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HUMAN RIGHTS, DRUG CONTROL AND THE UN SPECIAL PROCEDURES:

Preventing arbitrary and extra-judicial executions through the promotion of human rights in drug control¹

THE INTERNATIONAL CENTRE ON HUMAN RIGHTS AND DRUG POLICY

Established in 2009, the International Centre on Human Rights and Drug Policy (HRDP) is dedicated to developing and promoting innovative legal and human rights research and teaching on issues related to drug laws, policy and enforcement.

The HRDP's work supports policy development that reconciles the international narcotics control conventions with international human rights law

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1. Introduction

Human rights violations occurring as a consequence of drug control or enforcement efforts have been well-documented by both civil society organisations and United Nations human rights monitors. These violations highlight the degree to which the framework established under the three United Nations drug conventions contributes to an environment of increased human rights risk, and in some cases directly fuels abuses. The relationship between international human rights law and international drug control law is therefore a significant issue for human rights activists and scholars, yet to date it has largely gone unaddressed. The UN drug control bodies rarely mention human rights, while the UN human rights mechanisms rarely mention drug control. In effect, the two speak different languages and hold different priorities.² As the “eyes and ears” of the UN human rights system, the special procedures serve a critical role in bridging the normative gap and bringing thematic attention to this emerging human rights issue.

Such attention is critical to shifting the existing punitive drug control paradigm to one grounded in human rights and public health. Research underway at the International Centre on Human Rights and Drug Policy reveals that the historical treatment of drug control issues within the special procedures system is insufficient to have an impact on current drug control policy and practice. Reporting by mandate holders on drug control has been scattered and rarely collaborative, despite the numerous intersections drug control issues present across the mandates. As the special procedures develop their programme of work for the coming year, they have an important opportunity to consider ways in which coordination across the mandates can enhance the promotion and protection of human rights while countering the world drug problem—both to have an impact on policy-making and to close the normative gaps between the two legal regimes.

Ways in which the special procedures can organise their work to such ends should include the following:

Contribute to the development of a joint special procedures statement for submission to the UN General Assembly Special Session on Drugs in 2016. A UN

² Paul Hunt, UN Special Rapporteur on the right to the highest attainable standard of health, ‘Human Rights, Health and Harm Reduction: States’ Amnesia and Parallel Universes’, address to Harm Reduction 2008: IHRA’s 19th International Conference (International Harm Reduction Association, 11 May 2008) <http://www.hr-dp.org/contents/952> (last accessed 01 December 2014)

General Assembly Special Session on Drugs scheduled for mid-2016 is an important opportunity for the special procedures to have an impact on the drug policy debate, and ensure that human rights is rooted firmly at the centre of reforms moving forward.

Advance the normative development of human rights and drug control through collaborative and individual thematic reporting on the promotion and protection of human rights while countering the world drug problem. The normative gaps highlighted in this research present numerous opportunities for mandate holders to develop lines of inquiry within their individual work and through collaborative reporting. This can include: an analysis of normative gaps; suggestions for standard setting measures that target stakeholders responding to the world drug problem, and; promoting the issue as a thematic human rights concern within the broader UN human rights mechanisms.

2. Research Methodology

This research project is based on information collected from the review of publicly available reports of the special procedures. The International Centre on Human Rights and Drug Policy selected five special procedures for review due to their particular relevance to drug policy:

1. Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment
2. Special Rapporteur on the right to the highest attainable standard of health
3. Special Rapporteur on summary, arbitrary or extra-judicial executions
4. Special Rapporteur on the rights of indigenous peoples
5. Working Group on arbitrary detention

A search of publicly available reports from each special procedure was undertaken to identify:

- Each instance throughout the mandate's lifetime where drug control practices were highlighted.
- The key drug control practices that overlap with the mandate holder.
- The relative strength of recommendations given by the special procedure for follow-up action based on SMART indicators.³
- The potential intersections such practices have with other mandate holders within the special procedure mechanism.

³ Specific, Measureable, Attainable, Realistic, and Time-bound, see Human Rights Council, Manual on the Special Procedures of the Human Rights Council (June 2008) para 98
http://www2.ohchr.org/english/bodies/chr/special/docs/Manual_English_23jan.pdf <last accessed December 2014>

3. Preliminary data

Table 3.1

| Mandate | Total reports reviewed | Total reports highlighting drug control practices | Total recommendations on drug control measures |
|---------------------|------------------------|---|--|
| Indigenous Peoples | 85 | 25 | 3 |
| Health | 64 | 31 | 13 |
| Arbitrary Detention | 64 | 35 | 2 |
| Executions | 56 | 37 | 15 |
| Torture | 89 | 46 | 23 |
| Total: | 358 | 174 | 56 |

4. Historical treatment of drug control within the mandate

Under the mandate of this Special Procedure, the protection of the right to life in the context of drug control policy figures prominently into the work of the Special Rapporteur. Indeed, the ways drug crime and drug enforcement engage the right to life were examined with frequency throughout the lifetime of this mandate. The scope of the mandate has been progressively expanded to include considerations of violations of the right to life in both judicial and extra-legal contexts, and concerns conduct of both State and non-State actors that may raise questions of arbitrariness within the meaning of established international standards.⁴ As conduct of both State and private actors in the context of illicit drug trafficking and suppression has frequently and, in some cases, systematically given rise to excessive force, extra-legal killings, and arbitrary judicial executions, the mandate holder has grounds to pursue relevant questions that emerge from these practices.

Indeed, violations of the right to life arising from drug crime or enforcement were considered frequently in reports, including reporting that has been influential in the normative development around the death penalty for drug offenses as a violation of international law.⁵ Apart from repeated calls for the abolition of capital drug crimes, much of the reporting noted concern about the absence of legal regulations limiting the use of lethal force in policing activities to suppress drug trafficking.⁶ Several of the mandate holder's thematic reports are of importance in addressing arbitrary killings at the hands of non-State actors arising from drug-related activity as well as for establishing restrictive limits for police and military conduct in law enforcement.⁷

⁴ Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions (20 June 2014) A/HRC/26/L.23

⁵ See Section 5.1.1

⁶ See Sections 5.3.2 and 5.4.2

⁷ For a detailed overview of these reports, see here: Killings by Non-State Actors and Affirmative State Obligations: <http://www.extrajudicialexecutions.org/application/media/Handbook%20Chapter%203->

Likewise, recommendations explicitly calling on States to uphold their obligations to protect and ensure life while responding to the illicit drug trade were less frequent.⁸ As State and international responses to the illicit drug trade include practices that can directly contravene the right to life through either arbitrary or extrajudicial means, the mandate holder will continue to play an important role in shifting such responses to those grounded in human rights.

