THE INTERSECTIONS BETWEEN DRUG POLICY AND HUMAN RIGHTS

Submission to the Office of the High Commissioner for Human Rights from the International Drug Policy Consortium (IDPC)

May 2015

Further to Human Rights Council Resolution A/HRC/28/L.22 – which "Requests the United Nations High Commissioner for Human Rights to prepare a study… on the impact of the world drug problem on the enjoyment of human rights"[1] – we welcome this opportunity to provide relevant information to the Office of the High Commissioner for Human Rights (OHCHR) based on our experience and research as a network.

The International Drug Policy Consortium (IDPC) is a global network of more than 130 non-governmental organisations that focus on issues related to drug production, trafficking and use.[2] We come together to promote objective and open debate on the effectiveness, direction and content of drug policies. Our advocacy is grounded by five core policy principles: that policies be developed through an objective assessment of priorities and evidence; that they be undertaken in full compliance with international human rights law; that they focus on reducing the harmful consequences of drug use and markets; that they promote the social inclusion of marginalised groups; and that they be developed and implemented with the engagement of civil society.

People do not surrender their rights simply because they use, produce or become involved with illicit drugs – yet it has been well documented that drug laws and their enforcement around the world have resulted in multiple forms of human rights abuses.[3] There is also a growing acknowledgement that the human rights obligations to which countries have signed up must also be applied in the area of drug policy and drug markets – nationally and internationally.[4] Yet there remains a striking lack of coherence within the United Nations system regarding human rights and drug policy – which have been described as "parallel universes".[5] In this context, IDPC wishes to draw specific attention to six key areas in which drug policies continue to have a detrimental impact upon the enjoyment of, respect for, and protection of, and promotion of human rights.

1. MASS INCARCERATION AND DISPROPORTIONATE SENTENCING

Across the world, drug policies have focused on repression and punishment as the mechanism by which to reduce drug use and supply – with penalties on a scale that often rivals those for murder. This has resulted in the over-incarceration of drug offenders in all regions of the world – straining criminal justice systems and ruining lives. Decades of experience with this approach have shown that incarceration, punishment and repression have little or no impact upon levels of drug use or supply.[6] Countries with the most severe penalties – and even the death penalty (see below) – continue to encounter widespread drug problems, and evidence shows "that levels of drug use are influenced by factors more complex and nuanced than legislation and enforcement alone".[7]

[1] http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/28/L.22
[2] http://idpc.net/
[3] http://idpc.net/theme/human-rights
[4] http://www.worldlii.org/int/other/UNGARsn/2006/240.pdf
[5] http://www.ihra.net/files/2010/06/16/HumanRightsHealthAndHarmReduction.pdf
[6] http://www.penalreform.org/resource/global-prison-trends-2015/ (see 'Special Focus' segment on drugs and imprisonment)
[7] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/368489/DrugsInternationalComparators.pdf

Incarceration in many settings is associated with poor or dangerous conditions, abusive regimes, and other violations of the human rights of persons deprived of their liberty. Moreover, drug use (including injecting drug use) is highly prevalent among prison populations – yet individuals are commonly at greater risk of drug-related harms such as HIV, hepatitis, tuberculosis and overdose in the absence of evidence-based harm reduction and drug treatment services in prisons, even where these services are available in the community.[8] UN human rights bodies and the European Court of Human Rights are increasingly finding that denial of harm reduction services to people who use drugs can contribute to, or even constitute, conditions that meet the threshold of ill treatment.

Although the severe punishment and sanctioning of people who use drugs "is not the vision of the [international drug] Conventions, which aim at protecting public health"[9] – drug possession offences have bucked global crime trends with a 13 percent increase since 2003.[10] Furthermore, drug possession accounted for 83 percent of drug-related offences globally in 2013, up from 80 percent in 2005.[11] The vast majority of drug traffickers in prison are low-level offenders, and statistics from many countries show that a higher percentage of women than men are in prison for drug offences.[12] The incarceration of women has been shown to have devastating consequences on women themselves, their children and families overall.[13]

Drug policies must seek to redress the widespread human rights concerns and other harms associated with mass incarceration which disproportionately targets the most vulnerable in society. A truly health- and human rights-based approach to the world drug problem necessitates that governments stop criminalising people who use drugs and small-scale subsistence farmers involved in the cultivation of drug-linked crops. Such a policy shift would have a positive impact on millions of lives around the world. As has already been acknowledged by the UN Office on Drugs and Crime (UNODC) such a policy shift is permissible under the drug conventions[14] – and decriminalisation has also been recommended by WHO[15] and UNAIDS.[16] Governments should also review their drug laws and practices to ensure proportionality of sentencing for all drug offences, and to promote alternatives to incarceration for people involved in low-level, non-violent drug offences.

