



UNAIDS Reference Group on HIV and Human Rights

Drug policy, HIV and human rights: A crucial moment for change

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"I believe that drugs have destroyed many people, but wrong government policies [on drugs] have destroyed many more."

– Former UN Secretary-General Kofi Annan, June 2014, at launch of the report of the West African Commission on Drugs

I. Introduction

For over a century since the Shanghai Opium Commission of 1909, which laid the groundwork for the International Opium Convention of The Hague of 1912, governments have used harsh application of criminal law, military and para-military interventions, and stigmatizing public information about drugs and people who use them in the futile pursuit of a “drug-free world”. The “war on drugs” has been responsible for systematic human rights violations wherever it has been waged, including mass incarceration for minor, non-violent infractions; extra-judicial killing of civilians by criminal networks that run drug markets; denial of life-saving health services for people who use drugs; and destruction of the livelihoods of people in regions where drug crops are grown.

In spite of this high cost, the UN’s own evidence suggests that there has been no lasting reduction in supply of or demand for illicit drugs as a result of the drug war. There is widespread agreement, including among many member states of the United Nations, as well as UN technical agencies and other experts, that drug-war “business as usual” must end. It would be very useful for the Human Rights Council to call for reform of repressive, human rights-unfriendly drug policies as the world prepared for the UN General Assembly Special Session (UNGASS) on Drugs in April 2016.

We thank the Office of the High Commissioner for Human Rights (OHCHR) for the opportunity to comment on these issues. While the purview of the UNAIDS Reference Group on HIV and Human Rights is human rights issues related to HIV, we see the many human rights violations associated with repressive drug policy to be very closely related. This paper summarizes our principal concerns, offers recommendations for policy reform, and includes a list of more detailed readings on these issues.

II. Drugs, criminal justice and human rights

The UN Office on Drugs and Crime (UNODC), as well as UNAIDS, WHO and the Global Commission on HIV and the Law (of which UNDP was the secretariat), have called for states to regard use of illicit drugs as a public health problem to be managed in the health sector rather than by law enforcement or criminal justice officials. Nonetheless, the penal codes of many countries impose harsh custodial penalties for use of drugs and/or possession of small quantities of drugs for individual use, sometimes with mandatory minimum sentences that limit judges' discretion. As a result, minor drug offenses account for a large percentage of the populations of prisons and pretrial detention facilities.

II.A. *Police practices*

Criminalization of drug offenses, including harsh custodial penalties for minor offenses, gives police a very free hand to crack down on people who use drugs. People who use drugs are very vulnerable to human rights abuses in police crackdowns and in police custody in many ways – for example:¹

- There is documentation from many countries of the police practice of interrogating or coercing confessions from people who are in a state of drug withdrawal while in police lock-up or other detention. Two UN Special Rapporteurs on Torture have condemned this practice, a form of torture specific to people who use drugs.²
- If police performance is measured by the number of arrests and detentions, as is the case in many countries, small-scale drug users are usually the easiest targets for filling arrest quotas. Police may even resort to targeting drug treatment centers or other services for people who use drugs as a way to boost arrest totals.
- Police may seize injection equipment or use it as evidence of criminal activity. In some countries, drug paraphernalia laws make it a crime to possess syringes, even sterile syringes, a self-defeating policy with respect to HIV prevention. Some countries also define as a drug possession offense the possession of a syringe having trace elements of a drug in it. Such laws make it more likely that people will have to hide or share syringes and thus add to HIV risk.
- Intensive policing and crackdowns can increase the risk of HIV and other harms, not only by making it less likely that people will seek services, but also by breaking up what may be relatively safe drug consumption networks, by causing rushed injections leading to vascular accident, by causing people to switch from smoking to injecting drugs because of the quicker effect of injection and reduced chance of detection of consumption, and by causing unsafe disposal of syringes and related drug-use materials.
- In general, people who fear police abuse may have a justifiable fear of seeking health services from government facilities (see registration by health workers in section III below), even though government services are likely to be the most affordable.

