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Submission to the Office of the High Commissioner on Human Rights regarding the report on drug policy and human rights (implementation of Resolution A/HRC/28/L.22)

Since 2010, when the Global Commission on Drug Policy (GCDP) was formed with the purpose of bringing an informed, science-based discussion about humane and effective ways to reduce the harm caused by drugs to people and societies, we have advocated for greater coherence across all UN entities. We are pleased to note increased engagement by the United Nations Development Program, the World Health Organization, the Joint United Nations Programme on HIV/AIDS and others to ensure a more comprehensive and integral understanding of the drugs issue and drug policy. With the adoption of Resolution A/HRC/28/L.22 at the Human Rights Council, we are gratified to see the High Commissioner on Human Rights bringing his voice to the debate in anticipation of the United Nations General Assembly Special Session on the World Drug Problem (UNGASS) to be held in April 2016.

By the present, we are pleased to submit, in accordance with your call for contribution to your upcoming report on drug control policies and human rights as stated by resolution A/HRC/28/L.22, the relevant information we have gathered regarding drug policy and human rights and suggest a series of recommendations that we hope can be shared by the Office of the High Commissioner on Human Rights (OHCHR).

The Global Commission on Drug Policy was formed on the basis of two experiences of drug policies, and with the highest level players of these two experiences. The first experience was that of the history of violence, threat to democracy and to the rule of law in drug producing and transit countries in Latin-America. The second was the health-based approach discussed and implemented in the consuming countries in Western Europe. Convinced that the drug issue is multisectoral, that the interconnectedness between the drug trade, violence and corruption is a threat to sustainable livelihood and to people centered policies, the Commission condemned the 'war on drugs' and opened a public debate about an issue that tends to be surrounded by fear and misinformation.



The Global Commission is composed of 22 high-level, distinguished politicians, diplomats, entrepreneurs and intellectuals, including 8 former heads of state, former United Nations Secretary-General Kofi Annan and entrepreneur Sir Richard Branson. In the past four years, the Global Commission has produced four reports which emphasized promoting and respecting the human rights of people who use drugs and abolishing abusive practices carried out in the name of treatment – such as forced detention, forced labor, and physical or psychological abuse – which contravene human rights standards and norms or that remove the right to self-determination. Moreover, the Global Commission has built its research and its work on scientific evidence.

The Global Commission on Drug Policy believes that the Universal Declaration of Human Rights should be the corner stone of international cooperation and policies. All the treaties that rule this international cooperation refer to the Universal Declaration, implicitly or explicitly. The Single Convention on Narcotic Drugs is no exception, as it has as core purpose the “health and welfare of mankind”. Nevertheless, it is undeniable that the control and repression measures existing in the Single Convention represent several risks for the basic human rights of individuals and communities. These risks have been more visible in the last two decades, as the end of the illusion of a drug-free world has permitted the implementation of policies that are more pragmatic and more respectful of people’s dignity, especially the most vulnerable. Many countries renounced, de facto or de jure, death penalty. Here is some progress we recognize, without forgetting that most of capital punishments are still sentenced for drug-related offences. There are also many other opposite trends, of populations that suffer from extreme violence and from the destruction of their existential basis in zones of the ‘war on drugs’, punishments without a perspective of a social or economic reintegration burdening mostly youth, and the maintaining of death penalty in many places.

The Global Commission has developed, throughout its reports, a set of recommendations and conclusions that we would like to share with you following the rights the former High Commissioner for Human Rights has presented at the 53rd session of the Commission on Narcotic Drugs in March 2014. These fundamental rights should underpin all aspects of national and international drug control policies and are enshrined in the Universal Declaration of Human Rights and other treaties: the right to life, the right to health, torture and inhuman treatments, arbitrary detention, the right to equality and non-discrimination and the right of the child.

The right to life: The Global Commission condemns countries where drug offenders are subject to the death penalty, in clear contravention of international human rights law. As the former High Commissioner reminded it, article 6 of the International Convention on Civil and Political Rights indicates that countries that did not yet abolish death penalty can sentence it only for the ‘most serious crimes’ Although the death penalty for drug offences is illegal under international law¹ it

¹ Lines, R. (2007) *The Death Penalty for Drug Offences: A Violation of International Human Rights Law*, London. International Harm Reduction Association www.ihra.net/files/2010/07/01/DeathPenaltyReport2007.pdf, Accessed 08.07.14

is nevertheless retained by 33 countries. As a result of such offences, around 1,000 people are executed every year.²

- Governments should abolish or institute moratoriums on death penalty, especially for drug-related offences.

The right to health: The whole structure of the international drug control regime can be directly linked to the right to health. Health is inscribed in the preamble of the 1961 Single Convention on Narcotic Drugs as one of its two major objectives. Nevertheless it is this same right that is denied to people who use drugs, to those who suffer from addictions, to their families and their communities.

The Global Commission, since its first report in 2011 and to its latest recommendations, has strongly called for the prioritization of health and human rights when designing and implementing drug policies. The Global Commission also calls for the removal of the legal barriers, criminalization and stigmatization of drug users that often do not get access to information, prevention and treatment services. Other behaviors such as the obligation informing law-enforcement services in case of overdose or the creation of medical registries of people who use drugs constitute serious impediments to saving lives.