Under the framework of this research, 56 reports of the special procedure were examined, including 28 annual and interim reports and 28 country reports. *Of these reports, 37 included drug-related issues while only 15 reports highlighted drug related issues in their final recommendations to States.*

5. The intersection of drug control policy and the mandate holder

The current international drug control regime obligates States to take certain measures to counter the illicit drug trade, including the criminalization of certain activities such as drug production, possession and trafficking.⁹ States implement policies to give effect to these obligations that are often in direct conflict with their international human rights obligations-particularly the right to life. This conflict is not limited to domestic implementation as international organizations and other States directly support and encourage these harmful drug suppression policies through financial and technical support.¹⁰ Such policies and subsequent practices examined by the Special Rapporteurs and listed below are essential for the mandate holder to continue addressing during country and thematic work.

5.1. Death penalty under human rights law

The death penalty as a lawful form of punishment is explicitly referenced in human rights instruments and not expressly prohibited.¹¹ In order for capital punishment to be compliant with customary norms guaranteeing the right to life, it must never be arbitrarily applied, may only be imposed when proscribed by the law in force at the time a capital crime was committed and only then reserved for the 'most serious

[Responsibility%20of%20states%20for%20non-state%20killings.pdf](#) <last accessed 13 May 2015>; Report of the Special Rapporteur on Executions (08 March 2006) E/CN.4/2006/53, beginning at para 44

⁸ Only the death penalty for drug related offences and international assistance in this respect was explicitly addressed by the Special Rapporteur. See the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (*hereinafter* "Special Rapporteur on Executions") (09 August 2012) UN Doc. A/67/275, para 122

⁹ Article 36 of the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol; Article 22 of the Convention on Psychotropic Substances of 1971; Article 3 of the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988.

¹⁰ See Sections 5.2.4 and 5.4.2

¹¹ International Covenant on Civil and Political Rights (*hereafter* ICCPR) (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, Article 6; European Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, 213 UNTS 221, Article 2 (although the text permits the death penalty, the European Court of Human Rights has stated owing to State practice this article has been amended to prohibit the death penalty)

crimes'.¹² Death sentences issued pursuant to mandatory capital punishment legislation are considered arbitrary and prohibited under international law.¹³ Further, capital punishment must never be imposed for offenses committed by individuals under 18 years of age or upon pregnant women.¹⁴ Safeguards to protect an individual from an arbitrary execution insist upon transparency,¹⁵ the right of a condemned individual to seek commutation,¹⁶ and the highest standards of fair trial proceedings.¹⁷ As any violation of fair trial standards in a capital case also necessitates a violation of the right to life, the imposition of the death penalty where such standards cannot be upheld must be prohibited, including during states of emergency.¹⁸ Capital trials of civilians undertaken in military jurisdictions do not meet the requisite, strict fair trial provisions and should be prohibited.¹⁹

5.1.1. "Most serious crimes"

Understanding the scope for which the death penalty may be lawfully applied is of significant relevance for this paper's discussion. The ICCPR establishes a minimum threshold restricting the use of the death penalty to 'most serious crimes'.²⁰ While a specific definition of 'most serious crimes' is not provided within the international legal instruments, it has been authoritatively interpreted to include only crimes with lethal intent,²¹ excluding drug offenses in particular.²² As the nature of the obligation for retentionist States to restrictively apply the death penalty to only crimes with

¹² ICCPR, Article 6; Safeguards guaranteeing protection of the rights of those facing the death penalty, ESC Res. 1984/50 annex 1984 UN ESCOR Supp (1) at 33, UN Doc. E/1984/84, para. 1

¹³ *Eversley Thompson v. St. Vincent and the Grenadines* (18 October 2000) Human Rights Committee, Comm. No. 806/1998, para 8.2; *Kennedy v. Trinidad and Tobago* (26 March 2002) Human Rights Committee, Comm. No. 845/1998, para 7.3; See Report of the Special Rapporteur on Executions (29 January 2007) A/HRC/4/20, para 66; for an overview of regional and domestic jurisprudence, See Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (9 August 2012), A/67/279 para 59

¹⁴ ICCPR Article 6(5); Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC), Article 37

¹⁵ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Transparency and the Imposition of the Death Penalty (2006) E/CN.4.2006/53.Add.3

¹⁶ ICCPR, Article 6(1) & (4), 14; "General comment No. 6: the right to life", UN Human Rights Committee, HRI/GEN/1Rev.9 (Vol. 1) (2008) para 7

¹⁷ see for example, *Ocalan v Turkey* (App No 46221/99) ECtHR para 166

¹⁸ "General comment No. 29: state of emergency" UN Human Rights Committee para 15

¹⁹ Report of the Special Rapporteur on Executions (09 August 2012) A/67/275, paras 30-33

²⁰ ICCPR, Article 6(2)

²¹ Human Rights Committee, Concluding Observations, Iran (03 August 1993) CCPR/C/79/Add.25 para 8; Report of the Special Rapporteur on Executions (09 August 2012) A/67/275, para 35; Safeguards guaranteeing protection of the rights of those facing the death penalty, Approved by Economic and Social Council resolution 1984/50 (25 May 1984), No. 1

²² UN Human Rights Committee, 'Concluding observations: Thailand' (8 July 2005) UN Doc No CCPR/CO/84/THA, para 14; UN Human Rights Committee, 'Concluding observations: The Sudan' (29 August 2007) UN Doc No CCPR/C/SDN/CO/3, para 19; UN Commission on Human Rights, 'Report by the Special Rapporteur, Mr. Bacre Waly Ndiaye, submitted pursuant to Commission on Human Rights resolution 1996/74' (24 December 1996) UN Doc No E/CN.4/1997/60, para 91; UN Human Rights Council, 'Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston' (29 January 2007) UN Doc No A/HRC/4/20, paras 51-52; 'Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak' (14 January 2009) UN Doc No A/HRC/10/44, para 66

lethal intent reflects an international standard, supported by State practice,²³ Parties may not invoke internal law to the contrary.²⁴

5.1.2. International complicity and assistance

In extradition cases, human rights standards prevent States from returning an individual to a State that may carry out an arbitrary execution.²⁵ Under the right to life, it has been established that abolitionist States must not return an individual to a country where they may be sentenced to capital punishment.²⁶ Arising from extradition and the customary law of complicity,²⁷ there is a legal norm emerging that constrains States from financially or otherwise,²⁸ supporting programmes and activities abroad with the knowledge²⁹ that such support can contribute to arbitrary executions or other activities contrary to the right to life and the prohibition of torture.³⁰ From this, it is argued that States may not divest their responsibility when they direct such financial assistance through United Nations specialised agencies.³¹ Likewise, United Nations entities themselves have obligations to protect human rights under the Charter, but also arguably under general international law.³²

Despite the rich legal standards established by human rights law to protect an individual from the arbitrary application of capital punishment, executions for drug

²³ VCLT article 31(3)(b)

²⁴ VCLT article 27; see general discussion Report of the Special Rapporteur on Executions (09 August 2012) A/67/275, paras 45-60

²⁵ ICCPR, Article 6; *Judge v. Canada* (CCPR/C/78/D/829/1998), para 10.5, and *A.R.J. v. Australia* (CCPR/C/60/D/692/1996), para 6.9; *Al-Saadoon and Mufdhi v. United Kingdom*, ECtHR, Application No. 61498/08, para 115

