

**Joint Open Letter by the UN Working Group on Arbitrary Detention; the Special Rapporteurs on extrajudicial, summary or arbitrary executions; torture and other cruel, inhuman or degrading treatment or punishment; the right of everyone to the highest attainable standard of mental and physical health; and the Committee on the Rights of the Child, on the occasion of the United Nation General Assembly Special Session on Drugs**

*New York, 19-21 April 2016*

15 April 2016

Excellency,

We have the honour to address you in regard to the upcoming General Assembly special session on the world drug problem convening on 19-21 April 2016. We have been following the preparatory process closely since the adoption of Human Rights Council resolution 28/28 and General Assembly resolution 70/181, and the subsequent discussions and negotiations around the existing draft outcome document.

We have welcomed the opportunity to contribute towards this preparatory process and view the UNGASS as an important occasion to reflect upon the achievements and challenges of international drug control, and its impact upon the enjoyment of human rights and fundamental freedoms. The UNGASS is also a vital moment to make bold commitments that ensure the promotion and protection of human rights is central to the development of the upcoming 2019 Political Declaration and Plan of Action on drugs.

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To: H.E. Mogens Lykketoft  
President of the UN General Assembly

Cc: Mr. Yury Fedotov  
Executive Director  
United Nations Office on Drugs and Crime

Secretariat to the Governing Bodies  
Division for Treaty Affairs  
United Nations Office on Drugs and Crime

## ***Criminalisation***

The criminalisation of drug consumption and possession for personal use has contributed to a range of negative consequences for the health, security, and human rights of individuals and communities across the globe. There is clear evidence that criminalisation drives those most in need away from vital health interventions or places them in prison with significant implications for public health.<sup>2</sup> Worldwide, criminalisation has fuelled incarceration rates, contributing to overcrowded prisons and overtaxed criminal justice systems, placing individuals at increased risk of arbitrary detention and inhuman or degrading treatment while incarcerated. Treating low level drug possession for personal use as a criminal act intensifies discrimination by placing individuals in increased conflict with the law, which negatively affects their chances for employment, education and other opportunities for social inclusion.

In many parts of the world, drugs have been used as grounds to police poor, racial and ethnic minority communities in grossly discriminatory ways, with negative consequences for public safety and community well-being. Equally, drug convictions disproportionately impact minority communities and women, with sentencing regimes out of step with international human rights standards.<sup>3</sup> In addition, the social exclusion and stigma experienced by women involved with drugs places them at increased risk for sexual violence and physical abuse at the hands of both private and State actors.

In recent years, States have explored decriminalisation regimes as a means to improve the safety and well-being of their communities, with documented, positive outcomes for health and public safety. In keeping with these domestic policy successes, and with the recommendations of United Nations agencies<sup>4</sup> and as a step towards the fulfilment of the right to health, drug use and possession should be decriminalized and depenalized. This should be accompanied with increased investment in treatment, education, and other interventions as discussed further below. Within the scope of our respective mandates, we will continue to examine the ways in which criminalisation acts as a barrier to the full and effective realisation of human rights and encourage States to prioritise this discussion in the post-UNGASS era.

## ***Incarceration and arbitrary detention***

As previously mentioned, drug enforcement fuels rising incarceration rates and overburdened criminal justice and prison systems are unable to guarantee essential human rights safeguards or provide acceptable standards of care and living in both pre and post-conviction environments. Conditions such as overcrowding, denial of essential medical services—including harm reduction—create an environment where torture or cruel, inhuman, and degrading treatment is more likely to occur.<sup>5</sup> Likewise, arbitrary detention for drug use or drug related offences may occur across criminal and administrative settings, particularly when procedural safeguards are absent.<sup>6</sup>

We welcome the unequivocal commitment to take practical measures to uphold the prohibition of arbitrary detention, and torture and all forms of cruel, inhuman and degrading treatment in the pursuit of criminal justice within the current outcome document. This political commitment paves the way towards bold new reforms for domestic criminal justice systems in the post-UNGASS decade.

While the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances allows for alternatives to conviction and punishment for some offenses, it is essential to underline that conviction and punishment are late stages in the criminal justice process, and of no help

available resources towards ensuring access to affordable and quality health services, which includes access to essential medicines, palliative care, comprehensive drug prevention education, drug treatment, and harm reduction. This legal requirement is of immediate effect and States must take concrete and targeted measures to progressively fulfil this obligation. Given the current state of funding for evidence-based drug-related health services, scaled up investment is essential.

#### ***Access to evidence based treatment for drug dependence***

The right to health requires that drug dependence treatment be available, accessible, acceptable (culturally, for women, for children and other key populations), and of sufficient quality, meaning voluntary and based on the best available evidence. We welcome the commitment in the outcome document to ensuring international treatment standards are integrated into national drug treatment strategies.

People experiencing drug dependence have different and complex needs, which require a wide range of diverse options and are more effectively addressed when those concerned can participate in the design, delivery and assessment of their treatment. The views and input of people who are drug dependent into their own treatment is essential for a successful outcome.

While the current outcome document references informed consent in the delivery of treatment, the language is weak and fails to acknowledge that informed consent is a legal requirement to safeguard against torture or other forms of inhuman or degrading treatment in healthcare settings.<sup>13</sup> Moreover, under the right to health, the obligation to provide acceptable drug treatment services legally requires informed consent and the right to refuse treatment.

#### ***Access to controlled medicines***

International human rights law places particular and explicit emphasis on the obligation of States to guarantee a number of relevant health and health-related services to ensure the dignity of the individual, guard against inhuman or degrading treatment, prevent mortality, and ensure the highest attainable standard of health.<sup>14</sup> This includes the provision of essential controlled medicines for the management of pain, including in palliative care, the treatment of drug dependence, and other conditions, affecting adults and children alike across the globe.