¹ Details of violations related to policing may be found in R Jürgens, J Csete, JJ Amon et al. People who use drugs, HIV and human rights. *Lancet* 2010; 376 (9739): 475-485.

² JE Mendéz. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Human Rights Council, 22nd session. UN doc. no. A/HRC/22/53, 1 February 2013; UN Office on Drugs and Crime, "United Nations human rights rapporteur denounces torture" (media statement), 24 April 2009, at: <http://www.unodc.org/unodc/en/frontpage/un-human-rights-rapporteur-denounces-torture.html>.

II.B. Abuses in prison and other custodial settings

Where drug laws are harsh with respect to minor offenses, it is likely that people who use drugs will be in state custody at some time in their lives, often many times. People who use drugs and people with drug dependence are over-represented in prison populations in most countries. Relatively few countries in the world respect the human rights standard that health services offered to people in the community should be offered at least at the same level and quality to people in the custody of the state. This is particularly the case with respect to HIV prevention and treatment for drug dependence.

In spite of international standards recommending comprehensive harm reduction and HIV prevention activities in prison,³ custodial sentences for people who use drugs most often represent heightened HIV risk with no hope for treatment of either HIV or drug dependence. UN standards and guidelines recognize that in spite of the best efforts to keep drugs out of prisons, prisoners usually have access to illicit drugs — a fact policy-makers often deny. Though drugs are available in prison, prisoners and other detainees in most countries are denied access to clean injection equipment or evidence-based treatment for drug dependence, resulting in disproportionate HIV and hepatitis C transmission and deaths from overdose in custodial settings. Many countries offer medication-assisted maintenance therapy for opioid dependence in the community but not in prisons. Exposure to tuberculosis and other infectious diseases only exacerbates their risk of illness and mortality.

In a number of countries, minor drug offenses can be punished by sentencing people to compulsory drug “rehabilitation” centres, detention facilities that claim to offer treatment for drug dependence and other health services but rarely do. In some cases, people undergoing “rehabilitation” in these centers are forced to engage in hard labour, and the economic importance of this labour adds to the political popularity of the centers. In 2012, a dozen UN and other international bodies, including not only OHCHR but also WHO, UNAIDS, UNODC and the Global Fund to Fight AIDS, Tuberculosis and Malaria, called for closure of these centers and development in the community-based health system of treatment of drug dependence and related services for people who use drugs.⁴ A few countries have made preliminary efforts to follow this recommendation, but compulsory rehabilitation centers still exist in too many countries. In addition to their economic importance, they are portrayed as a way to get “undesirable” people off the streets, to uphold “morality” and to deal with people who are engaged in the “social evil” of drug use.

As already noted, people who use drugs in any form of state custody are likely to be very vulnerable to extortion, torture and other cruel, inhuman and degrading treatment. Denial of the health services that could contribute to their physical and mental stability only exacerbates their vulnerability to many forms of inhuman treatment.

³ UNODC, WHO, UNDP, WHO and UNAIDS. HIV prevention, treatment and care in prisons and other closed settings: a comprehensive package of interventions. UN, 2013. At: http://www.unodc.org/documents/hiv-aids/HIV_comprehensive_package_prison_2013_eBook.pdf

⁴ International Labour Organization, UNAIDS, WHO, UN Women, UNODC et al. Joint statement: Compulsory drug detention and rehabilitation centres. Geneva, March 2012. At: <http://www.unaids.org/en/resources/presscentre/featurestories/2012/march/20120308adetentioncenters>

II.C. Court-supervised treatment

A number of UN member states, led by the US, have espoused court-supervised treatment as an alternative to incarceration for some categories of non-violent offenses, particularly where drug dependence is deemed to be at the root of the motivation to commit a crime. So-called drug treatment courts (or drug courts) have been established in the US, Canada, Australia, Belgium, Ireland and numerous Latin American countries, many of these assisted by CICAD, the drug policy arm of the Organization of American States (OAS), which strongly espouses drug courts.⁵

