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## **UNDP Submission to the Office of the UN High Commissioner for Human Rights regarding the Report on the Implementation of the UNGASS Joint Commitment to Effectively Addressing and Countering the World Drug Problem with Regard to Human Rights**

### **1. Introduction: Drugs, development and human rights in the UNGASS Outcome Document**

The UNGASS Joint Commitment to Effectively Addressing and Countering the World Drug Problem represents the most recent international consensus and includes important commitments to creating and implementing development-oriented drug policies that respect, protect and promote human rights, fundamental freedoms and human dignity, in line with the vision of the 2030 Agenda for Sustainable Development and the commitment to leave no one behind. This submission explores what these commitments mean in the with regard to States binding and current legal human rights obligations.

The 2016 UN General Assembly outcome document strengthens the connection between human development and drug control policies. It does so by broadening the focus beyond “alternative development” to include development concerns in rural and urban settings. It recommends that States address underlying factors contributing to involvement in illicit drug economies, such as poverty, social and economic marginalization and poor infrastructure by implementing “comprehensive strategies aimed at alleviating poverty and strengthening the rule of law” and promoting “sustainable development aimed at enhancing the welfare of the affected and vulnerable population through licit alternatives”, for example by boosting job opportunities in legal markets, improving infrastructure, basic public services, land tenure and access to markets.

The outcome document encourages the “incorporation and participation of local communities” in development efforts and “ensuring the empowerment, ownership and responsibility of affected local communities. The outcome document further commits to “mainstream a gender perspective into and ensure the involvement of women in all stages of the development, implementation, monitoring and evaluation of drug policies and programmes” and to develop gender-sensitive measures that “take into account the specific needs and circumstances faced by women and girls with regard to the world drug problem and, as States parties, implement the Convention on the Elimination of All Forms of Discrimination against Women.”

Specific recommendations follow below.

## 2. Right to participation, inclusion and self-determination

Everyone, including people who use drugs or cultivate plants for personal, religious, cultural or traditional use, has the right to meaningful and effective participation in the design, implementation, accountability and assessment of drug control laws, policies and strategies.<sup>1</sup>

### Recommendations

States must:

- Remove legal barriers that prevent or restrict participation of people who use drugs, cultivate crops for illicit purposes or are otherwise involved in the drug trade in public life.
- Adopt and implement legislative and other policy measures, including institutional arrangements and mechanisms to ensure their participation in the design, implementation, accountability and assessment of drug control laws, policies and strategies.

## 3. Right to an adequate standard of living

Many small-scale farmers in drug-producing countries cultivate crops for illicit purposes because of poverty, marginalization and lack of viable alternatives. Involvement in illicit drugs economies is often the only available livelihood option for many poor and marginalized people in conflict situations and urban areas.<sup>2</sup> Crop eradication efforts have eliminated the principle source of income for families and displaced populations dependent on drug crops as well as those who are not. Displacement exacerbates the poverty and insecurity of poor farmers, with disproportionate impacts on rural, indigenous and ethnic minority persons.<sup>3</sup> In many countries, laws criminalizing drug possession, sale and use have been aggressively enforced in low-income neighborhoods and communities of color, resulting in disproportionate incarceration of poor racial or ethnic minorities. Incarceration can have serious economic, social and political consequences.<sup>4</sup> The intergovernmental expert working group on eradication and alternative development, convened by the CND in 2008, recommended that donor countries “not make development assistance conditional on reductions in illicit drug crop cultivation” and that member states “ensure that eradication is not undertaken until small-farmer households have adopted viable and sustainable livelihoods and that interventions are properly sequenced.”<sup>5</sup> UNODC has adopted a similar position.<sup>6</sup> Everyone has the right to an adequate standard of living including adequate food, water and housing and to the continuous improvement of living conditions.<sup>7</sup>

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<sup>1</sup> UDHR, art. 21 (a); ICCPR, art. 25 (a); CEDAW, arts. 7(b)(c); 14(2)(a); CRPD, art. 29; ILO Convention 169 (1989), Indigenous and Tribal Peoples Convention, Arts. 6, 7; Declaration on the Rights of Indigenous People.