2. SUSTAINABLE ALTERNATIVE LIVELIHOODS

The crops which form the plant base for the unauthorised production of opium, heroin, morphine and cocaine are predominantly cultivated by subsistence farmers in some of the most under-developed areas of the world. Traditional attempts to stem the flow of drugs from these production zones have concentrated on the forced eradication of crops destined for the illicit market. This approach has not only failed to reduce unauthorised global crop cultivation: it severely impacts upon the human, social and economic rights of subsistence farmers; it poses major challenges to traditional cultures and values in many of these countries; and it exacerbates poverty, forced migration, starvation and conflict. These policies have even been labelled as 'criminalising poverty'.[17]

In Colombia, for example, forced eradication through aerial fumigation campaigns and manual eradication through military and police operations have exacerbated the internal conflict and have led to multiple cases of forced displacement, loss of food security and health harms related to the use of toxic substances. The lack of human development policies for these communities exacerbates

[8] http://www.unodc.org/wdr2014/
[9] http://www.unodc.org/documents/commissions/CND/CND_Sessions/CND_57/E-CN7-2014-CRP05_V1400819_E.pdf
[10] http://www.unodc.org/documents/congress//Documentation/A-CONF.222-4/ACONF222_4_e_V1500369.pdf
[11] http://www.unodc.org/documents/data-and-analysis/statistics/crime/World_Crime_Trends_2013.pdf
[12] http://www.penalreform.org/resource/global-prison-trends-2015/ (see 'Special Focus' segment on drugs and imprisonment)
[13] http://idpc.net/publications/2014/04/women-and-drugs-in-the-americas
[14] http://www.unodc.org/documents/commissions/CND/CND_Sessions/CND_57/E-CN7-2014-CRP05_V1400819_E.pdf
[15] http://idpc.net/publications/2014/07/consolidated-guidelines-on-hiv-prevention-diagnosis-treatment-and-care-for-key-populations
[16] http://idpc.net/publications/2014/07/the-gap-report
[17] http://www.countthecosts.org/sites/default/files/Development_and_security_briefing.pdf

their poverty level and their marginalisation at a time when the militarisation of these rural areas has also led to significant human rights violations.

Crop eradication should never be carried out unless small farmer households have adopted viable and sustainable alternative livelihoods, and interventions must be properly sequenced to support the necessary alternative infrastructures first. Efforts in this area should not be measured against simplistic metrics such as the number of hectares of crops destroyed – but rather they should promote (and be measured in terms of) positive change in the lives of the people involved, based on human development indicators.

3. ACCESS TO ESSENTIAL MEDICINES

Controlled substances play a critical role in the provision of healthcare around the world. At present, 12 medicines from the WHO Model List of Essential Medicines are either made of, or contain, substances that are controlled by the international drug conventions. These medicines are used in such diverse fields of health care as analgesia, anaesthesia, drug dependence treatment, maternal health, mental health, neurology and palliative care.

Although the international drug conventions seek to ensure the availability of these controlled medicines for the relief of pain and suffering, an estimated 5.5 billion people (83 percent of the world's population) live in countries with low to non-existent access to treatment for moderate to severe pain.[18] A wealth of research demonstrates that controlled substance regulations often interfere with the availability and accessibility of this group of medicines, and especially opioid analgesics: the technical and bureaucratic requirements imposed by the international regime represent obstacles that, while they may be simple enough for wealthy states, developing countries find difficult to negotiate.[19] National regulations are often far more restrictive than is actually mandated by the UN drug conventions, creating significant barriers to their stocking, prescribing and dispensing. Some governments even impose harsh punitive measures for errors in handling controlled medicines, further deterring their use. These kinds of regulations raise important questions about the fulfillment of international human rights standards, particularly the right to health. Indeed, the Committee on Economic, Social and Cultural Rights has included "the provision of essential drugs" as one of the core minimum obligations of States.[20]