Drug courts originated in the United States, where they were meant to address dramatically increasing rates of incarceration of minor drug offenders. In the US model of drug courts, defendants are usually required to plead guilty to the charge against them as a condition of participating in court-supervised treatment for drug addiction. In principle, treatment as an alternative to a criminal sanction should be a human rights-friendly development. In practice, however, there are numerous human rights concerns raised by the drug court experience, particularly in the US, including the following:

- Many drug court judges simply exclude the possibility of methadone maintenance or other medication-assisted treatment for opioid dependence in spite of strong endorsement by WHO and UNODC and decades of scientific consensus about the importance of this approach to treatment, both for addressing opioid dependence and for preventing HIV transmission. Judges do not have medical training and should not be empowered with decisions of this kind. If drug courts are to have validity as a public health alternative to criminal sanctions, treatment decisions must rest in the hands of medically qualified persons.
- In the US, drug court participants can be punished for “failing” treatment, including by imprisonment. One meta-analysis of data concludes that in some US jurisdictions whatever reduction in prison time is represented by drug court participation is offset by prison time imposed by judges for treatment failure.⁶ WHO characterizes addiction as a chronic, relapsing condition for which several attempts at treatment may be necessary for a successful outcome. Punishment for treatment failure, particularly in the form of imprisonment, is counter to rights-based and evidence-based norms for treatment of drug dependence.⁷
- Having to plead guilty to a charge as a condition of receiving treatment for an urgent health problem also seems inconsistent with the human right to medical care when one is ill.⁸ It also may encourage harsher punishment for those who are judged by the court to fail their course of treatment.

⁵ Organization of American States, Inter-American Drug Abuse Control Commission (CICAD). *Drug treatment courts: an international response to drug dependent offenders*. Washington, DC, 2013. At: http://www.cicad.oas.org/fortalecimiento_institucional/dtca/publications/DTC_FINAL_PUBLICATION.pdf.

⁶ Sevigny EL, BK Fuleihan, FV Ferdik. Do drug courts reduce the use of incarceration?: A meta-analysis. *Journal of Criminal Justice* 41(6):415-425, 2013.

⁷ UNODC, WHO. *Principles of drug dependence treatment (discussion paper)*. Vienna, 2008. At: <http://www.unodc.org/documents/drug-treatment/UNODC-WHO-Principles-of-Drug-Dependence-Treatment-March08.pdf>.

⁸ UN International Covenant on Economic, Social and Cultural Rights (1966), 993 UNTS 3, Article 12.

If drug courts do not offer ethical, evidence-based and rights-based health services, they will not be a step forward in drug policy reform. Rather, they risk being one more way for health to be sidelined when it should be the sector that manages the state response to drug use. Governments and donors that wish to support alternatives to incarceration should ensure that credible and good-quality health and social services figure prominently in those alternatives.

III. Drugs, health services and human rights

It is no accident that some of the most uncontrolled HIV epidemics in drug-using populations are in places with the harshest criminalization of drug use. As UNAIDS reports, it is unlikely that the world will meet the 2015 goal for halving HIV transmission among people who use drugs.⁹ HIV burden remains high in this population. While there are very effective and affordable measures for prevention of HIV transmission linked to drug use, national governments have failed to provide these services adequately. They reach a very small percentage of those who would benefit from them. Some 31 of the 35 countries reporting data to UNAIDS in 2013 indicated coverage of less than 10 percent in their opioid maintenance therapy programs, and only two of 32 countries indicated that they are able to supply at least 200 syringes per year per person, the cut-off recommended to ensure effectiveness of syringe programs.¹⁰

People who use drugs are systematically excluded from HIV treatment in many places. In addition, in many countries, those who need it do not have access to affordable, scientifically sound and humane treatment for drug dependence. As was noted in 2013 by the UN Special Rapporteur on Torture, some of the “treatments” that are provided to people who use drugs are cruel and inhuman, including “state-sanctioned beatings, caning or whipping, forced labour, sexual abuse and intentional humiliation.”¹¹ It is hard to imagine another public health problem for which such “treatment” would be considered acceptable by the state and society. In many countries, a large proportion of services ostensibly for treatment of drug dependence is provided by private-sector actors, including faith-based institutions, with little or no oversight by the state as to quality and scientific soundness of the therapies offered.