²⁶ *Al-Saadoon and Mufdhi v. United Kingdom*, ECtHR, Application No. 61498/08; *Judge v. Canada* (CCPR/C/78/D/829/1998) para 10.4

²⁷ International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, November 2001, Supplement No. 10 (A/56/10), chp.IV.E.1, Article 16; viewed as customary international law by the ICJ in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, International Court of Justice, ICJ Reports (2007) paras 419-420

(*Bosnia and Herzegovina v. Serbia and Montenegro*), International Court of Justice, ICJ Reports (2007) para 419

²⁸ Instructive elaboration of what other forms of assistance may engage questions of complicity include those identified by the Joint Commission on Human Rights: Joint Committee on Human Rights, Twenty-Third Report of 2008–09, ‘Allegations of UK Complicity in Torture’ HL 152, HC 230, 21 July 2009; see also Bharat Malkani, ‘The Obligation to Refrain from Assisting the Use of the Death Penalty’ *International and Comparative Law Quarterly* (2013) 62, 533-535

²⁹ For an elaboration on the test for knowledge, Joint Committee on Human Rights, Twenty-Third Report of 2008–09, ‘Allegations of UK Complicity in Torture’ HL 152, HC 230, 21 July 2009

³⁰ *Judge v. Canada* (CCPR/C/78/D/829/1998), para. 10.5, and *A.R.J. v. Australia* (CCPR/C/60/D/692/1996), para. 6.9; as a peremptory norm of international law, States contributing aid or assistance to acts that enable violations of the prohibition to continue are themselves committing an internationally wrongful act as elaborated by Article 41(2) ILC Draft Articles on State Responsibility

³¹ Rick Lines, Damon Barrett and Patrick Gallahue, ‘Complicity or Abolition?’ (Harm Reduction International, 2012)

³² *Reparations for Injuries Suffered in the Service of the United Nations*, International Court of Justice, advisory opinion, ICJ Reports 179 (1949); see also Security Council resolutions regarding assistance to apartheid South Africa: UNSC, Resolution 418, Adopted by the Security Council at its 2046th meeting, on 4 November 1977, S/RES/418; Resolution 569, Adopted by the Security Council at its 2602nd meeting, on 26 July 1985, S/RES/569; UN Human Rights Committee ‘General Comment No. 31’ UN Doc CCPR/C/21/Rev.1/Add. 13 (2004) para 2; UNODC Guidance Note, ‘UNODC and the Promotion and Protection of Human Rights’, (Vienna, 2012), page 7; Rick Lines, Damon Barrett and Patrick Gallahue, ‘Complicity or Abolition?’ (Harm Reduction International, 2012), footnote 111: The ILC stated that ‘it is apparent that ... peremptory norms of international law apply to international organizations’ and that ‘it can hardly be maintained that states can avoid compliance with peremptory norms by creating an organization’, ILC (1981) Yearbook of the International Law Commission 1980 vol. II, no. 2, p. 56; Report of Special Rapporteur on Executions (9 August 2012) A/67/275, paras 87-92

crimes continue to be carried out by States, oftentimes at alarming levels.³³ Further aggravating the practice of capital drug crimes in many of these countries is the presence of international assistance for counter-narcotics operations, including financial and material incentives to increase drug seizures, arrests, and convictions.³⁴ The Special Rapporteurs have provided rich and detailed examination of the ways in which capital drug crimes fail to meet legally proscribed safeguards to protect an individual from arbitrary executions and will be examined further in the following section.

5.2. The death penalty for drug offenses

Worldwide, there is a trend toward abolition. States transitioning either formally or *de facto* to abolitionist countries have been on a steady rise in the four decades since the International Covenant on Civil and Political Rights entered into force.³⁵ The trend reflects the views toward abolition captured in the meaning of Article 6 of the ICCPR and equally conforms with increasing normative pressure for abolition arising from the prohibition of inhuman or degrading treatment.³⁶ However, amongst retentionist States, there has been an alarming trend of expansion in crimes not previously punishable by death.³⁷ Of relevance to this discussion is the precipitous rise of capital drug crimes from the 1980's to today's thirty-three States who have the death penalty for drug offenses established in their criminal law.³⁸ It is estimated that globally, more than 1,000 people are executed each year for drug offenses.³⁹

5.2.1. Death penalty and international drug control law

The source of the international obligation to penalize certain drug crimes is contained within the three international drug control conventions, which establish the complex regulatory framework of international drug control.⁴⁰ These treaties call for a range of

³³ Patrick Gallahue, Ricky Gunawan, Fifa Rahman, Karim El Mufti, Najam U Din, Rita Felten, 'Death Penalty for Drug Offenses, Global Overview' (Harm Reduction International, 2012); Patrick Gallahue and Rick Lines, 'The Death Penalty for Drug Offences: Shared responsibility and shared consequences' in P Hodgkinson (ed) *The International Library of Essays on Capital Punishment, Volume III: Policy and Governance* (Ashgate 2013) 559

³⁴ 'European Aid for Executions: How European Counternarcotics aid enables death sentences and executions in Iran and Pakistan' (Reprieve, November 2014); Damon Barrett, Patrick Gallahue and Roxanne Saucier, 'Partners in Crime: International Findings for Drug Control and Gross Violations of Human Rights' (Harm Reduction International, 2012); Rick Lines, Damon Barrett and Patrick Gallahue, 'Complicity or Abolition: The death penalty and international support for drug enforcement' (Harm Reduction International, 2014)

³⁵ Amnesty International, 'Death Penalty Abolitionist and Retentionist Countries' page 64
<https://www.amnesty.org/en/documents/act50/0001/2015/en/> <last accessed 08 May 2015>

³⁶ Report of the Special Rapporteur on Torture, Juan Mendez, (09 August 2012) A/67/279

³⁷ Patrick Gallahue, Ricky Gunawan, Fifa Rahman, Karim El Mufti, Najam U Din, Rita Felten, 'Death Penalty for Drug Offenses, Global Overview' (Harm Reduction International, 2012)

³⁸ *Ibid*

³⁹ *Ibid*

⁴⁰ Single Convention on Narcotic Drugs 1961, as amended by the Protocol amending the Single Convention on Narcotic Drugs, 1961 (entered into force 8 August 1975) 520 UNTS 7515 (1961 Convention); 1971 Convention on Psychotropic Substances (21 February 1971) 1019 UNTS 14956. Protocol Amending the Single Convention on Narcotic Drugs, 1961 (25 March 1972) 976 UNTS 3 (1971 Convention); UN Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances (20 December 1988) 1582 UNTS 95 (1988 Convention)

penal measures to prohibit the illicit production, traffic and possession of drugs for more than forty-nine offenses.⁴¹ Language used throughout the treaties points to the “serious” and “grave” nature of many of these offenses, establishing a minimum requirement of “adequate” penal responses.⁴² The treaties do not define what underpins “adequate” penalties, though the Commentaries indicate a level of severity so as to have a deterrent effect and importantly, that any penal obligation is subordinate to the constitutional provisions and legal systems of each country.⁴³ Complementing this suite of penalisation requirements is the permissive obligation established by each treaty allowing for States to selectively adopt more strict or severe measures.⁴⁴ While the treaties leave the specific design of criminal offenses and how they should be punished to State parties,⁴⁵ the absence of explicit protection of the individual throughout the drug control treaties⁴⁶ has contributed to an environment where States have developed highly punitive laws and severe sanctions, including justification for the use of capital drug crimes.⁴⁷