We have produced two technical reports in the past, one on the impact of drug control policies on the hidden and silent epidemic of Hepatitis C (HCV) among drug users, and the other on how prohibition fuels the HIV/AIDS epidemic. The global emphasis on drug law enforcement has led to mass incarceration of drug users in compulsory “drug detention centers,” particularly in countries where HIV and HCV are rapidly spreading among this population.³ Although these centers vary in their design and operation, reports consistently indicate that these facilities fail to offer evidence-based addiction treatment or HIV and HCV care. Documented cases of forced labor, torture and other human rights abuses are widespread in these settings.⁴ Despite recent criticism by a range of health and human rights organizations, as well as the United Nations and donor governments, compulsory drug detention centers continue to operate, especially in China and Southeast Asia.^{5,6}

² Harm Reduction International (2012) *The death penalty for drug Offences: Global Overview 2012 – Tipping the Scales for Abolition* www.ihra.net/files/2012/11/27/HRI_-_2012_Death_Penalty_Report_-_FINAL.pdf Accessed 08.07.14

³ Wolfe D, Carrieri MP, Shepard D. Treatment and care for injecting drug 38 users with HIV infection: a review of barriers and ways forward. *Lancet*, 2010; 376(9738): 355-366.

⁴ Jurgens R, Csete J. In the name of treatment: ending abuses in compulsory drug detention centers. *Addiction*, 2012; 107(4): 689-691.

⁵ The Vienna Declaration. <http://www.viennadeclaration.com>.

⁶ Parry J. Vietnam is urged to close drug detention centres after widespread abuse is discovered. *BMJ*, 2011; 343: d5739.

In addition to promoting the sharing of used syringes and other HIV risk behavior, punitive drug law enforcement measures create barriers to HIV testing and treatment. There are several ways the criminalization of drug use may hinder or prevent access to essential treatment for drug users infected with HIV. These barriers to treatment include stigma and discrimination within healthcare settings, refusal of services, breaches of confidentiality, requirements to be drug-free as a condition of treatment, and the use of registries that lead to denial of such basic rights as employment and child custody.^{7, 8} As a result, research has repeatedly shown that drug users have lower rates of antiretroviral therapy use and higher HIV/AIDS related-death rates.⁹ The lack of harm reduction services continues to be of great concern to the Global Commission.

Another major aspect of the right to health is the access to essential medicines and other substances controlled under the international and national drug regimes. One of the obligations of the Single Conventions is the availability of these substances for medical and scientific purposes. This obligation is far from being achieved, mainly because of the fear of diversion of these substances. This is how efficient sedatives, analgesics and anesthesia are unavailable to those who need them most. The lack of access to such medicines, especially for people with highly painful diseases, is not only a violation of the right to health but also an act of cruel and inhuman treatment.

We know it is time for national and international leadership. Within the United Nations system, key organizations, including the Joint United Nations Programme on HIV/AIDS and the World Health Organization, have remained on the sidelines while the war on drugs has fueled the HIV and HCV epidemics, and left billions of people in untreated pain due to over-restricted access to controlled medicines. Unfortunately, overwhelming evidence points to not just the failure of the drug control regime to attain its stated goals but also the horrific unintended consequences of punitive and prohibitionist laws and policies.

- Prevention, harm reduction and treatment strategies should be compliant with basic human rights, respond compassionately to the needs of the intended beneficiaries and be cost-effective,
- Governments should publicly acknowledge the importance of the hepatitis C epidemic and its significant human, economic and social costs, particularly among people who use drugs,

⁷ Wolfe D, Carrieri MP, Shepard D. Treatment and care for injecting drug 38 users with HIV infection: a review of barriers and ways forward. *Lancet*, 2010; 376(9738): 355-366.

⁸ Wood E, Kerr T, Tyndall MW, Montaner JSG. A review of barriers and facilitators of HIV treatment among injection drug users. *AIDS*, 2008; 22(11): 1247-1256.

⁹ Mathers BM, Degenhardt L, Ali H, et al. HIV prevention, treatment, and care services for people who inject drugs: a systematic review of global, regional, and national coverage. *Lancet*, 2010; 375(9719): 1014-1028.

- Governments should recognize that the goal of halving HIV transmission among people who inject drugs by 2015 is the target the less met, and scale-up the available, needed and efficient harm reduction services,
- Governments should recognize the crisis of access to controlled substances for pain relief and maintenance therapy, and adopt a plan of action to ensure the barriers to this access are lifted in compliance with the drug control framework,
- At an institutional level, the necessary realignment of the system towards the core health, human rights and security priorities of the UN can begin by recognizing the responsibility of WHO (and ensuring it is funded to fulfill its existing or expanded mandate).

