependence. The UNGASS must serve as a platform for setting targets for the closure of such centres.

We are further concerned about the use of criminal detention as a measure of drug control following charges for drug use, possession, production and trafficking. Legal standards established by a variety of regional and international human rights instruments for detention based on criminal grounds, including minimum procedural guarantees, apply equally in cases of criminal detention for drug-related offences. Criminal laws and penal measures pursued under the existing punitive system of international drug control raise important questions of legality, proportionality, necessity and appropriateness.¹⁰

5 Report of the Special Rapporteur on Torture, Mission to Kazakhstan A/HRC/13/39/Add.3, para 85; See also Report of the Special Rapporteur on Torture A/68/295, para 68

6 A/HRC/30/36, para.58

7 Annual Report of the Working Group on Arbitrary Detention A/HRC/30/36 para 62

8 See United Nations Office on Drugs and Crime and World Health Organization, "Principles of drug dependence", p.15.

9 A/HRC/30/36, para.60

10 A/HRC/30/36, para.61

Funding of punitive models

A common critique of the current international system of drug control is the unequal policy investment in law enforcement at the expense of socio-economic development and public health interventions.¹¹ Over the years, this has given rise to expansive, powerful, and entrenched domestic law enforcement machineries that have failed to achieve discernible progress in reducing the availability of illicit drugs.

At the international level, funding assistance and cooperation remains disproportionately weighted towards law enforcement efforts and technical assistance to restrict the availability of controlled drugs on the illicit market. These policy priorities reinforce highly punitive models of responding to drugs that place communities at increased risk of human rights abuses, particularly when carried out by militarised police forces, and prevents socio-economic and health investments that pave the way for more effective realisation of rights. Donor States and United Nations agencies are at risk of being complicit to human rights violations in their support of highly punitive drug enforcement models through international cooperation. In some cases, direct links between these programmes and human rights abuses have been documented.

The UNGASS is an important opportunity to confront this policy imbalance and make bold commitments to redirect funding towards programmes that enable individuals and communities to realise their full range of freedoms and entitlements guaranteed to them under the international bill of rights.¹² As part of their obligations toward the right to health, States must commit maximum available resources towards ensuring access to affordable and quality health services, which includes access to essential medicines, palliative care, comprehensive drug prevention education, drug treatment, and harm reduction. This legal requirement is of immediate effect and States must take concrete and targeted measures to progressively fulfil this obligation. Given the current state of funding for evidence-based drug-related health services, scaled up investment is essential.

Access to evidence based treatment for drug dependence

The right to health requires that drug dependence treatment be available, accessible, acceptable (culturally, for women, for children and other key populations), and of sufficient quality, meaning voluntary and based on the best available evidence. We welcome the commitment in the outcome document to ensuring international treatment standards are integrated into national drug treatment strategies.

People experiencing drug dependence have different and complex needs, which require a wide range of diverse options and are more effectively addressed when those concerned can participate in the design, delivery and assessment of their treatment. The views and input of people who are drug dependent into their own treatment is essential for a successful outcome.

While the current outcome document references informed consent in the delivery of treatment, the language is weak and fails to acknowledge that informed consent is a legal requirement

¹¹ Report by the Executive Director of the United Nations Office on Drugs and Crime as a contribution to the review of the twentieth special session of the General Assembly 'Making drug control 'fit for purpose': Building on the UNGASS decade', E/CN.7/2008/CRP.17 p 10

¹² The Case for a Harm Reduction Decade: progress, potential, and paradigm shifts (Harm Reduction International, March 2016)
http://www.ihra.net/files/2016/03/10/Report_The_Case_for_a_Harm_Reduction_Decade.pdf

to safeguard against torture or other forms of inhuman or degrading treatment in healthcare settings.¹³ Moreover, under the right to health, the obligation to provide acceptable drug treatment services legally requires informed consent and the right to refuse treatment.