5.2.2. Drug offenses and “most serious crimes”

As has been previously outlined, drug offenses fall below the restrictive threshold of “most serious crimes” under Article 6 of the ICCPR. The legal test established by human rights requires that the act of drug trafficking demonstrate lethal intent or be linked to such a grave outcome. The Special Rapporteur presented a useful examination of the nature of drug crimes articulating the tenuous links between acts of drug trafficking and specific, lethal harm.⁴⁸ Because drug trafficking is an inchoate offense, harm is only anticipated and even then, is either many times removed or does not occur at all (because the harm-inducing drugs have been interdicted).⁴⁹ Importantly, the range of specific capital crimes that emerge from the generic offense of “drug trafficking” are often over-expansive and vastly different amongst retentionist States, further contributing to its arbitrariness.⁵⁰

⁴¹ Julie Hannah, Nahir de la Silva, 'Human Rights, Drug Control and the UN Special Procedures: Preventing arbitrary detention through the promotion of human rights in drug control' International Centre on Human Rights and Drug Policy, University of Essex at footnote 65

⁴² 1961 Convention Article 36; 1971 Convention, Article 22; 1988 Convention, Article 3

⁴³ Commentary on the Protocol amending the Single Convention on Narcotic Drugs, 1961 (United Nations 1976), p 429; Commentary on the Convention on Psychotropic Substances (United Nations 1976), p 352

⁴⁴ 1961 Convention amended (n 203) art 39.; 1971 Convention (n 186) art 23.; 1988 Convention (n 194) art 24

⁴⁵ See 1961 Convention, article 36 (1)(a) and 36(2); 1971 Convention, Article 22(1) and Article 22(2); 1988 Convention, Article 3 paras (a) and (b)

⁴⁶ The 1988 Convention is the only treaty where there is explicit reference to the individual within the system at article 6(6) and article 14(2), which specifically references human rights

⁴⁷ The Indonesian Supreme Court in their ruling on the legality of executing the plaintiffs who were charged with drug trafficking, invoked Article 24 of the 1998 Convention in support of its legality, see *Edith Yunita Sianturi, Rani Andriani (Melisa Aprilia), Myuran Sukumaran, Andrew Chan, Scott Anthony Rush* [2007] 2-3/PUU-V/2007 IDCC 16 (Constitutional Court) p 103, para j

⁴⁸ Report of the Special Rapporteur on Executions (09 August 2012) A/67/275, paras 58-60

⁴⁹ *Ibid* para 59; see also Lines, Rick, 'A "Most Serious Crime"? - The Death Penalty for Drug Offences and International Human Rights Law' (2010) *Amicus Journal* 21, 21

⁵⁰ *Ibid*

5.2.3. Procedural inadequacies in capital drug convictions

As previously addressed, certain minimum procedural guarantees must be established in order to prevent an execution from becoming arbitrary. Individuals charged with capital drug offenses are often subject to special court systems, including military tribunals, with questionable independence and where procedural safeguards are either inadequate or non-existent.⁵¹ The Special Rapporteurs have also highlighted how the death penalty for drug offenses undermines procedural guarantees protecting the individual from arbitrary executions, including: lack of judicial independence in cases of mandatory sentencing for drug offenses,⁵² lack of fair trial guarantees in criminal proceedings, including imposition of the death penalty based on evidence extorted by torture or other ill-treatment,⁵³ violations of the presumption of innocence in cases leading to the death penalty,⁵⁴ and the discriminatory affects of capital drug crimes.⁵⁵

5.2.4. International counter-narcotics assistance and the death penalty

The international drug control treaties create obligations for States to provide mutual assistance to counter the illicit drug trade embodied by the principle of shared responsibility.⁵⁶ Such cooperation often places assisting States in violation of their human rights obligations, particularly to the obligation to protect individuals from arbitrary executions in violation of the right to life.⁵⁷ As an example, cooperation in countering the illicit drug trade includes support (technical or financial assistance) for law enforcement practices where “success” can be measured by the number of convictions and death sentences.⁵⁸ Cooperation in countering the illicit drug trade also comes from within the UN itself and while technical guidance requires UN organizations to conduct human rights due diligence when supporting law enforcement operations, there is no indication the leading UN body tasked with

⁵¹ see reference to the use of military courts for drug offenses in Sudan: Report of the Special Rapporteur on Executions, Mission to Sudan, (6 August 2004) E/CN.4/2005/7/Add.2, para 53; the use of Revolutionary Courts in Iran for drug offenses: Special Rapporteur on the situation of human rights in the Islamic Republic of Iran (13 March 2014) A/HRC/25/61 paras 4, 84-86; UN Rights experts call on Iran to end the death penalty, <http://www.un.org/apps/news/story.asp?NewsID=50799> and <http://www.un.org/apps/news/story.asp?NewsID=47966> <last accessed 08 May 2015>; the use of drug courts in Pakistan: ‘European Aid for Executions: How European counter-narcotics aid enables death sentences and executions in Iran and Pakistan’ (Reprieve, November 2014)

⁵² For example, under the legislation of Malaysia and Singapore there is the mandatory death penalty for certain drug-related offences, which leaves no discretion to personalize the sentence and to take into account mitigating circumstances of the crime. See *inter alia*, Report of the Special Rapporteur Executions (23 December 1997) UN Doc. E/CN.4/1998/68; Report of the Special Rapporteur Executions (24 December 1996) UN Doc. E/CN.4/1997/60

⁵³ Report of the Special Rapporteur Executions (22 December 2003) E/CN.4/2003/3/Add.1, para 51

⁵⁴ Report of the Special Rapporteur Executions (23 December 1997) UN Doc. E/CN.4/1998/68, para 83; Report of the Special Rapporteur Executions (24 December 1996) E/CN.4/1997/60 para 81

⁵⁵ Particularly, in Indonesia 43 persons out of 57 awaiting execution for drug trafficking were foreigners, half of them were citizens of African countries. See the Report of the Special Rapporteur Executions, Summary of Cases transmitted to the Governments and Replies Received (29 May 2009) A/HRC/11/2/Add.1, para 174

⁵⁶ Article 35 of the Single Convention 1961; Article 21 of Convention of Psychotropic Substances 1981, Articles 7-10 of the United Nations Convention against Illicit Traffic 1988

⁵⁷ Report of the Special Rapporteur Executions (09 August 2012) UN Doc. A/67/275, para 84.