<sup>2</sup> United Nations Development Program, *Addressing the Development Dimensions of Drug Policy* (New York: UNDP, 2015).

<sup>3</sup> *Ibid.*

<sup>4</sup> DSD Program, *Drug Courts in the Americas*, New York: Social Science Research Council, March 2018, pp. 22-23.; The Pew Trusts, *Collateral Costs: Incarceration’s Effect on Economic Mobility*. Washington, DC: The Pew Charitable Trusts, 2010, available at [http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs\\_assets/2010/collateralcosts1pdf.pdf](http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2010/collateralcosts1pdf.pdf)

<sup>5</sup> UNODC/CND/2008/WG.3/2, *Open-ended intergovernmental expert working group on international cooperation on the eradication of illicit drug crops and on alternative development Vienna, 2-4 July 2008, Results attained by Member States in achieving the goals and targets set at the twentieth special session of the General Assembly, the limitations and problems encountered and the way forward: international cooperation on the eradication of illicit drug crops and on alternative development*, Note by the Secretariat, 20 May 2008, p.5.

<sup>6</sup> UNODC, *Alternative Development: A Global Thematic Evaluation*, Final Synthesis Report, 2005, pp. vii and 16. [http://www.unodc.org/pdf/Alternative\\_Development\\_Evaluation\\_Dec-05.pdf](http://www.unodc.org/pdf/Alternative_Development_Evaluation_Dec-05.pdf);

<sup>7</sup> ICESCR, art. 11(1); CERD, arts. 5(e)(iii); CEDAW, art. 14(2)(h); CRC, art. 27; CRPD, art. 28.

## Recommendations

States should:

- Ensure that alternative livelihoods are in place before drug crops are destroyed.
- Implement measures for comprehensive rural development that take into account the situation of women and rural, indigenous, and ethnic minority people.
- Instead of imposing criminal sanctions for small-scale crop cultivation, States, with the support of international organizations, should provide financial and technical assistance to establish and support options to improve the standard of living of people who cultivate illicit crops and to gradually reduce their economic dependence on income generated by such crops by providing viable alternative livelihoods.
- Ensure that these programs benefit indigenous persons and historically marginalized persons, including rural women, Afro-descendant persons, civilian populations who have been displaced, and people involved in the illicit drug trade, on an equal basis.
- Ensure that efforts to prevent illicit cultivation and eradicate illicit crops are properly designed and sequenced so people who rely on cultivation of such crops for their livelihood can transition without regression to viable, licit alternative means of subsistence.

### **4. Right to social security/social protection**

Everyone has a right to social security, including social insurance.<sup>8</sup> The UN Committee on Economic, Social and Cultural Rights has recognized that social security is an important tool to prevent and reduce poverty and social exclusion and support the transition from informal to formal employment.<sup>9</sup> Social protection floors, including a basic income to live a life in dignity, has been recommended by the ILO as well as a number of treaty bodies.<sup>10</sup> Social protection floors could assist small-scale farmers, and others whose poverty and lack of viable alternatives has led to involvement in the drug trade, in their transition to economically viable alternatives to illicit cultivation. The UN Committee on Economic, Social and Cultural Rights has recommended that “States parties must take steps to the maximum available resources to ensure that social security systems cover those persons working in the informal economy,” including those “working in atypical forms of work in the informal economy.”<sup>11</sup> The UN Guiding Principles on Extreme Poverty and Human Rights, likewise recommends that States “ensure that legal standards regarding just and favourable conditions of work are extended and respected in the informal economy” and “take specific measures to ensure that persons living in poverty, in particular women and those working in the informal economy, have access to social security benefits.”<sup>12</sup>

## Recommendations

States must:

- Ensure that individuals dependent on illicit drug economies enjoy their right to social protection without discrimination. States must take steps, to their maximum available resources, to ensure that social security systems cover those persons working in illicit economies. The establishment

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<sup>8</sup> UDHR, articles 22, 25(1); ICESCR, article 9; CEDAW, articles 11(1)(e), 14(2)(c); CRC, article 26; CRPD, article 28; ICERD, article 5 (e) (iv).