Access to controlled medicines

International human rights law places particular and explicit emphasis on the obligation of States to guarantee a number of relevant health and health-related services to ensure the dignity of the individual, guard against inhuman or degrading treatment, prevent mortality, and ensure the highest attainable standard of health.¹⁴ This includes the provision of essential controlled medicines for the management of pain, including in palliative care, the treatment of drug dependence, and other conditions, affecting adults and children alike across the globe.

Despite this obligation, approximately four fifths of the world population, overwhelmingly in the global south, lack sufficient access to opiates for the medical management of pain. Access to opioid substitution therapy medications for the treatment of drug dependence is dangerously low worldwide, contributing to a situation in which global HIV targets will be missed by decades.

We welcome the attention given to this global health crisis in the current outcome document, but wish to emphasize that the current operational recommendations fail to confront how stigma and fear of addiction impedes access to these medicines. Research by the International Narcotics Board has clearly shown that fear of addiction and stigma is a significant barrier to global access levels.¹⁵

Given the clear legal mandate within the drug treaties to ensure access to controlled medicines, and concurrent obligations under human rights law, we urge States and relevant UN drug control bodies to set targets for improving access on the ground by 2030, in line with the sustainable development goals.

Access to harm reduction measures

It has been ten years since the first Special Rapporteur on the right to health first called for the implementation of harm reduction programmes as part of State obligations under the right to health. Over the ensuing decade, this call has been repeated from a range of UN human rights mandate holders based upon the proven effectiveness of harm reduction programmes in preventing the transmission of blood borne viruses, and generally in promoting the health and dignity of people who use drugs.

The provision of harm reduction is not merely a policy option for States. Rather, the provision of these programmes for people who use drugs, including but not limited to the core UNODC/WHO/UNAIDS interventions, constitute a legal obligation as part of State obligations to progressively realize the right to health and to guard against inhuman or degrading treatment. Given the low priority assigned to harm reduction globally, reflected by the low levels of funding and implementation in communities and prisons, we urge States to rebalance spending within national drug control budgets, scaling up investment towards harm reduction programmes.

¹³ Report of the Special Rapporteur on Torture A/HRC/22/53, para 42;

¹⁴ Report of the Special Rapporteur on Torture A/HRC/22/53, paras 54-56; Report of the Special Rapporteur on the right to health A/65/255, para 46

¹⁵ Report of the International Narcotics Control Board on the Availability of Internationally Controlled Drugs: Ensuring Adequate Access for Medical and Scientific Purposes, ¶ 97, U.N. Doc. E/INCB/2010/1/Supp.1

Reducing health harms and risks associated with drug use complements the underlying objectives of the drug control treaties, and we repeat previous calls for an action-oriented discussion of harm reduction at the UNGASS that includes target setting in key areas, including: the scale up of HIV-related harm reduction interventions, including in places of detention, to meet identified needs by 2030 in line with the sustainable development goals; and time bound targets for ensuring adequate coverage of naloxone access to reduce opiate overdose deaths.

The rights of the child

We welcome the focus on children and young people as a cross-cutting theme of the UNGASS and recognise the wide range of children's rights affected by drug use, the drug trade and repressive government policies across the drug market chain. While the current outcome document references the need for evidence-based education and child-appropriate prevention programmes, the document fails to explicitly address the needs of children incarcerated for drug crimes, children living in the streets, children experiencing drug-related violence, children involved in the drug trade, children in families coping with drug dependence, and children who already use drugs for whom services remain inadequate. Moreover, the acknowledged harms associated with drug use and involvement in the drug trade must be understood alongside State responses.