Arbitrary detention, torture and inhuman treatments: Drug law enforcement has fueled a dramatic expansion of people in detention (prisons, pretrial detainees, people held in administrative detention). Many people are held in mandatory ‘drug detention’ centers, including some 235,000 people in China and South East Asia.¹⁰ The Global Commission has, in all its reports, noted the stigmatization and discrimination and recognized the use of torture tactics within treatment centers and the mass incarceration of people who use drugs. In addition, we have strongly highlighted that harm reduction services such as opioid substitution therapy are routinely denied to people in closed settings, as well as evidence-based prevention tools including sterile injecting equipment. The denial of such health services are also used to obtain declarations of guilt, resulting in painful withdrawal.

At the same time, abusive practices carried out in the name of treatment – such as forced detention, forced labor, physical or psychological abuse – that contravene human rights standards and violate the Universal Declaration of Human Rights; by subjecting people to cruel, and inhuman and degrading treatment can be stop by decriminalizing drug use. It is time to question what right states use to criminalize people that do not harm others, even if they take the risk to harm themselves.

- Focus on reducing the power of criminal organizations as well as the violence and insecurity that result from their competition with both one another and the state. Governments need to be far more strategic, anticipating the ways in which particular law enforcement initiatives, particularly militarized ‘crackdowns’, may often exacerbate criminal violence and public insecurity without actually deterring drug production, trafficking or consumption. Displacing illicit drug production from one locale to another, or control of a trafficking route from one criminal organization to another, often does more harm than good,

¹⁰ Amon, J.J., Pearshouse, R., Cohen, J.E. and Schleifer, R. (2014) ‘Compulsory drug detention in East and Southeast Asia: evolving government, UN and donor responses’, *International Journal of Drug Policy*, vol. 25, no. 1, pp. 13-20

- The goals of supply-side enforcement need to be reoriented from unachievable market eradication to achievable reductions in violence and disruption linked to the trafficking. Enforcement resources should be directed towards the most disruptive, problematic and violent elements of the trade – alongside international cooperation to crack-down on corruption and money laundering. Militarizing anti-drug efforts is seldom effective and often counterproductive. Greater accountability for human rights abuses committed in pursuit of drug law enforcement is essential.

The right to equality and non-discrimination: The Global Commission has continuously denounced policies that stigmatize and discriminate drug users. The penal sentencing against people with minor offences related to drugs puts at risk their most basic human rights, from parental rights to legal rights, and modifies irremediably their societal opportunities in the future, including employment.

We also attach the biggest importance to the right of ethnic minorities that are usually victims of the imposition of discriminatory policies and live in poverty. They are trapped between disproportionate actions by anti-drug law-enforcement services and the pressure of criminal organizations, the latter exploiting them as small mostly non-violent players in the drug trade market or the production of illicit substances. In the US, African Americans make up 13% of the population, yet they account for 33.6% of drug arrests and 37% of people sent to state prison on drug charges. Similar racial disparities have been observed elsewhere including the UK,¹¹ Canada¹² and Australia¹³.

- Governments should strongly avoid discrimination and racial profiling in their law-enforcement activities.

The rights of the child: As the former High Commissioner for Human Rights reminded, the Committee on the rights of the child asked that children who use drugs not to be subjected to criminal prosecution. The Global Commission has also consistently promoted adapted prevention for minors, and that they should be given clear and objective information on drugs, and harm reduction services and drug treatment should be available for them.

¹¹ Eastwood, N. Shiner, M. and Bear, D. (2013) *The Numbers In Black And White: Ethnic Disparities In The Policing And Prosecution Of Drug Offences In England And Wales*, London: Release www.release.org.uk/sites/release.org.uk/files/pdf/publications/Release%20-%20Race%20Disparity%20Report%20final%20version.pdf Accessed 18.06.14.

¹² Campbell, T. (2011) *Pros & Cons: A Guide to Creating Successful Community-Based HIV and HCV Programs for Prisoners (Second Edition)*, Toronto: Prisoners with HIV/AIDS Support Action Network www.pasan.org/Publications/Pros_&_Cons-2nd_Ed_2011.pdf Accessed 07.07.14

¹³ Australian Institute of Criminology (2012) *Australian crime: Facts and figures 2011* www.aic.gov.au/documents/0/B/6/%7B0B619F44-B18B-47B4-9B59-F87BA643CBAA%7Dfacts11.pdf Accessed 08.07.14.



We add that the long periods of imprisonment of women arrested for smuggling small quantities of drugs, usually women that are exploited by criminal organizations, deprive their children of the person who provides for their material and educational needs. Beyond, it is their whole family that is caught in a sequence with serious and severe consequences.

- Governments should offer minors honest and evidence-based information and prevention tools,
- Governments should offer minors harm reduction services, and decriminalize drug use among children and adolescents,
- Governments and health workers should ensure minors with medical conditions get access to essential medicines without over-emphasizing the risk of addiction, which leaves many of them without pain relief.
- Governments should consider proportionate sentencing and alternatives to imprisonment for women in order to protect their families and children.

We thank you for this opportunity to submit our recommendations for your upcoming report on human rights and drug control policy. We look forward to a continued collaboration with OHCHR and with the Human Rights Council.

Sincerely yours,