⁵⁸ *Ibid*, para.88

supporting drug control efforts—the UN Office on Drugs and Crime—is implementing human rights standards.⁵⁹ This is evidenced by their continued support of States that routinely and systematically execute drug offenders.⁶⁰ Likewise, the quasi-judicial treaty monitoring body of the international drug control regime—the International Narcotics Control Board—has offered little interpretive guidance by stating capital drug offenses are ‘neither encouraged nor prohibited by the drug conventions’.⁶¹ Only in April 2014, did the INCB encourage states to abolish the practice.⁶²

Such tepid endorsements of human rights by international bodies indicate a need for human rights experts to examine the current system to promote a robust human rights framework for responding to drug control. While States may view their obligations to protect life and counter the drug trade as competing, there is interpretive space to ensure such obligations are met within a human rights framework. The mandate holder has examined mutual assistance thematically and commendably highlighted the need for coordinated standard setting to guide States and international organizations in cooperative drug control efforts that uphold their human rights obligations.⁶³

5.3. The use of lethal force and arbitrary killings under human rights law

Questions related to arbitrary deprivations of life in the context of drug control are not limited to lawfully sanctioned, judicial executions. Consideration must also extend to a range of extra-judicial contexts where arbitrary killings occur, including both acts of violence arising from powerful criminal enterprises and the conduct of law enforcement actors in their increasingly militarised responses to the illicit drug trade. The following sections will review the human rights framework that elaborates the obligations of States to protect and ensure individuals are not subject to arbitrary deprivations of life.

⁵⁹ for example of due diligence standards see: UN Secretariat, Human rights due diligence policy on United Nations support to non-United Nations security forces UN Doc A/67/775–S/2013/110; UNODC Guidance Note, ‘UNODC and the Promotion and Protection of Human Rights’, (Vienna, 2012)

⁶⁰ UNODC Executive Director, Yuri Fedotov, praised Iran for taking a very active role in the global fight against illicit drugs and encouraged the UN to continue supporting these efforts: Meeting of Representative of UNODC Leik Boonwaat with Iranian Interior Minister Abdolreza Rahmani Fazli in Tehran (28 December 2013), see also, Damon Barrett, Patrick Gallahue and Roxanne Saucier, *Partners in Crime: International Findings for Drug Control and Gross Violations of Human Rights* (Harm Reduction International, 2012)

⁶¹ Press Release: INCB encourages States to consider the abolition of the death penalty for drug-related offences (5 March 2014) UNIS/NAR/1199 <<http://www.hr-dp.org/contents/851>> **last accessed July 30 2014**

⁶² Press Release: INCB encourages States to consider the abolition of the death penalty for drug-related offences (5 March 2014) UNIS/NAR/1199 <<http://www.hr-dp.org/contents/851>> **last accessed July 30 2014**

⁶³ Such guidelines are being explicitly sought by regional organizations that are major donors with regard to drug control efforts. For example, in a December 2010 resolution on the European Union annual report on human rights and democracy in the world, the European Parliament called upon the European Commission to develop guidelines governing international funding for country-level and regional drug enforcement activities. Some individual States, such as Australia and the United Kingdom of Great Britain and Northern Ireland, are already developing domestic safeguards and guidance.

5.3.1. Duty to protect life

The prohibition of arbitrary killing is a fundamental right that cannot be lawfully restricted, even during times of an emergency.⁶⁴ While a State's obligation to refrain from killing is presumptive, there are exceptional circumstances in which a State may lawfully take an individual's life.⁶⁵ The scope of a State's obligation to protect the right to life is not limited to merely refraining from killing, but includes a positive duty to ensure the right to life by meeting established due diligence obligations 'to deter, prevent, investigate, prosecute and punish perpetrators.'⁶⁶ States assume greater responsibility to uphold this obligation towards individuals in custodial situations.⁶⁷

Stemming from the obligation to protect the right life, States have a direct responsibility for the actions of parastatal or non-State actors acting on their behalf or with their acquiescence.⁶⁸ This is particularly relevant when considering activities of paramilitaries, death squads, or other organised groups committing arbitrary killings with impunity.⁶⁹ Actions of private actors may also engage the international responsibility of a State under the right to life, particularly where a known pattern of lethal violence has been established.⁷⁰

5.3.2. Lethal force in law enforcement under human rights law

As established above, States have a duty to protect individuals in their jurisdiction from acts of lethal violence. In order to fulfil this obligation during peacetime⁷¹, State law enforcement actors may be required to use lethal force to secure innocent lives,

⁶⁴ ICCPR, Article 6; African Charter on Human and Peoples' Rights ('ACHPR') (26 June 1981) OAU Doc CAB/LEG/67/3 rev.5; 1520 UNTS 217; 21 ILM 58 (1982), entered into force 21 October 1986, Art 4; American Convention on Human Rights (ACHR), (22 November 1969) 1144 UNTS 123, entered into force 18 July 1978, Art 4; ECHR, Art 2; no derogations permitted: ICCPR, Art 4; ECHR, Art 15; ACHR, Art 27

⁶⁵ These include: capital punishment as elaborated in the above section; killings pursuant to necessary law enforcement actions, and; killings during armed conflict

⁶⁶ Report of the Special Rapporteur on Executions (A/HRC/14/24, 20 May 2010, para 46; see also *Velásquez Rodríguez Case*, Judgement of 29 July 1988, para. 172, Inter-American Court of Human Rights; *Case of X and Y v. the Netherlands*, Application No. 8978/80, para 23; Human Rights Committee, General Comment 6, para 6

⁶⁷ *Keenan v. the United Kingdom* [2001] 3 EHRR 913, para 90

⁶⁸ ICCPR, Article 6(1); Draft Articles on State Responsibility, Article 16; Human Rights Committee, "General Comment 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant" (26 May 2004) para 8; Report of the Special Rapporteur on Executions (22 December 2004) E/CN.4/2005/7, para 69-70

⁶⁹ Report of the Special Rapporteur on Executions (22 December 2004) E/CN.4/2005/7, para 69

⁷⁰ Report of the Special Rapporteur on Executions (22 December 2004) E/CN.4/2005/7, para 72; *Mahmut Kaya v Turkey* (ECtHR, 2000) App. No. 22535/93; *Dink v Turkey* (ECtHR, 2010) App. No. 2668/07

⁷¹ For more information on the targeted killing of suspected drug traffickers during situations of armed conflict, see Patrick Gallahue, 'Targeted Killing of Drug Lords: Traffickers as Members of Armed Opposition Groups and/or Direct Participants in Hostilities' *International Journal on Human Rights and Drug Policy*, vol. 1 (2010) 15

which, in limited circumstances, is permitted within the human rights legal framework.

Contained within the right to life is the customary prohibition of arbitrary or extrajudicial executions.⁷² In order for a State to carry out a non-arbitrary lethal act outside of a judicial context it must firstly, be regulated by law and secondly, demonstrate that lethal force was both necessary and proportionate.⁷³ In order to satisfy the requirement of necessity, the use of lethal force must be a considered measure of last resort to achieve a legitimate law enforcement objective.⁷⁴ The proportionality requirement demands that lethal force be reserved only for the objective purpose of protecting individuals from an imminent loss of life.⁷⁵ In this regard, operations with a primary lethal intent raise significant questions of arbitrariness and can only be justified in rare and exceptional circumstances where there is an imminent threat of death and other means of capture are not possible.⁷⁶ Even in such circumstances, States must demonstrate at all stages of planning and execution that measures taken were intended to reduce risk to life.⁷⁷ Any law enforcement operation that uses unnecessary or disproportionate lethal force, even if permitted under domestic law, will contravene the prohibition of arbitrary killing.

