

*Contribution of FAAAT think & do tank for the
report of the High Commissioner on Human Rights
for the 39th session of the Human Rights Council,
pursuant to resolution HRC 37/42.*

57 years of Global and Systematic Human Rights violations in the name of "drug control"

Right to a
Remedy and Reparation
for Victims of
Gross Violations of
International
Human Rights Law.



*For Alternative
Approaches to Addiction
Think & do tank*



In the introduction of its *Joint commitment to effectively addressing and countering the world drug problem*, the 30th Special Session of the United Nations General Assembly¹ (UNGASS 2016) called for the "protection and respect for human rights and the dignity of all individuals in the context of drug programmes, strategies, and policies."

As the numerous contributions received by the High Commissioner from other non-governmental organizations from around the planet have stressed, the ratification by countries of the three international drug control Conventions has brought broad and generalized violations of an important number of fundamental rights. These breaches, severe and systematized, give relevance to the **Right to a remedy and reparation for victims of gross violations of international Human Rights law and serious violations of international humanitarian law**, as proclaimed by the UN General Assembly in 2005², for all the victims of excessive drug control policies that undermine human rights and dignity.

Despite the evidence before any policymaker *a minima* aware of the basic fundamental rights that govern international law, that the Preambles of the 1961 and 1971 Conventions – and particularly their opening sentences³ – establish health as an inalienable key to reading the operational measures of the Treaties, the **Right of everyone to the enjoyment of the highest attainable standard of physical and mental health** is by far the one that has been violated the most systematically by State Parties, in the name of the respect of international obligations derivating from the drug control Conventions.

Unfortunately, infringements to other Human Rights justified by the same drug policies are commonplace, and concern a **long list of civil, social, economic, political, cultural or environmental rights**, inter alia: the **Dignity of Persons**, the **Right to Life**, and the **Right to Personal Autonomy**, the **Right to Privacy**, the **Right to Liberty and Security of persons**, the **Rights not to be subject to unethical, inhumane treatment or torture**, but also series of **Rights of indigenous people** and communities.

¹ [Outcome document of the Thirtieth special session of the United Nations General Assembly](#), 2016.

² [Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law](#), adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005.

³ "The Parties, Concerned with the health and welfare of mankind", Preamble of the [Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol amending the Single Convention on Narcotic Drugs, 1961](#) and "The Parties, Being concerned with the health and welfare of mankind" Preamble of the [Convention on Psychotropic Substances, 1971](#).



Internationally-led drug control measures deeply affect the enjoyment of these rights by people who make use of controlled plants or substances, or those more generally called "drug offenders". In this regard it is to be noted that data show in numerous countries the disproportion of enforcement of these measures on the shoulders of the most vulnerable populations, thus jeopardizing the **Right to Equality and Non-discrimination**. Furthermore, it is concerning that these violations increasingly extend to a number of communities and populations that do not even have a link with these controlled (or prohibited) products⁴.

Yet, the *Joint commitment to effectively addressing and countering the world drug problem* "[reiterates the commitment of Heads of State and Government, ministers and representatives of Member States...] 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".

* * *

Tensions and contradictions between international Human Rights instruments and the global Drug Control system have repeatedly been pointed out as irreconcilable and insolvable.

However, tensions between these two "parallel universes" (as used to call them a decade ago the former Special Rapporteur on the right to the highest attainable standard of health, Paul Hunt) have been constantly increasing, in particular since the 1990's (a moment of scale-up in the international calls for repressive, if not exception measures, to "fight drugs", in particular at the occasion of the 20th Special Session of the UN General Assembly in 1998⁵).

An absolute hierarchization between the commitments made by countries on drug demand and supply reduction, and the commitments made on the protection and development of human rights on their territories, urges.

The *Joint commitment to effectively addressing and countering the world drug problem* calls for it when committing to "ensure that all aspects [of control measures] are addressed in full conformity with the purposes and principles of the Charter of the United Nations, international law and the Universal Declaration of Human Rights" while calling for a "full respect for [...] all human rights, fundamental freedoms, the inherent dignity of all individuals."

⁴ Neil Boister, Penal aspects of the UN drug conventions. Kluwer Law International, 2001.

