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Sir,

On behalf of the International Narcotics Control Board (INCB), I have the honor to refer to the Board's responsibilities under the provisions of the international drug control treaties, namely the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol, the Convention on Psychotropic Substances of 1971, and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, and the meeting held between the President of the Board and Ms. Leigh Toomey, the Vice Chair of the UN Working Group on Arbitrary Detention of the Human Rights Council as well as Ms. Lucie Viersma, Secretary of the Working Group on 5 March 2020.

The Board would like to thank Ms. Leigh Toomey and Ms. Lucie Viersma for the aforementioned meeting, and for the information shared about the study on arbitrary detention relating to drug policies, as requested by HRC resolution 42/22. The Board takes note that the Working Group has requested replies from stakeholders in response to a questionnaire and indicated that receiving the feedback of INCB regarding the issues raised in the questionnaire would be helpful towards completion of the study.

Based on a review of the questionnaire prepared for stakeholders, the Board would like to provide the Working Group with the following information for its consideration:

- 1) The Board monitors compliance of Member States with international drug control treaties, including their responses to drug-related criminality and has called on all States to adopt drug policies that respect the rule of law and human rights, including the presumption of innocence, the prohibition of arbitrary arrest and detention, the right to a fair trial and protection against all forms of cruel and inhuman punishment.
- 2) State actions that violate human rights in the name of drug control policy are inconsistent with the international drug control conventions. Such actions include extrajudicial responses to suspected drug-related criminality, which cannot be justified under the international drug control conventions. The rights of alleged drug offenders and drug users need to be protected at all stages of the criminal justice process, with respect for the principles of due process, proportionality and human rights. The drug control treaties do not require that people who use drugs or those who commit minor drug-related offenses be imprisoned. Rather, drug use disorders should be treated as health conditions.

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- 3) The 1961 Convention specifies that the possession of drugs should be limited exclusively to medical and scientific purposes, and possession of drugs for reasons contrary to the conventions shall be punishable when committed intentionally. A punishable offense does not however need to be dealt with a criminal offense and States can adopt alternative measures to imprisonment. Nonetheless, the extensive use of incarceration for low-level drug offenses persists in many States, even though under the drug control conventions only “serious” offenses should be liable to the penalty of incarceration.
- 4) The choice of punishment in response to drug-related offenses should be adequate and directly proportionate to the seriousness of the actual offense committed, and all three conventions explicitly allow measures of treatment, education, after-care, rehabilitation and social reintegration as alternatives or in addition to conviction or punishment. The Board frequently explains that the principle of proportionality is inherent to the treaties and constitutes an essential component in the development of a balanced approach.
- 5) People facing charges for drug use or possession of small quantities of drugs for personal use need to be provided with the option of care outside the criminal justice system and alternatives to imprisonment. Treatment and rehabilitation services can be provided as a full-fledged alternative to criminal justice sanctions.
- 6) With respect to minimizing the risks of human rights violations, including the arbitrary arrest or detention of drug users, the Board has expressed concern that in some countries, admission into treatment for drug dependence, whether voluntary or court-ordered, results in the inclusion of the individual in question on a government registry of drug users. The Board has noted with concern that registration may have significant negative consequences on registered individuals including restrictions on employment, the exercise of civil rights, ability to travel and that the prospect of having such limitations imposed is often a disincentive to seeking treatment. In many cases, registration as a drug user also results in serious social stigmatization that impedes recovery and social reintegration. Additionally, the practice of maintaining registries of drug users can potentially lead to cases of arbitrary arrest.
- 7) Access to treatment and rehabilitation services for inmates who have drug use disorders are also important components of the right to health. The standards and quality of treatment offered in prisons should match those of services available in the wider community, and all options for the psychological and pharmacological treatment of drug dependence available in the community must also be available in prison. Reflecting on the right to health and drug control measures includes that access to health care, rehabilitation and social reintegration services must be non-discriminatory and also available in prison settings.
- 8) With respect to those people having drug use disorders who are convicted of crimes and who belong to disadvantaged groups, as indicated in the Working Group’s questionnaire, the Board would like to take note of some specific population groups, including migrants and ethnic minorities that may face special challenges in terms of accessing treatment services. Although migration (whether forced or not) is occurring globally on a large scale, the research on drug use among migrants is limited. People engaged in sex work represent another especially vulnerable and often neglected group.
- 9) As relates to women and gender considerations, the number of women arrested for drug-related crimes has increased significantly in recent years. A large number of women who are incarcerated worldwide on drug offences are in pretrial detention.

There are often an insufficient number of prison facilities dedicated for women offenders, which may also be far from their communities and families. Many women who are arrested as drug couriers have no previous criminal backgrounds and are at greater risk of developing drug use problems within prison settings. Drug abuse prevention, treatment and rehabilitation programmes and interventions should be humane and strengthen social ties and individuals' capacity for self-determination and resilience.

- 10) Concerning the disadvantaged group of children and youth noted in the questionnaire, the Board would like to highlight that with respect to youth services such as juvenile detention, education and family services should be incorporated into broader national care systems. Young drug offenders and first-time offenders are often incarcerated not as a last resort but as a first resort. Interventions with offending young people and those at risk may include the development of multi-agency partnerships to ensure that the identified needs of juveniles are met in the course of case management, alternative sanctions and treatment. The Board continues to stress that interventions should generally include socio-economic development and local efforts at employment and licit income generation and educational programmes targeting socially marginalized groups such as the poor, vulnerable youth and minorities at risk.
- 11) The Board continues to discourage mandatory or compulsory drug treatment because: (a) the evidence for their effectiveness is poor; (b) they may affect the health of people undergoing the treatment, including through increased vulnerability to HIV and other infectious diseases; and (c) they are in direct conflict with the human rights principles as stated in the International Covenant on Economic, Social and Cultural Rights. Many countries have provisions in their national drug control frameworks stipulating that the criminal justice system can motivate, order, and/or supervise certain forms of drug dependence treatment without the consent of the patient. Such treatments often involve detention in prison or other custodial facilities. The Board discourages such measures and instead advocates implementation of voluntary, evidence-informed and rights-based treatment services. Therefore, any draconian treatment programmes, including those that involve the use of physical punishment, should be discontinued.

The Board wishes to note that all of its positions listed above were and continue to be communicated to the Member States and other members of international community through the Board's Annual Reports, press releases, statements and speeches of the Board's President at bilateral, regional and international meetings, including those of the United Nations General Assembly, Economic and Social Council and Commission on Narcotic Drugs.

The Board would like to take this opportunity to thank the Working Group for opening this channel of dialogue and stands ready to provide additional information or clarifications about the points above.

Accept, Sir, the assurances of my highest consideration.



Cornelis de Joncheere  
President  
International Narcotics Control Board