5.4. Extrajudicial killing and the illicit drug trade

A consequence of the current system of international drug control has been the creation of a global illicit drug market operated by extensive organised criminal networks and violent gangs across the world.⁷⁸ The emergence of these groups has also contributed to endemic levels violence in many States, particularly transit countries, which include widespread killings and disappearances.⁷⁹ In many places, these criminal networks have penetrated the public sphere through corruption and

⁷² ICCPR, Article 6(1)

⁷³ *McCann and Others v United Kingdom* App No 18984/91 (ECtHR, 27 September 1995) para. 148-149; *Husband of Maria Fanny Suarez de Guerrero v. Colombia*, Communication No. R.11/45 (Human Rights Committee, 5 February 1979) para.13(2) and 13(3); *Kelly and Others v United Kingdom* App no 30054/96 (ECtHR, 04 August 2001) para. 93; *Finogenov and Others v Russia* App Nos 18299/03 and 27311/03 (ECtHR, 04 June 2012) para. 210; *Isayeva, Yusopova and Bazayeva v Russia* App no 57947-49/00 (ECtHR, 24 February 2005) para. 169; Nils Melzer, *Targeted Killing in International Law* (OUP, 1stedn, 2008) 101; Noam Lubell, *Extraterritorial use of force against non-state actors* (1stedn, OUP, 2010) 171 and 173; Robert Chesney, 'Who may be killed? Anwar al-Alwaki as a case study in the international legal regulation of force' (2010) 13 Y. Int'l HL 3 at 53; Nigel Rodley, *The Treatment of Prisoners in International Law* (3rdedn, OUP, 2009) 260

⁷⁴ *Ibid*; United Nations, *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (7 September 1990)

⁷⁵ *Ibid*

⁷⁶ Report of the Special Rapporteur on Executions, E/CN.4/2006/53 (8 March 2006) paras 44-54; *McCann and Others v United Kingdom* App no 18984/91 (ECtHR, 27 September 1995) para. 150 and 194; *Isayeva, Yusopova and Bazayeva v Russia*, App no 57947-49/00 (ECtHR, 24 February 2005) para.171; *Finogenov and Others v Russia* App Nos 18299/03 and 27311/03 (ECtHR, 04 June 2012) para. 208; Noam Lubell, *Extraterritorial use of force against non-state actors* (1stedn, OUP, 2010) 171 and 173

⁷⁷ *Finogenov and Others v Russia* App nos 18299/03 and 27311/03 (ECtHR, 04 June 2012) para. 208

⁷⁸ 'A Century of International Drug Control' United Nations Office on Drugs and Crime, 2009

http://www.unodc.org/documents/data-and-analysis/Studies/100_Years_of_Drug_Control.pdf <last accessed 13 May 2014>

⁷⁹ 'The Drug Problem in the Americas' (Organisation of American States, 2013) OAS official records; OEA/Ser.D/XXV.4, pp 75-81; 'The Impact of Drug Policies in the Americas', IACHR regional hearing on drug policy in the Americas (Joint NGO submission, March 2014) <http://www.hr-dp.org/contents/998> <last accessed 10 May 2015>

operate with complete impunity. Likewise, law enforcement responses by States to curb the illicit drug trade are often characterised by militarised operations, arbitrary violence and extra-judicial executions. Often caught in the crosshairs are innocent civilians, primarily those from impoverished and marginalised communities.⁸⁰

The erosion or lack of human rights safeguards to protect individuals from arbitrary and extra-judicial killings as a result of private and State actions associated with the illicit drug trade has been examined in some detail by the Special Rapporteur and will be explored below.

5.4.1. The illicit drug trade and non-State actor violence

In numerous reports, the Special Rapporteurs have highlighted how drug trafficking networks contribute to high rates of violence in urban communities and fuel the violent activity of non-state armed groups during armed conflict.⁸¹ Subsequently criticised have been the ineffective investigations and relative impunity such actors enjoy, particularly when they are linked to military or security forces, prompting repeated calls for effective investigations and for the implementation of better preventive mechanisms.⁸²

In many contexts, States have been found either directly or indirectly responsible for a range of arbitrary killings. In some circumstances, State officials endorse or acquiesce to the conduct of paramilitary troops or “death squads” carrying out drug enforcement activities.⁸³ In other circumstances, States publicly disclose names of suspected drug associates, typically young adults or children, with the knowledge that such efforts will directly lead to disappearances or murder.⁸⁴

5.4.2. Lethal force in counter-narcotics operations

Flawed, structural approaches to policing illicit drug activity contribute to an environment where arbitrary killings and other abuses are more likely to occur. In responding to the complex and significant challenge of countering violent, drug-

⁸⁰ Press Release: Office of the High Commissioner of Human Rights, Side event: World Drug Problem on Human Rights (16 June 2014) <http://www.hr-dp.org/contents/980> <last accessed 10 May 2015>

⁸¹ Report of the Special Rapporteur, Visit to Mexico (28 April 2014) A/HRC/26/36/Add.1, para 81; Report of the Special Rapporteur on Executions, Mission to Colombia A/HRC/14/24/Add.2, para 3; Report of the Special Rapporteur on Executions, Mission to Brazil A/HRC/11/2/Add.2 23 March 2009, para 7; Report of the Special Rapporteur on Executions E/CN.4/1993/46 23 December 1992, para 185, 191; Report of the Special Rapporteur on Executions E/CN.4/1997/60/Add.1 23 December 1996, para 118; Report of the Special Rapporteur on Executions E/CN.4/1999/39/Add.1, para 62; Report of the Special Rapporteur on Executions E/CN.4/2004/7/Add.2 26 September 2003, para 19; Report of the Special Rapporteur on Executions, Mission to Brazil, E/CN.4/2004/7/Add.3 28 January 2004 paras 32, 43; Report of the Special Rapporteur on Executions, Mission to Philippines (16 April 2008) A/HRC/8/3/Add.2, para 41

⁸² Report of the Special Rapporteur on Torture, Mission to Brazil A/HRC/11/2/Add.2 23 March 2009, para 33, 53; Report of the Special Rapporteur, Visit to Mexico (28 April 2014) A/HRC/26/36/Add.1, para 81, 111,117; Report of the Special Rapporteur on Executions E/CN.4/1993/46 23 December 1992, para 214; Report of the Special Rapporteur on Executions, Mission to Brazil, E/CN.4/2004/7/Add.3 28 January 2004 para 43; Report of the Special Rapporteur on Executions, Mission to Philippines (16 April 2008) A/HRC/8/3/Add.2, para 68-69

⁸³ Report of the Special Rapporteur on Executions, Mission to Philippines (16 April 2008) A/HRC/8/3/Add.2, para 41 and footnote 56, where executions for drugs was the reason for the highest percentage of reported deaths