The rights of people who use drugs may be violated wittingly or unwittingly in others ways in the health sector. Aside from the problem noted above of police targeting drug-related health facilities to fill arrest quotas, in some countries health workers are required or strongly encouraged to inform the police of anyone they suspect to be a user of illicit drugs.¹² Being registered as a drug user with the police, even in the absence of formal convictions for drug offenses, may result unjustly in the revocation of legal privileges and government benefits. In addition, this policy is obviously an important barrier to seeking health care.

⁹ UNAIDS. *Global report: UNAIDS report on the global epidemic 2013*. Geneva, 2013, pp 5-6.

¹⁰ Ibid.

¹¹ JE Mendéz. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Human Rights Council, 22nd session. UN Doc. no. A/HRC/22/53, 1 February 2013.

¹² Open Society Institute. *The effect of drug user registration laws on people's rights and health: Key findings from Russia, Georgia and Ukraine*. New York, 2009. At: http://www.opensocietyfoundations.org/sites/default/files/drugreg_20091001.pdf.

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Even in places where a significant percentage of HIV transmission is linked to drug use, people who use drugs are often systematically excluded from antiretroviral therapy (ART), a discriminatory and abusive exclusion that is most likely in the presence of repressive laws.¹³ Turning all people who use drugs into criminals gives health authorities one more reason to exclude them from care.

In places where opioid use is widespread, it is clear that access to low-threshold methadone therapy and other effective treatments can dramatically lower HIV risk by eliminating the need for injection and can also reduce crime and stabilize the lives of patients. In spite of long-standing endorsement of such treatment by WHO, UNODC and UNAIDS,¹⁴ many countries have failed to ensure access to opioid substitution therapy (OST), with disastrous consequences for HIV transmission, and also undermining efforts to ensure access to effective treatment with ART of those people who use drugs who are also living with HIV.¹⁵

IV. Drugs and poverty

We hope that the Human Rights Council in its deliberations following the OHCHR's study, and the UN General Assembly at its special session on drugs in 2016, will consider the relationship between drug policy and poverty (though it is less directly related to HIV than the issues discussed above). It is clear that in some parts of the world people become involved in drug markets and in the cultivation of drug crops such as coca leaf and opium poppies because they have limited opportunities in mainstream economic activities.¹⁶ In the case of drug crops, eradication programs involving aerial spraying – sometimes backed by military or paramilitary force – have destroyed livelihoods, caused environmental and health problems, and forced displacement of poor rural families.¹⁷ Projects to provide alternative livelihood opportunities have generally not succeeded, often offering people activities that are not lucrative enough to sustain livelihoods, or failing to take into account the power of criminal drug networks over poor communities.¹⁸

Women may face gender-based discrimination in mainstream economic opportunities and thus may be particularly vulnerable to being drawn into drug markets as couriers or “mules” or in other minor roles. Though frequently minor players in the drug market hierarchy, women may face disproportionately harsh sentences because they often do not have information about more

¹³ UNAIDS. *The Gap Report 2014*. Geneva, 2014. At: http://www.unaids.org/sites/default/files/en/media/unaids/contentassets/documents/unaidspublication/2014/UNAIDS_Gap_report_en.pdf.

¹⁴ WHO, UNODC and UNAIDS. *Position paper: Substitution maintenance therapy in the management of opioid dependence and HIV/AIDS prevention*. Geneva, 2004. At: <http://www.unodc.org/documents/hiv-aids/Position%20Paper%20sub.%20maint.%20therapy.pdf>.

¹⁵ UNAIDS, *Gap Report*, op.cit.