4. BARRIERS TO SUSTAINABLE HARM REDUCTION PROGRAMMES

People who use drugs retain the right to the highest attainable standard of health – which includes access to evidence-based harm reduction services, including needle and syringe programmes and opioid substitution therapy.[21] There is a wealth of international evidence supporting the efficacy of these programmes in preventing HIV, hepatitis B and C, overdose and other harms.[22] As such, this issue is increasingly accepted as a component element of the right to heath in international law. Access to harm reduction in this context has been explicitly supported by the UN Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Rights of the Child, the Special Rapporteur on Health, and the Special Rapporteur on Torture.[23]

At the same time, there are no international legal barriers to the provision of harm reduction services, which are endorsed by the UN and the International Narcotics Control Board, among others. The provision of harm reduction services should therefore be seen as a core obligation of

[18] www.who.int/entity/medicines/areas/quality_safety/ACMP_BrNote_Genrl_EN_Apr2012.pdf
[19] http://idpc.net/publications/2015/01/the-international-drug-control-regime-and-access-to-controlled-medicines
[20] www.ohchr.org/Documents/Publications/Factsheet31.pdf
[21] http://www.ihra.net/what-is-harm-reduction
[22] http://www.who.int/hiv/pub/guidelines/keypopulations/en/
[23] See, for example: http://bookofauthorities.info/

States to meet their international legal and human rights obligations. Unfortunately, the availability and coverage of these services remains far too low globally and must urgently be increased.[24] Many countries still have laws and policies which prohibit or impede harm reduction – either explicitly or in practice. These include laws prohibiting the possession of needles and syringes, or regarding such possession to be evidence of illegal drug use, as well as health systems which require people who use drugs to become registered with the government before accessing services.

5. COMPULSORY DETENTION FOR PEOPLE WHO USE DRUGS

A number of governments – particularly in Asia – still employ compulsory drug detention centres as part of their drug response. People who use (or are suspected of using) drugs are rounded-up and detained with no judicial process and subjected to widespread forced labour, abuse and torture.[25] Little or no evidence-based medical interventions take place in these centres, and there is no evidence of their effectiveness in the face of high relapse rates and widespread harms.

In 2012, a coordinated call from numerous UN agencies – including OHCHR – called for the closure of all compulsory drug detention centres. Their continued existence in several countries is therefore an affront to the right to freedom from torture or cruel, inhuman or degrading treatment, and from arbitrary detention and punishment. Furthermore, by not making available evidence-based drug treatment services instead of compulsory drug detention centres, these countries are also violating the right to health of people who are dependent on drugs.

6. THE DEATH PENALTY

Perhaps one of the most striking and alarming demonstrations of tensions between drug policy and human rights is the continued application of the death penalty for drug offences – a topic that has received heightened attention in recent months. More than 30 countries and jurisdictions retain the death penalty for drug offences, although in practice most executions occur in a smaller number of countries which remain highly and strongly committed to this approach.[26]

The use of the death penalty for these offences is in violation of international law – something which has been confirmed by UNODC, the UN Human Rights Committee, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, and the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.[27] IDPC calls for the removal of the death penalty for drug offences globally, and this should be a key issue for OHCHR in its engagement at the General Assembly special session in 2016.

CONCLUSION: POLICY ASKS FROM THE IDPC NETWORK

In preparation for the UNGASS on drugs in April 2016, the IDPC network has agreed a set of core policy asks:[28]

1. Ensure an open and inclusive debate – one inclusive of all UN agencies, civil society and affected populations, and one which considers all options and issues.
2. Re-set the objectives of drug policies – focusing not on seizures, arrests and crop destruction, but instead on wellbeing, health, drug markets, development and human rights.

[24] http://www.harm-reduction.org/library/hiv-prevention-treatment-and-care-services-people-who-inject-drugs-systematic-review-global
[25] See, for example: http://www.hrw.org/reports/2010/01/25/skin-cable-0
[26] http://www.ihra.net/files/2014/08/06/HRI_-_2012_Death_Penalty_Report_-_FINAL.pdf
[27] http://www.ihra.net/files/2014/08/06/HRI_-_2012_Death_Penalty_Report_-_FINAL.pdf
[28] http://idpc.net/publications/2014/10/the-road-to-ungass-2016-process-and-policy-asks-from-idpc

3. Support policy experimentation and innovation – including the establishment of an Expert Working Group to further explore the existing tensions between the international drug conventions and other UN treaties (such as human rights law).
4. End the criminalisation of people who use drugs and subsistence farmers involved in the cultivation of drug-linked crops – as described above.
5. Commit to the harm reduction approach – as described above.