⁸⁴ Report of the Special Rapporteur, Visit to Mexico (28 April 2014) A/HRC/26/36/Add.1, para 81; Report of the Special Rapporteur on Executions, Mission to Philippines (16 April 2008) A/HRC/8/3/Add.2, para 41

related criminal and gang activity, policing in many States has transformed to highly punitive and militarized approaches.⁸⁵ Some States have enacted military jurisdiction, where an emerging pattern of extra-judicial killings and widespread disappearances has been revealed.⁸⁶ In other States, hybrid military and police law enforcement operations have contributed to alarming rates of arbitrary and extrajudicial killings.⁸⁷ In all cases, poor investigations lead to a lack of accountability and ensure ongoing impunity.⁸⁸ In parts of Mexico, for example, the scale of human rights abuses in this context has led to the withdrawal of international funding, namely from the United States.⁸⁹

The legal frameworks regulating the use of force in policing operations have been subject to much criticism by the Special Rapporteurs of this special procedure.⁹⁰ Positing drug trafficking and the “drug problem” as an existential threat to society has given rise to laws authorizing lethal force in a wide-range of policing activities and without the necessary human rights safeguards to ensure its restrictive application.⁹¹ In many States, ‘shoot to kill’ policies to suppress drug trafficking utilise unnecessary and disproportionate force undermining the right to life.⁹² In many instances, these policing policies disproportionately target or impact marginalised communities including minority and other vulnerable groups.⁹³ While

⁸⁵ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Asma Jahangir, Visit to Mexico, UN Doc. E/CN.4/2000/3/Add.3, 25 November, 1999, para.22; Report of Special Rapporteur on extrajudicial, summary or arbitrary executions, Asma Janangir, Mission to Brazil, UN Doc. E/CN.4/2004/7/Add.3, 28 January, 2004, para. 36-38; Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Bacre Waly Ndiaye, UN Doc. E/CN.4/1993/46, 23 December 1992, para. 185-193; Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, Mission to Colombia, UN Doc. A/HRC/14/24/Add.2, 31 March 2010, para 21

⁸⁶ Neither Rights, Nor Security: Killings, Torture, and Disappearances in Mexico’s “War on Drugs” (Human Rights Watch, November 2011) http://www.hrw.org/sites/default/files/reports/mexico1111webwcover_0.pdf <last accessed 13 May 2015>; Report of the Special Rapporteur on Executions, Mission to Mexico (28 April 2014) A/HRC/26/36/Add.1, para 8, including femicide at para 71

⁸⁷ Report of the Special Rapporteur on Executions, Mission to Mexico (28 April 2014) A/HRC/26/36/Add.1, paras 42-50; Report of the Special Rapporteur on Executions, Mission to Brazil, A/HRC/8/3/Add.4 (14 May 2008); Report of the Special Rapporteur on Executions, Mission to Brazil E/CN.4/2004/7/Add.3 (28 January 2004), para 38

⁸⁸ Report of the Special Rapporteur on Executions, Mission to Brazil, A/HRC/8/3/Add.4 (14 May 2008), para 21; Report of the Special Rapporteur on Executions, Mission to Brazil E/CN.4/2004/7/Add.3 (28 January 2004), paras 65-64

⁸⁹ Cora Currier, Jesse Franzblau ‘Mexican Authorities Implicated In Violence, But U.S. Security Aid Still Flows’ The Intercept (11 May 2015) <https://firstlook.org/theintercept/2015/05/08/ayotzinapa-mexico-u-s-security-aid-keeps-flowing/> <last accessed 12 May 2015>

⁹⁰ Report of the Special Rapporteur Executions, Report on issues of domestic laws on the use of (especially lethal) force by police, (01 April 2014) A/HRC/26/36, para 32; Report of the Special Rapporteur Executions (08 March 2006) E/CN.4/2006/53, para 44

⁹¹ One of the most egregious examples, being Thailand’s drug trafficking crack-down in 2003 resulting in the extrajudicial execution of 2,800 individuals. An urgent appeal was submitted at the outset of the killings by then UN Special Rapporteur Asma Jahangir, see Report of the Special Rapporteur on Executions, Summary of cases transmitted to governments and replies received (24 March 2004) E/CN.4/2004/7/Add.1, paras 557-558

⁹² *Ibid*, see also Report of the Special Rapporteur on Executions (08 March 2006) E/CN.4/2006/53, paras 44, 47; Report of Special Rapporteur on Executions, Mission to Brazil (28 January 2004) E/CN.4/2004/7/Add.3, para 36; Report of the Special Rapporteur on Executions, Mission to Brazil, (23 March 2009) A/HRC/11/2/Add.2, para 16-26

⁹³ The Special Rapporteur highly criticized the practice of Brazil where victims of the use of force were usually young Afro-Brazilian males between 15 and 19 years of age, sometimes involved in criminal gangs and dwellings of the poorest communities. See the Report of Special Rapporteur on Executions, Mission to Brazil (28 January 2004) E/CN.4/2004/7/Add.3, para 36; Report of the Special Rapporteur Executions, Mission to Brazil, (23 March 2009) A/HRC/11/2/Add.2, para 16-26

the excessive use of force within the context of drug control operations has been noted in important thematic reports from the mandate holder,⁹⁴ recommendations during country visits lack reference to ending such practices or guidance for reform.⁹⁵

While many States have adopted laws that implement international human rights standards regulating the use of lethal force, others continue to propose legislative measures providing means to depart from a human rights framework in enforcement activities.⁹⁶ Specifically, existential or moralistic views on the threat drugs pose to society continue to provide a false pretext for such departures while conducting drug control enforcement operations.⁹⁷ Placing law enforcement responses to countering the world “drug problem” within a human rights framework is critical for both the reform of rights abusive policing practices and the prevention of future violations.

6. Interplay with other mandate holders

Drugs laws, policy and enforcement activities engage a broad spectrum of human rights issues. Health, arbitrary detention, capital punishment, due process, consent to treatment, prisons and policing, indigenous rights, women’s rights and children’s rights are just a few of the areas in which drug law and policy have a direct impact, often resulting in violations of international human rights law. Similar contemporary human rights challenges of a systemic nature – those engaging a broad spectrum of rights, challenging preemptory norms of international law or displacing human rights for reasons of security or other State/private interests – have previously received thematic consideration by members of the special procedures. Some of these thematic concerns, such as counter-terrorism, have given rise to specific mandates, while others have been examined thematically through individual and joint reports.⁹⁸

⁹⁴ Report of the Special Rapporteur Executions, Report on issues of domestic laws on the use of (especially lethal) force by police, (01 April 2014) A/HRC/26/36, para 32; Report of the Special Rapporteur Executions (08 March 2006) E/CN.4/2006/53, para 44

⁹⁵ The issue of excessive force and shoot to kill policies was highlighted in the reports on country visits to Brazil, Jamaica, and Mexico but no recommendations were included. See Report of the Special Rapporteur on Executions, Mission to Mexico (28 April 2014) A/HRC/26/36/Add.1, para 35; Report of the Special Rapporteur on Executions, Mission to Brazil (23 March 2009) A/HRC/11/2/Add.2, para 20-26; Report of the Special Rapporteur on Executions, Mission to Jamaica (26 September 2003) Un Doc. E/CN.4/2004/7/Add.2, para 19