Despite this obligation, approximately four fifths of the world population, overwhelmingly in the global south, lack sufficient access to opiates for the medical management of pain. Access to opioid substitution therapy medications for the treatment of drug dependence is dangerously low worldwide, contributing to a situation in which global HIV targets will be missed by decades.

We welcome the attention given to this global health crisis in the current outcome document, but wish to emphasize that the current operational recommendations fail to confront how stigma and fear of addiction impedes access to these medicines. Research by the International Narcotics Board has clearly shown that fear of addiction and stigma is a significant barrier to global access levels.<sup>15</sup>

Given the clear legal mandate within the drug treaties to ensure access to controlled medicines, and concurrent obligations under human rights law, we urge States and relevant UN drug control bodies to set targets for improving access on the ground by 2030, in line with the sustainable development goals.

impact of repressive drug policies on children's health and their healthy development often outweighs the protective element behind such policies, and children who use drugs are criminalised, do not have access to harm reduction or adequate drug treatment, and are placed in compulsory drug rehabilitation centres.

The UN Convention on the Rights of the Child has now been ratified or acceded to by 196 States and must serve as an important framework for considering these and other issues of vital importance to the effective realisation of human rights for all children.

*A pivotal moment for the promotion and protection of human rights in international drug control*

While we and our predecessors have repeatedly called for the integrated development of human rights and international drug control, this UNGASS is a pivotal moment to bring human rights and drug policy beyond Geneva and Vienna. And important progress has been made to that end. There has been serious engagement from the United Nations human rights machinery on drug control, with the Human Rights Council hosting its first high-level thematic panel on the human rights impact of the world drug problem. At this panel, the Office of the High Commissioner for Human Rights presented its first study on the issue, with robust and global participation by civil society. There is also now clear recognition from the UNGASS process that human rights are a thematic issue for international drug control.

It is vital that all stakeholders—States, civil society, the UN human rights institutions, and UN drug control institutions—build on this progress by taking concrete actions to operationalise human rights on the ground. Building a strong foundation for the new 10-year Political Declaration and Plan of Action for 2019 is an important means to concretise these commitments. As United Nations independent experts on human rights, it has become clear that our role in contributing towards these important political processes must continue. In the lead up to 2019, we will invigorate our attention to the intersection of drug policy within the scope of our mandates and working methods.

We would appreciate it if this document could be circulated amongst the participants at the Special Session. Please, kindly note that we will make it public through the media and our respective websites right before the session.

We thank you for taking the time to consider this letter and wish States, relevant UN agencies, and civil society organisations a fruitful and productive Special Session on the world drug problem.

Please accept, Excellency, the assurances of our highest consideration.

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- 1 Open Letter by the Special Rapporteur on the right of everyone to the highest attainable standard of mental and physical health, Dainius Pūras, in the context of the preparations for the UN General Assembly Special Session on the Drug Problem (7 December 2015); Concluding Observations of the Committee on the Rights of the Child, Ukraine, CRC/C/UKR/3-4 (2011) para 60; Report of the Working Group on Arbitrary Detention A/HRC/30/36 ; Julie Hannah et al, 'Human Rights, Drug Control, and the UN Special Procedures' (International Centre on Human Rights and Drug Policy, 2015)
  - 2 Special Rapporteur on the right to health A/65/255
  - 3 Report of the Working Group on Arbitrary Detention A/HRC/30/36; Special Rapporteur on Violence Against Women A/HRC/17/26/Add.5
  - 4 WHO, Consolidated guidelines on HIV prevention, diagnosis, treatment and care for key populations, 2014; UNDP, Addressing the Development Dimensions of Drug Policy, 2015
  - 5 Report of the Special Rapporteur on Torture, Mission to Kazakhstan A/HRC/13/39/Add.3, para 85; See also Report of the Special Rapporteur on Torture A/68/295, para 68
  - 6 A/HRC/30/36, para.58
  - 7 Annual Report of the Working Group on Arbitrary Detention A/HRC/30/36 para 62
  - 8 See United Nations Office on Drugs and Crime and World Health Organization, "Principles of drug dependence", p.15.
  - 9 A/HRC/30/36, para.60
  - 10 A/HRC/30/36, para.61
  - 11 Report by the Executive Director of the United Nations Office on Drugs and Crime as a contribution to the review of the twentieth special session of the General Assembly 'Making drug control 'fit for purpose': Building on the UNGASS decade', E/CN.7/2008/CRP.17 p 10
  - 12 The Case for a Harm Reduction Decade: progress, potential, and paradigm shifts (Harm Reduction International, March 2016)  
[http://www.ihra.net/files/2016/03/10/Report\\_The\\_Case\\_for\\_a\\_Harm\\_Reduction\\_Decade.pdf](http://www.ihra.net/files/2016/03/10/Report_The_Case_for_a_Harm_Reduction_Decade.pdf)
  - 13 Report of the Special Rapporteur on Torture A/HRC/22/53, para 42;
  - 14 Report of the Special Rapporteur on Torture A/HRC/22/53, paras 54-56; Report of the Special Rapporteur on the right to health A/65/255, para 46
  - 15 Report of the International Narcotics Control Board on the Availability of Internationally Controlled Drugs: Ensuring Adequate Access for Medical and Scientific Purposes, ¶ 97, U.N. Doc. E/INCB/2010/1/Supp.1
  - 16 Report of the Special Rapporteur on the right to health A/HRC/32/32 (forthcoming)
  - 17 UN Office on Drugs and Crime. International standards on drug use prevention. Vienna
  - 18 Report of the Special Rapporteur on the right to health A/HRC/32/32 (forthcoming)