¹⁶ Buxton J. *Drugs and development: the great disconnect*. Policy Report no. 2, Global Drug Policy Observatory. Swansea University, January 2015. At: <http://www.swansea.ac.uk/media/The%20Great%20Disconnect.pdf>

¹⁷ Ibid. See also UN Development Programme. *Perspectives on the development dimensions of drug control policy*. Paper presented at annual session of the UN Commission on Narcotic Drugs, Vienna, March 2015. At: http://www.unodc.org/documents/ungass2016/Contributions/UN/UNDP/UNDP_paper_for_CND_March_2015.pdf

¹⁸ Buxton, *ibid*.

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powerful drug traffickers higher up the chain.¹⁹ Mandatory minimum sentences may hit them particularly hard, with disastrous consequences for their families when they face long incarceration.

V. Better policies and practices emerge

A number of countries have adopted human rights-friendly (or at least friendlier) drug policies with great benefits for both fulfillment of rights and improvement of public health and human security. A full catalog of these experiences is beyond the scope of this paper, but we would cite several examples for the consideration of the the Office of the High Commissioner, the Human Rights Council and the General Assembly.

- Putting public health at the center: Explosive HIV epidemics among people who inject drugs led Switzerland and Portugal, for example, to rethink policing-focused drug control policies. Switzerland invested in a dramatic expansion of low-threshold health and social services for people who use drugs, including needle exchanges in the community and in prisons, methadone and other scientifically sound treatment for drug dependence, and supervised injection facilities where people could get assistance if they experienced overdose. Health officials found a place around the policy table with police and criminal justice authorities. Portugal also scaled up appropriate services for people who use drugs but went one step further in decriminalizing all drug consumption and minor possession and sale offenses. People who are found committing these infractions are offered health and social services, counseling and other support. In both countries, HIV transmission linked to drug injection and problematic drug use have plummeted.²⁰
- Decriminalization of minor infractions in Latin America: Many Latin American countries have joined a number of European countries in decriminalizing minor drug infractions.²¹ While implementation of these laws has sometimes been challenging and in some cases health and social services still need significant development to lead the response to minor drug offenses, this change in national law is an important development in the Global South.
- Pre-adjudication diversion: In the U.S. where drug laws generally remain harsh at the federal and state level, a few cities are experimenting with diversion of minor drug offenses away from criminal sanctions without requiring that a person enter a guilty plea. A program called Law Enforcement Assisted Diversion (LEAD) pioneered in Seattle, Washington (USA) allows police who encounter people committing minor drug infractions to direct them to a range of community services rather than to require their further involvement in the judicial system.²² This program is being evaluated in a four-year pilot effort.

¹⁹ UN Women. *A gender perspective on the impact of drug use, the drug trade and drug control regimes: UN Women policy brief*. New York, July 2014.

²⁰ Csete J and P Grob. Switzerland, HIV and the power of pragmatism: lessons for drug policy development. *International Journal of Drug Policy* 2011; 23(1): 82-86.

²¹ Youngers C and C Pérez Correa, eds. *In search of rights: drug users and government responses in Latin America*. Mexico City: Centro, 2014.

²² See detailed description at “LEAD: Law Enforcement Assisted Diversion” (online presentation), at: <http://leadkingcounty.org/>

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- Change stirs in Africa: In Africa, where most national drug laws are very harsh — imposing long prison sentences for minor offenses — the African Union drug strategy for 2013-2017 recognizes the importance of drug control that respects the human rights of marginalized people who use drugs. For the first time, African Union policy calls for member states to endeavor to find alternatives to incarceration for drug consumption and minor offenses.²³ The West African Commission on Drugs, a body of former heads of state and ministers convened with the help of former UN Secretary General Kofi Annan and chaired by former Nigerian president Olusegun Obasanjo, has also called for more human rights-friendly drug laws and policies in the sub-region and is helping to open up new drug policy debates.²⁴ In a politically challenging climate for harm reduction, Tanzania has nonetheless significantly scaled up a methadone program to address long-standing heroin injection particularly in its coastal areas, and Senegal is following suit.²⁵