It is widely accepted that prevention is an important part of addressing drug use among children. However, too often what is meant as prevention turns into practices that are neither grounded in evidence nor in human rights. Human rights, and the right to health specifically, require that prevention be pursued through evidence-based interventions as well as accurate and objective educational programmes and information campaigns.¹⁶ International prevention standards have been developed by UNODC and we repeat our call for all States to agree to the timely and effective implementation of these standards.¹⁷ Prevention must be understood as one aspect of a comprehensive approach to ensuring the protection and promotion of children's rights, which also includes the provision of harm reduction and dependence treatment services. These strategies are mutually reinforcing, legally binding requirements to enable children to seek and access the services they are entitled to receive.¹⁸

One of the arguments used in support of the "war against drugs" and zero-tolerance approaches is the protection of children. However, history and evidence have shown that the negative impact of repressive drug policies on children's health and their healthy development often outweighs the protective element behind such policies, and children who use drugs are criminalised, do not have access to harm reduction or adequate drug treatment, and are placed in compulsory drug rehabilitation centres.

The UN Convention on the Rights of the Child has now been ratified or acceded to by 196 States and must serve as an important framework for considering these and other issues of vital importance to the effective realisation of human rights for all children.

¹⁶ Report of the Special Rapporteur on the right to health A/HRC/32/32 (forthcoming)

¹⁷ UN Office on Drugs and Crime. International standards on drug use prevention. Vienna

¹⁸ Report of the Special Rapporteur on the right to health A/HRC/32/32 (forthcoming)

A pivotal moment for the promotion and protection of human rights in international drug control

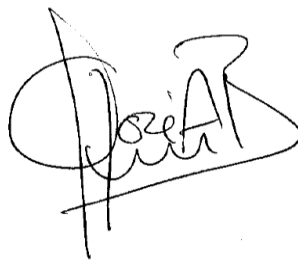
While we and our predecessors have repeatedly called for the integrated development of human rights and international drug control, this UNGASS is a pivotal moment to bring human rights and drug policy beyond Geneva and Vienna. And important progress has been made to that end. There has been serious engagement from the United Nations human rights machinery on drug control, with the Human Rights Council hosting its first high-level thematic panel on the human rights impact of the world drug problem. At this panel, the Office of the High Commissioner for Human Rights presented its first study on the issue, with robust and global participation by civil society. There is also now clear recognition from the UNGASS process that human rights are a thematic issue for international drug control.

It is vital that all stakeholders—States, civil society, the UN human rights institutions, and UN drug control institutions—build on this progress by taking concrete actions to operationalise human rights on the ground. Building a strong foundation for the new 10-year Political Declaration and Plan of Action for 2019 is an important means to concretise these commitments. As United Nations independent experts on human rights, it has become clear that our role in contributing towards these important political processes must continue. In the lead up to 2019, we will invigorate our attention to the intersection of drug policy within the scope of our mandates and working methods.

We would appreciate it if this document could be circulated amongst the participants at the Special Session. Please, kindly note that we will make it public through the media and our respective websites right before the session.

We thank you for taking the time to consider this letter and wish States, relevant UN agencies, and civil society organisations a fruitful and productive Special Session on the world drug problem.

Please accept, Excellency, the assurances of our highest consideration.

A handwritten signature in black ink, appearing to read 'Jose AR', with a large, stylized flourish underneath.

Chair-Rapporteur of the Working Group on Arbitrary Detention

A handwritten signature in blue ink, appearing to read 'Christof Heyns', with a large, stylized flourish underneath.

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions



Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment



Dainius Puras
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable
standard of physical and mental health



Benyam Dawit Mezmur,
Chair of the UN Committee on the Rights of the Child

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The UN Committee on the Rights of the Child is one of the 10 committees of independent experts, known as Treaty Bodies, that monitor implementation by States parties of the core international human rights treaties adopted by the UN General Assembly. A State that ratifies a treaty is thereby agreeing to be subject to periodic review. Committee members are not UN staff but human rights experts nominated and elected for fixed renewable terms of four years by State parties. However, they are independent from any government or organization. They serve in their individual capacity and do not receive a salary for their work. Under what are known as the Addis Ababa guidelines, a member does not participate in the review of his or her own country. For more information, log on to: <http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx>