THE IMPACT OF PUNITIVE DRUG POLICIES ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

SUBMISSION TO THE UN COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS ON THE ANNOTATED OUTLINE FOR A GENERAL COMMENT

31 JANUARY 2024

AMNESTY INTERNATIONAL

Amnesty International is a movement of 10 million people which mobilizes the humanity in everyone and campaigns for change so we can all enjoy our human rights. Our vision is of a world where those in power keep their promises, respect international law and are held to account. We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and individual donations. We believe that acting in solidarity and compassion with people everywhere can change our societies for the better.

© Amnesty International 2024
Except where otherwise noted, content in this document is licensed under a Creative Commons (attribution, non-commercial, no derivatives, international 4.0) licence.
https://creativecommons.org/licenses/by-nc-nd/4.0/legalcode
For more information please visit the permissions page on our website: www.amnesty.org
Where material is attributed to a copyright owner other than Amnesty International this material is not subject to the Creative Commons licence.
First published in 2024
by Amnesty International Ltd
Peter Benenson House, 1 Easton Street
London WC1X 0DW, UK

Index: IOR 40/7652/2024
Original language: English

amnesty.org

CONTENTS

1. INTRODUCTION **4**

2. GENERAL OBSERVATIONS **4**

THE FAILURE OF APPROACHES BASED ON PROHIBITION AND CRIMINALIZATION 4
THE RELATIONSHIP BETWEEN THE UN DRUG CONVENTIONS AND INTERNATIONAL HUMAN RIGHTS LAW 5
PARTICIPATION AND PROTECTION OF AFFECTED COMMUNITIES, HUMAN RIGHTS DEFENDERS AND CIVIL SOCIETY ORGANIZATIONS 6

3. SPECIFIC OBLIGATIONS UNDER ICESCR RELATED TO DRUG CONTROL **8**

ENSURING COMPREHENSIVE HARM REDUCTION INTERVENTIONS 8
INCREASING ACCESS TO VOLUNTARY TREATMENT AND REHABILITATION SERVICES 9
CARRYING OUT PREVENTION CAMPAIGNS 10
DISCONTINUING DRUG COURTS 11
REFRAINING FROM USING MANDATORY DRUG TESTING 12
GUARANTEEING ADEQUATE AVAILABILITY OF DRUGS FOR MEDICAL PURPOSES 12
ADVANCING THE DECRIMINALIZATION OF DRUGS 13
IMPLEMENTING ALTERNATIVES TO THE CRIMINALIZATION OF OTHER MINOR AND NON-VIOLENT DRUG OFFENCES 14
PROTECTING THE RIGHT TO AN ADEQUATE STANDARD OF LIVING OF PEOPLE WHO DEPEND ON THE DRUG TRADE 15
AVOIDING MILITARIZED APPROACHES TO DRUG ENFORCEMENT 15

4. INTERSECTIONAL DISCRIMINATION AND ACCESS TO ECONOMIC, SOCIAL AND CULTURAL RIGHTS **16**

5. INTERNATIONAL COOPERATION AND ASSISTANCE **17**

6. THE FUTURE OF DRUG POLICY **17**

STATE REGULATION AND ADEQUATE CONTROLS 17
REPARATIONS FOR THE HARMS CAUSED BY THE “WAR ON DRUGS” 18
NEW INDICATORS TO EVALUATE DRUG POLICIES 19
REFORMING THE UN DRUG CONVENTIONS 19

1. INTRODUCTION

Amnesty International welcomes the opportunity to provide the following preliminary observations to the annotated outline circulated in the context of the upcoming General Comment on the impacts of drug policies on economic, social and cultural rights to be developed by the Committee on Economic, Social and Cultural Rights (the Committee).

The organization would like to express at the outset its strong support for this initiative. The upcoming General Comment will provide a key opportunity for the Committee to address important concerns regarding the implementation of drug laws and policies and to provide authoritative guidance to states on how to fulfil their obligations under the International Covenant on Economic, Social and Cultural Rights (the Covenant) in this context.

As the Committee has previously recognized, drug policies have direct implications for a number of rights enshrined in the Covenant. The blanket prohibition of drugs has led to a litany of abuses and has undermined the rights of millions as ill-conceived policies in the context of the "war on drugs" have effectively unleashed a war on people, in particular the poorest and most marginalized sectors of society. A sustained paradigm shift towards drug policies grounded in the protection of public health and human rights is therefore essential to stem the widespread human rights violations that arise from or are facilitated by the implementation of drug control policies.

Amnesty International highlights in this submission different areas that the organization believes should be addressed in the upcoming General Comment. The submission is largely based on research and policy analysis conducted by Amnesty International, although it should not be considered as an exhaustive list of all concerns the organization has regarding human rights and drug policies.

Lastly, Amnesty International would like to encourage the Committee to continue the positive engagement and consultation with people who use drugs and other communities engaged in the drug trade that have been affected by punitive drug policies, as well as civil society organizations and experts in health, social services and other relevant fields throughout the process of drafting the General Comment.

2. GENERAL OBSERVATIONS

THE FAILURE OF APPROACHES BASED ON PROHIBITION AND CRIMINALIZATION

Amnesty International welcomes the view reflected in the annotated outline that punitive approaches to drugs have failed over the years, which requires the promotion of a sustained paradigm shift towards drug control policies grounded on the protection of public health and human rights. Shifting away from prohibition models is critical to address the widespread human rights violations that arise from or are facilitated by the implementation of drug control policies and drug enforcement operations.

Over the years, Amnesty International and many other civil society organizations and international human rights mechanisms have documented the widespread human rights violations that are taking place across the world as a direct consequence of the implementation of punitive drug control policies, including police abuses, discrimination, extrajudicial executions, torture and other ill-treatment, arbitrary detentions, and violations of economic, social and cultural rights, including

of the right to health.[1] In some cases, abuses committed in the name of drug control have amounted to crimes against humanity committed as part of the "war on drugs".[2]

While drugs can pose risks to individuals and societies, the heavy reliance on criminal laws, repressive policies and other measures based on prohibition has resulted in widespread human rights violations and abuses. Moreover, the heavy reliance on criminal law and repressive policies has failed to decrease the use and availability of drugs over the years,[3] and has instead perpetuated high-risk behaviours that exacerbate the risks and harms associated with using drugs.[4] In particular, prohibition has led to the sale of more harmful drugs of unknown quality and to riskier methods of using drugs leading to significant increases in overdose deaths, transmissions of HIV, hepatitis C and other blood-borne diseases,[5] and other risks to health.[6] At the same time, violence and corruption are rife as a direct result of the expansion of illicit markets, having a particular dire impact on human rights and the rule of law.[7]

Amnesty International therefore encourages the Committee to emphatically condemn the prohibition and criminalization of drugs at the onset of the upcoming General Comment as such approaches have left a legacy of violence, disease, mass incarceration, suffering and abuse contrary to states obligations under the Covenant. As pointed out in the annotated outline, new drug control policies should uphold human rights and public health instead of relying on punitive approaches intended to supress the use and availability of drugs.

THE RELATIONSHIP BETWEEN THE UN DRUG CONVENTIONS AND INTERNATIONAL HUMAN RIGHTS LAW

Current drug policies worldwide are based on an international legal framework embedded in three different UN Conventions to which almost all States are party.[8] The three UN Drug Conventions are based on an underlying assumption that drugs and drug addiction are an 'evil' that should be prevented and eradicated for the protection of humankind.[9] The characterization of drug addiction as 'evil', and by implication of people who use drugs, introduced a concept into international law that morally describes drug use as a unique and exceptional form of wrongful conduct.[10]

---

[1] Amnesty International, "Substance Abuses: The Human Cost of Cambodia's Anti-Drug Campaign" (ASA 23/2220/2020), 12 May 2020,Amnesty International, "They just kill: Ongoing extrajudicial executions and other violations in the Philippines' 'war on drugs'" (ASA 35/0578/2019), 8 July 2019; Amnesty International, "If you are poor, you are killed: Extrajudicial executions in the Philippines' 'war on drugs'"" (ASA 35/5517/2017), 31 January April 2017; Amnesty International, "Criminalizing pregnancy: Policing pregnant women who use drugs in the USA" (AMR 51/6203/2017), 23 May 2017; Amnesty International, "You killed my son: Homicides by military police in the city of Rio de Janeiro" (AMR 19/2068/2015), 3 August 2015; Amnesty International, "Make him speak by tomorrow: torture and other ill-treatment in Thailand" (ASA 39/4747/2016), 28 September 2016; Amnesty International, "Out of control: torture and other ill-treatment in Mexico" (AMR 41/020/2014), 4 September 2014; Amnesty International: "Shadow of impunity: torture in Morocco and Western Sahara" (MDE 29/001/2015), 19 May 2015; Amnesty International, "Treated with indolence: the state's response to disappearances in Mexico" (AMR 41/3150/2016), 14 January 2016; Amnesty International, "Changing the soup but not the medicine?: Abolishing re-education through labour in China" (ASA 17/042/2013), 17 December 2013

[2] Amnesty International, "If you are poor, you are killed: Extrajudicial executions in the Philippines' 'war on drugs'" (ASA 35/5517/2017), 31 January April 2017; Amnesty International, "They just kill: Ongoing extrajudicial executions and other violations in the Philippines' 'war on drugs'", (ASA 35/0578/2019), 8 July 2019

[3] According to data from UNODC, the number of people aged 15-64 that used drugs globally in 2021 was estimated at 296 million, a 23% increase since 2011

[4] UN System coordination Task Team on the Implementation of the UN System Common Position on drug-related matters, *What we have learned over the last ten years: A summary of knowledge acquired and produced by the UN system on drug-related matters,* March 2019

[5] OHCHR, "Drug policies: High Commissioner calls for transformative changes", 13 March 2023, available at www.ohchr.org/en/statements-and-speeches/2023/03/drug-policies-high-commissioner-calls-transformative-changes; Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 6 August 2010, UN Doc. A/65/255, para. 26; Office of the High Commissioner on Human Rights, "Study on the impact of the world drug problem on the enjoyment of human rights", 4 September 2015, UN Doc. A/HRC/30/65, para. 26

[6] Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 6 August 2010, UN Doc. A/65/255, para. 26; Office of the High Commissioner on Human Rights, *Study on the impact of the world drug problem on the enjoyment of human rights,* 4 September 2015, UN Doc. A/HRC/30/65, para. 26

[7] Human Rights Committee, Concluding Observations: Guatemala, 19 April 2012, UN Doc. CCPR/C/GTM/CO/3, para. 12; The Global Commission on Drug Policy, *War on Drugs*, June 2011, p. 15.

[8] Every UN Member State is party to at least one of the Conventions. The 1961 Single Convention has been ratified by 185 States, the 1971 Convention by 183 States and the 1988 Convention has 189 parties.

[9] The preamble of the 1961 Single Convention states that Parties recognize "that addiction to narcotic drugs constitute a serious evil for the individual and is fraught with social and economic danger to mankind" and that the Parties have "a duty to prevent and combat this evil".

[10] Cristopher Hobson, "Challenging 'evil': Continuity and change in the drug prohibition regime" in *International Politics,* July 2014. Volume 51, Issue 4, pp. 528.