<sup>9</sup> CESCR, General Comment No. 19, The Right to Social Security (Article 9), UN Doc. E/C.12/GC/19 (2008).

<sup>10</sup> International Labour Organization Recommendation 202, Social Protection Floors (2012); CESCR Statement on social protection floors: an essential element of the right to social security and of the sustainable development goals, UN Doc. E/C.12/54/3 (2015).

<sup>11</sup> CESCR, General Comment No. 19, The Right to Social Security (Article 9), UN Doc. E/C.12/GC/19 (2008).

<sup>12</sup> UN Guiding Principles on extreme poverty and human rights (2012), paras. 84(c), 86(c).

or extension of social protection floors, as committed under ILO Recommendation 202, should cover them.

- Refrain from denying or limiting the enjoyment of the right to social security/protection for failure to cease using drugs.

## 5. Right to a healthy environment

The 1988 Convention against Illicit Traffic in Narcotic Drugs requires State Parties to “take appropriate measures to prevent illicit cultivation of and to eradicate plants containing narcotic or psychotropic substances”. In practice, measures to prevent cultivation of and to eradicate illicit crops have had negative impacts on the environment. Illicit crop cultivation, production and related trafficking and enforcement efforts damage the environment, contributing to deforestation, loss of endemic species and biodiversity and contaminating soil, groundwater and waterways.<sup>13</sup> Displacement of growers to remote areas, biodiversity hotspots, national parks and protected forest areas in response to eradication efforts; lack of rural development; disposal of chemicals used in production of cocaine and opiates on the ground and waterways; and aerial fumigation are among the factors that contribute to these harms.<sup>14</sup> UN human rights mechanisms have recognized the right to a healthy environment, which includes the obligation to adopt measures to protect against and remedy environmental health hazards such as polluted air, water and soil, as part of State’s obligations to protect the right to health,<sup>15</sup> the child’s right to an adequate standard of living<sup>16</sup> and recommended that conservation efforts be free from discrimination, be undertaken so as to safeguard both the right to a healthy, ecologically balanced environment and the rights of those who have lived in or near protected areas and take into account such groups’ historically marginalized status.<sup>17</sup>

### **Recommendations**

States:

- Must ensure that drug control measures do not cause deforestation, degradation of natural habitats, loss of biodiversity or other environmental harm.
- Should ensure that drug control efforts be conducted only after comprehensive environmental and other studies are carried out, with the participation of the people concerned, to assess the impact on the environment and biodiversity of planned activities.<sup>18</sup>
- Should take effective measures as far as possible and as appropriate to prevent and redress environmental harms caused by drug control measures or drug crop cultivation and production.
- Must abolish aerial fumigation with potentially and proven harmful chemicals.<sup>19</sup>

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<sup>13</sup> UNODC, World Drug Report 2016 (Vienna: UNODC, 2017); Organization of American States, The Drug Problem in the Americas: Introduction and Analytical Report (Washington, D.C.: OAS, 2013).

<sup>14</sup> Ibid.

<sup>15</sup> See, e.g., CESCR, General Comment on the Right to Health, paras 4, 11, 15, 46; CRC, Concluding Observations: Columbia, UN Doc. CRC/C/COL/CO/4-5 (2015), paras. 49, 50.

<sup>16</sup> CRC, Concluding Observations, Cameroon, UN Doc. CRC/C/CMR/CO/2 (2010), paras. 63, 64; CRC, Concluding Observations, Democratic Republic of Congo (2009), paras. 63, 64; CRC, Concluding Observations, Brazil, UN Doc. CRC/C/BRA/CO/2-4 (2015), para. 79 (b).