VI. Conclusions and recommendations: UNGASS as a key moment for reform

Prohibitionist policies have cost the world trillions of dollars, but they have not reduced the supply or demand for illicit drugs, which are more abundant, cheaper and purer than ever before – and meanwhile, they have helped to damage human rights and public health, including fuelling the spread of HIV and other blood-borne infections. The UNGASS on the world drug problem is being held in 2016 rather than as originally scheduled in 2019 because of the insistence of several UN member states that ineffective policies should be reconsidered with urgency. That insistence exemplifies the growing global movement for drug policy reform that has united policy-makers, civil society and academic experts in calling for drug policy that supports rather than undermines the protection, respect and fulfillment of human rights. In the view of the UNAIDS Reference Group on HIV and Human Rights, effectively responding to the HIV epidemic — which is driven to a significant degree in many countries and regions by unsafe drug consumption practices — requires protecting and promoting the human rights of people who use drugs and addressing the abuses often committed in the name of enforcing prohibitionist policies.

The Reference Group therefore recommends the following actions:

1. The OHCHR and the Human Rights Council should assert strongly that it is essential that the outcome of the 2016 UNGASS on drugs be consistent with human rights principles and indeed that it advance the human rights of people who use drugs and others affected by drug policies, whose rights have so often been abused. In particular, it would be a very important contribution to the debate for OHCHR and the Council itself to make explicit statements in the lead-up to the UNGASS on a number of human rights issues, including the following:
 - Drug consumption and minor, non-violent offenses such as possession of small amounts of drugs should not be punishable by criminal sanctions; these problems should be addressed principally by the health and social service sectors.

²³ African Union. Plan of action on drug control (2013-2017). AU doc. CAMDC/EXP/2(V), Addis Ababa, 2013. At: <http://sa.au.int/en/sites/default/files/AUPA%20on%20DC%20%282013-2017%29%20-%20English.pdf>.

²⁴ West African Commission on Drugs. *Not just in transit: drugs, the state and society in West Africa*. June 2014. At: <http://www.wacommissionondrugs.org/report/>.

²⁵ Ibid.

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- Judging performance of drug police by the number of arrests and detentions is bound to result in the arrest of minor offenders and should be avoided.
 - There should be monitoring and oversight of drug police practices and accessible mechanisms of complaint and redress when people's rights are violated. Police must never use drug dependence against people in interrogation or otherwise. Drug dependence should be addressed by health professionals.
 - People have a right to scientifically sound harm reduction services, including provision of sterile injection equipment and access to medication-assisted treatment for opioid dependence. Governments must ensure scaling up these health services to meet demand as a matter of fulfilling their human rights responsibilities.
 - Health services for people who use drugs, including treatment for drug dependence, must be humane, scientifically sound and voluntary. Compulsory "rehabilitation" is contrary to the principles of rights-based health services. Governments should establish scientifically based standards and ensure monitoring, training and certification of providers of treatment for drug dependence, and there should be accessible mechanisms of complaint and redress when patients' rights are violated. Health service providers should not be compelled to register with the police people who present with drug-related health problems. As recommended by UN agencies in 2012, compulsory "rehabilitation" centers should be closed, and community-based services should be established and adequately supported.
2. It would be very useful for the High Commissioner for Human Rights to be present and to speak at the UNGASS on drugs in 2016, highlighting the importance of human rights-centered drug policy at national, regional and global levels.
 3. The Office of the High Commissioner for Human Rights should do everything in its power to ensure the participation in drug policy reform debates of national and regional human rights commissions and civil society organizations focused on human rights, including in the UNGASS of April 2016.
 4. It would be useful for the High Commissioner on Human Rights to make regular reports to the annual session of the UN Commission on Narcotic Drugs about the importance of human rights in considerations of global drug control.
 5. The Office of the High Commissioner should explore ways in which it can assist the UN's human rights treaty bodies and ongoing processes (e.g., the Universal Periodic Review mechanism) in addressing human rights concerns raised by drug control laws, policies and practices, including violations of the rights of people who use drugs, as well as ways in which it can assist states in moving away from harmful prohibitionist approaches and implementing more human rights-friendly and health-friendly responses to drugs.

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Further reading

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