⁵ [Political Declaration of the Twentieth special session of the United Nations General Assembly, 1998.](#)



Luckily, the academic community has started assessing the substantive weight of Human Rights as compared to other international legal norms, in particular, the three drug control Convention, and the consistency with Human Rights law of the interpretation and implementation of the drug control measures derivating from these three Conventions. The researches of Profs. Piet Hein van Kempen and Masha Fedorova^{6,7} on one side, and Rick Lines⁸ on the other side have brought precious elements to untwist the subject matter. Both studies were presented in a multi-stakeholder conference during the 60th session of the Commission on Narcotic drugs in March 2017, which is available on video⁹.

A reading of their research shows that the Human Rights obligations that directly interfere with drug control measures are those headed to the protection of individual and public health, the security of citizens and crime control. They tend to protect not only the right to health, but also the right to life, to privacy, or the right not to be subjected to torture or inhumane treatment.

While these positive obligations require countries to be proactive and to take all possible measures in order to guarantee fundamental human rights of individuals, and to progressively enhance their enjoyment, Countries have systematically prioritized the enforcement of drug legislation.

Nonetheless, these contradictory and comprehensive analyses of international law and norms indisputably give evidence that Member States should give priority to their Human Rights obligations over and above the obligations resulting from the international drug control Conventions.

⁶ Van Kempen & Fedorova, [International law and cannabis II. Regulation of cannabis cultivation and trade for recreational use: positive human rights obligations versus UN Narcotic Drugs Conventions \(vol. 1\)](#), Kluwer, 2014.

⁷ Van Kempen & Fedorova, [International law and cannabis II. Regulation of cannabis cultivation and trade for recreational use: positive human rights obligations versus UN Narcotic Drugs Conventions \(vol. 2\)](#), Kluwer, 2016.

⁸ Lines, [Drug Control and Human Rights in International Law](#), Cambridge University Press, 2017.

⁹ [Human Rights and the Drug Control System: hierarchy of norms & flexibility for Member States. youtu.be/ujalZSUv7ko](https://youtu.be/ujalZSUv7ko)



In light of these elements, the High Commissioner should consider taking the following initiatives.

1.

In accordance with operative paragraph 4 (a) of the *Joint commitment*, that recommends to "Enhance the knowledge of policymakers and the capacity [...] of relevant national authorities [...] in order to ensure that national drug policies, as part of a comprehensive, integrated and balanced approach, fully respect all human rights and fundamental freedoms and protect the health, safety and well-being of individuals, families, vulnerable members of society, communities and society as a whole, and to that end encourage cooperation with and among the UNODC, the INCB, [...] and other relevant United Nations entities",

and in light of the 21st preambular paragraph that "reaffirm the need to strengthen cooperation between the UNODC and other United Nations entities, within their respective mandates, in their efforts to support Member States in the implementation of international drug control treaties in accordance with applicable human rights obligations and to promote protection of and respect for human rights and the dignity of all individuals in the context of drug programmes, strategies and policies",

the High Commissioner should convene meetings involving the UNODC and the INCB, to assess the prioritization of, and hierarchy between Human Rights and International Drug Control, with the aim to establish guidelines for countries to reach conformity with all international Human Rights obligations.

2.

In accordance with operative paragraph 4 (h) of the *Joint commitment*, which invites countries to consider "the inclusion of information concerning, inter alia, the promotion of human rights and the health, safety and welfare of all individuals, communities and society in the context of their domestic implementation of these conventions, including recent developments, best practices and challenges" in their reports to the Commission on Narcotic drugs,

the High Commissioner could establish guidance to allow countries modernize their drug-related metrics, in order to include data that would allow monitoring the impact of these policies on the rights of their populations.



3.

In the spirit of the 7th preambular paragraph of the *Joint commitment*, that reaffirms the "unwavering commitment to ensuring that all aspects of demand reduction and related measures, supply reduction and related measures, and international cooperation are addressed in full conformity with the purposes and principles of the Charter of the United Nations, international law and the Universal Declaration of Human Rights",

and having acknowledged the extent of Human Rights violations to which has been leading the three drug control Conventions for the last 57 years,

the High Commissioner might find appropriate to recommend to countries the application of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law, for the millions of *drug offenders* and other affected populations that have suffered from continuous breaches in their enjoyment of an excessively long list of fundamental rights.

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