⁹⁶ Including troubling new legislation granting immunity to law enforcement officials who cause injury or death through the use of weapons or any other means while performing their duties: Report of the Special Rapporteur on Executions (01 April 2014) A/HRC/26/36, para 32

⁹⁷ As an example, consider the increase in legislation in Latin America authorizing States to use lethal force to down civilian airplanes suspected of drug trafficking, *Ibid*, para 32

⁹⁸ Joint Study On Global Practices In Relation To Secret Detention In The Context Of Countering Terrorism Of The Special Rapporteur On The Promotion And Protection Of Human Rights And Fundamental Freedoms While Countering Terrorism; The Special Rapporteur On Torture And Other Cruel, Inhuman Or Degrading Treatment Or Punishment; the Working Group On Arbitrary Detention; and the Working Group On Enforced Or Involuntary Disappearances (19 February 2010) A/HRC/13/42; Situation of detainees at Guantánamo Bay, Report of the Working Group on Arbitrary Detention; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on freedom of religion or belief; and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (27 February 2006) E/CN.4/2006/120

Considering the scope of the human rights impacts of drugs laws and policies in the context of past practice, it is proposed that the ‘promotion and protection of human rights while countering the world drug problem’ be taken up as a thematic concern by the special procedures. In the absence of a specific mandate, there is important work to be done by existing mandate-holders both individually and jointly. Several mandate holders have done work on drug control issues in the past, but there remain numerous opportunities for dynamic collaboration with additional special procedure mandates, to bring a more comprehensive and detailed human rights analysis to the issues involved.

Table 6.1 Individual thematic consideration of drug control policies

| Report | Mandate |
|---|--|
| ‘Right of everyone to the highest attainable standard of mental and physical health’ A/65/255 (06 August 2010) | Special Rapporteur on the right to the highest attainable standard of health |
| ‘Applying a human rights-based approach to drug control’ A/HRC/10/44 (14 January 2009) paras 49-74 | Special Rapporteur on torture and other forms of cruel, inhuman or degrading treatment of punishment |
| Report of the Special Rapporteur on Torture and other cruel, inhuman and degrading treatment or punishment, Juan Mendez, UN Doc. A/HRC/22/53 (1 February 2013) para 40-44, 51-56, 72-74, 86, 87 | Special Rapporteur on torture and other forms of cruel, inhuman or degrading treatment of punishment |

Table 6.2 Joint collaboration on drug control policies

| Communication | Mandate |
|--|---|
| Urgent appeal to Colombia on aerial fumigation (June 2014) | Special Rapporteur on the right to the highest attainable standard of health Special Rapporteur on the rights of indigenous peoples |
| Joint Press Release ‘Iran: UN experts condemn public execution of juvenile and reiterate call for immediate halt on death penalty’ (21 September 2011) | Special Rapporteur on torture and other forms of cruel, inhuman or degrading treatment of punishment Special Rapporteur on summary, arbitrary or extrajudicial executions Special Rapporteur on the situation of human rights in the Islamic Republic of Iran Special Rapporteur on the independence of judges and lawyers |
| Joint Press Release: ‘UN experts call for a moratorium on death penalty in Islamic Republic in Iran’ (02 February 2011) | Special Rapporteur on summary, arbitrary or extrajudicial executions Special Rapporteur on the independence of judges and lawyers |
| Joint Letter from UN Special Rapporteurs on Health and on the Question of Torture to the UN Commission on Narcotic Drugs (10 December 2008) | Special Rapporteur on torture and other forms of cruel, inhuman or degrading treatment of punishment Special Rapporteur on the right to the highest attainable standard of health |

Table 6.3. Opportunities for future collaboration/contributions on drug control policies

| Mandate | Issue |
|---------|-------|
|---------|-------|

| | |
|---|--|
| Special Rapporteurs | |
| Adequate Housing | Crop eradication; loss of housing benefits and drug offenses; homelessness; discrimination; policing practices |
| Cultural Rights | Traditional practices of licit drug use; traditional medicines; cultural practices; security and development; discrimination |
| Education | Drugs education; random school drug testing; strip searches; benefits of school retention; alternative development; reduction in school attendance due to conflict; crop eradication; displacement; policing practices; cultural practices; security and development; discrimination |
| Extreme Poverty | Access to essential controlled medicines; crop eradication; alternative development; pre-trial detention; policing practices; homelessness; security and development; discrimination |
| Human Rights Defenders | Harm reduction workers; indigenous rights defenders |
| Independence of Judges and Lawyers | Mandatory sentencing; pre-trial detention |
| Internally Displaced Persons | Crop eradication; militarized responses to drug control; access to essential controlled medicines; security and development; discrimination |
| Migrants | Access to essential controlled medicines; cultural practices; discrimination; policing practices |
| Racism | Policing practices; discrimination; over-incarceration; access to essential controlled medicines; discrimination; security and development |
| Right to Food | Crop eradication; alternative development; food shortages from displacement; security and development; displacement |
| Right to Water | Crop eradication; alternative development; security and development; displacement |
| Freedom of expression | Laws prohibiting advocacy and outreach on harm reduction; anti-drug propaganda legislation |
| Myanmar | Crop eradication; militarized responses to drug control; access to essential controlled medicines; discrimination; policing; security and development; benefits of school retention; international assistance; harm reduction |
| Iran | Executions for drug offenses; sentencing and incarceration practices; international assistance; access to essential controlled medicines; harm reduction |
| Independent Experts | |
| Environment | Crop eradication |
| Minority Issues | Policing practices; discrimination; sentencing and incarceration practices; access to essential controlled medicines |
| Working Groups | |
| Discrimination against women in law & practice | Disproportionate incarceration rates of women for drug offenses; discrimination |
| Human rights & transnational corporations | Access to essential controlled medicines (pharmaceutical companies); harm reduction (private prison corporations); aerial and maritime drug trafficking enforcement (private security firms) |
| Mercenaries | Crop eradication; illicit drug crop protection |

7. Recommendations

Contribute to the development of a joint special procedures statement for submission to the UN General Assembly Special Session on Drugs in 2016. This statement can highlight

the array of work already undertaken by the special procedures to address the gap between human rights standards and drug control activities and advocate for a human rights framework as the central feature in progressive reform.

Consider a dynamic and collaborative report with fellow mandate-holders that presents countering the world drug problem as a thematic human rights concern.

Continue to seek opportunities to integrate drug control policies into country work and ensure consistent, strong recommendations to States on how to bring drug control responses in line with human rights standards and obligations.

Include lethal force legislation in the context of drug control as part of mandate holder's current complementary activity. The current mandate holder has undertaken an important complementary activity in his use of force project (<http://www.icla.up.ac.za/un/use-of-force>). It would be of great benefit to include lethal force legislation to reflect measures States have in place in the context of drug control either through a survey or ongoing data collection.