We would also strongly recommend that OHCHR seeks to ensure, and plays a key role in, a formal human rights oversight mechanism of the existing drug control infrastructure – bridging the gap between Geneva and Vienna to guarantee system coherence and more humane drug policies.

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Acción Técnica Social
ACEID
ADCA
AECU
AFR
Agência Piaget para o Desenvolvimiento
AIDES
AIDS Foundation East West
Aksion Plus
Akzept
Al-Maqdese for Society Development
Alternative Georgia
Andean Information Network
Andrey Rylkov Foundation
Asian Harm Reduction Network
Asian Network of People who use Drugs
ASRDR
Association Margina
Association Prevent
Association Terra Croatia (Udruga Terra)
ATUPRET
Asuntos del Sur
Australian Drug Foundation
Autosupport des Usagers de Drogues (ASUD)
Beckley Foundation
Brazilian Drug Policy Platform
Canadian Drug Policy Coalition
Canadian Foundation for Drug Policy
Canadian HIV/AIDS Legal Network
Caribbean Drug Abuse Research Institute
DeJuSticia
Centro de Estudios Legales y Sociales
CIDDH
CMPDPH
COIN
CRECE
Citywide Drugs Crisis Campaign
CUPIHD
Colegio Médico de Chile
Collectif Urgence Toxida
Correlation Network
Diogenis
Drug Policy Alliance
DrugScope
DrugText Foundation
Espolea
Eurasian Harm Reduction Network
Fachverband Sucht
FADCA
Federación Andaluza ENLACE
Fédération Addiction
FEDITO BXL
Forum Droghe
Fundación Latinoamérica Reforma
Gadejuristen
Global Exchange
GREA
Greek Drug and Substitute Users Union
Harm Reduction Coalition
Health Poverty Action
Healthy Options Project Skopje
Human Rights Watch
Hungarian Civil Liberties Union
IAAC
IAHPC
ICEERS
IEPES
Illicit Drug Market Institute
Indonesian Coalition for Drug Policy Reform
Indonesian Harm Reduction Network
Initiative for Health Foundation
INPUD
Institute for Policy Studies
Intercambios
Intercambios Puerto Rico
International AIDS Society
Int. Centre for Science in Drug Policy
Int. Doctors for Healthy Drug Policies
Int. Harm Reduction Development Program
International HIV/AIDS Alliance
Juventas
Kenyan AIDS NGOs Consortium
Lawyers Collective
LSE Ideas International Drug Policy Project
Mainline
Malaysian AIDS Council
Médecins du Monde
México Unido Contra la Delincuencia
National Rehabilitation Centre
New Zealand Drug Foundation
NGO 4 Life
NGO Veza
NoBox Transitions
Norwegian Ass. for Humane Drug Policies
OCDI
PILS
Pivot
PKNI
Polish Drug Policy Network
PRAKSIS
Prolegal/Proderechos
Population Services International
Psicotropicus
Puente, Investigacion y Enlace
RAISSS
Red Chilena de Reducción de Daños
REDUC
Regional Arab Network against AIDS
Release
Réseau Français de Réduction des Risques
ReverdeSer Colectivo
Romanian Harm Reduction Network
SCDI
Scottish Drugs Forum
SEEAN
Skoun Lebanese Addiction Centre
SPYM
StoptheDrugWar.org
Students for Sensible Drug Policy
Swedish Drug User Union
Thai AIDS Treatment Action Group
Transform
Transnational Institute
Trimbos Institut
Turkish Green Crescent Society
Uganda Harm Reduction Network
UNAD
Viktorija
Viva Rio
Washington office on Latin America
West Africa Civil Society Institute
Women's Harm Reduction Int. Network
World Hepatitis Alliance
Worldwide Hospice Palliative Care Alliance
Youth Organisations for Drug Action
Youth RISE
Zimbabwe Civil Liberties and Drug Network