<sup>17</sup> Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment: Mission to Costa Rica, UN Doc. A/HRC/25/53/Add.1 (2014), paras. 63(a, b, c, d).

<sup>18</sup> See CESCR, Concluding observations of the Committee on Economic, Social and Cultural Rights Democratic Republic of the Congo, UN Doc. E/C.12/COD/CO/4, 16 December 2009, para. 14; UN Convention on Biodiversity, 1992, arts. 6, 14.

<sup>19</sup> UN Special Rapporteur on Health, Anand Grover and UN Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, Communication to Colombia, 31 March 2014, AL Health (2002-7) Indigenous (2001-8) COL 4/2014; Paul Hunt, oral remarks, 21 September 2007, Bogota., Colombia; ‘Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, Mission to Colombia’ (E/CN.4/2005/88/Add.2), 10 November 2004; UN

## 6. Women's rights

Women's health and economic circumstances are often under-represented in programs to provide alternative livelihoods in rural communities dependent on illicit crops. Alternative livelihoods programs that foster the cultivation of alternative crops usually target landowning farmers, mainly men who are traditional titleholders and often the primary beneficiaries of agricultural extension services, training, credit and tools. These programs further inscribe gender inequality, as women are barred by law or practice from holding title to land in many crop-cultivating areas.<sup>20</sup>

### Recommendations

States must take appropriate measures to ensure women's right to participate in and benefit from efforts to provide alternative livelihoods in rural communities dependent on illicit crops including by adopting, amending, repealing or modifying laws, policies and practices to ensure women's right, on an equal basis as men to ownership, possession and control of land, water and other natural resources and access to financial services, credits and loans, irrespective of their civil and marital status.

## 7. Right to health

Health and development are intrinsically linked.<sup>21</sup> As noted in the 2015 report of the High Commissioner on Human Rights, the right to health should be protected by ensuring that persons who use drugs have access to health-related information and treatment on a non-discriminatory basis. Harm reduction programmes, in particular opioid substitution therapy should be available and offered to persons who are drug dependent, especially those in prisons and other custodial settings. Consideration should be given to removing obstacles to the right to health, including by decriminalizing the personal use and possession of drugs; moreover, public health programmes should be increased. The right to health requires better access to controlled essential medicines, especially in developing countries.<sup>22</sup>

### **Additional Information of Relevance: Human rights guidelines for drug control**

For more than two decades, UN Member States have affirmed their commitment to ensure that drug control efforts be conducted in full conformity with the aims and principles of the Charter of the United Nations and the Universal Declaration of Human Rights. International guidelines on human rights and drug control would help provide guidance on how to systematically integrate a human rights framework into international drug control. They would strengthen accountability, assist with implementation at the national level and further implementation of the global development agenda. They would facilitate UN efforts to strengthen system-wide coherence in actions to support UNGASS 2016 implementation. UNDP, in partnership with the International Centre for Human Rights and Drug Policy at the University of Essex, is leading a multi-stakeholder effort to produce international guidelines on human rights and drug control. UN Member States and entities should support these efforts. Such guidelines will provide an important tool for governments to meet their commitments to address the world drug problem and to leave no one behind.

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CRC, 'Concluding observations, Colombia' (CRC/C/COL/CO/3), 8 June 2006, para. 72; 'Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt. Preliminary note on the mission to Ecuador and Colombia', Addendum (A/HRC/7/11/Add.3) paras. 16, 20.

<sup>20</sup> United Nations Development Programme, *Addressing the Development Dimensions of Drug Policy* (New York: UNDP, 2015).

<sup>21</sup> United Nations Development Programme. *HIV, Health and Development Strategy 2016-2021: Connecting the Dots*.

<sup>22</sup> OHCHR. A/HRC/30/65. *Study on the impact of the world drug problem on the enjoyment of human rights* (Geneva: OHCHR 2015)