This prohibitionist approach and the strict interpretation by many states and intergovernmental organizations has favoured punishment as the main driver for achieving the goals under the UN Drug Conventions and has contributed to the transformation of a regime that was supposed to be about protecting the right to health.[11] Requirements to adopt legislation for the enforcement of the UN Drug Conventions has in many cases led to draconian national laws and highly invasive mechanisms of control often exceeding what is required by the language of the Conventions and in violation of international human rights law, such as forced crop eradication, chemical fumigation, mass incarceration, torture and other ill-treatment and the application of the death penalty.[12]

Historically, the drug control regime has been largely dissociated from human rights mechanisms.[13] International drug control mechanisms have failed to ensure that drug policies are consistent with international human rights law while the lack of consideration of human rights among international drug control mechanisms has resulted in poor human rights compliance among drug control bodies.[14] Over the years, the Commission on Narcotic Drugs (CND) has overall failed to discuss the human rights impact of punitive drug policies while UNODC has been criticized for its failure to address human rights in a comprehensive way, both in its operative and monitoring tasks.[15]

Amnesty International considers that the General Comment offers an important opportunity to clarify the relationship between the UN Drug Conventions and the Covenant, including when obligations arising from each treaty are in contradiction. The General Comment should urge international drug control bodies to ensure that human rights are a baseline for scrutinizing the legitimacy and impact of drug laws, policies and their enforcement, and to establish mechanisms for ensuring that appropriate remedies are available when such laws, policies and practices are found to be inconsistent with international human rights law and standards.

PARTICIPATION AND PROTECTION OF AFFECTED COMMUNITIES, HUMAN RIGHTS DEFENDERS AND CIVIL SOCIETY ORGANIZATIONS

The prohibition and criminalization of drugs has disenfranchised and excluded those most affected by drug control policies, including people who use drugs, and has excluded them from the design, implementation, monitoring and evaluation of drug laws and policies at the local, national and international level.[16] Moreover, human rights defenders, activists and civil society organizations providing services to affected communities, advocating for drug policy reform or documenting human rights abuses have faced increased risks and challenges as a direct result of punitive drug policies and the “war on drugs”.[17]

The dehumanization of people who use drugs and others involved in the drug trade – who are commonly considered to be ‘criminal’, ‘sick’ or ‘immoral’ – has been a key barrier for their effective participation in matters that directly affect them.[18] The criminalization of the use and possession of drugs and other drug-related offences has created additional barriers to the effective consultation

---

[11] Damon Barrett *et al.,* “Recalibrating the Regine: The need for a human rights-based approach to international drug policy”, The Beckley Foundation Drug Policy Programme. March, 2008, pp. 19; Rick Lines, “Deliver us from evil” in *International Journal on Human Rights and Drug Policy,* Vol. 1. UK, 2010, pp. 10.

[12] International Narcotics Control Board, “State responses to drug-related criminality”, 2019, UN Doc. E/INCB/2019/Alert.12, incb.org/documents/News/Alerts/Alert12_on_Convention_Implementation_June_2019.pdf; Daniel Heilmann, “The international control of illegal drugs and the UN treaty regime: Preventing or causing human rights violations?” in *ExpressO.* July 2010, pp. 30; David Bewley-Taylor, “Challenging the UN drug control conventions: problems and possibilities”, in *The International Journal of Drug Policy,* 2003, pp. 173.

[13] Jelsma, Martin. “UN-Common Position on drug policy – Consolidating system-wide coherence”, December 2019. Available at https://idpc.net/publications/2019/12/un-common-position-on-drug-policy-consolidating-system-wide-coherence

[14] International Drug Policy Consortium, “Taking Stock: A decade of drug policy – A civil society shadow report”, 21 October 2018; Damon Barrett and Manfred Nowak, *The United Nations and Drug Policy: Towards a human rights-based approach.* International Harm Reduction Association. London 2009, pp. 8

[15] International Drug Policy Consortium (IDPC), ”For the third year in a row, 100+ NGOs urge UNODC Director to mark International Human Rights Day by calling for rights-affirming drug policies”, 30 November 2022. Available at https://idpc.net/news/2022/12/for-the-third-year-in-a-row-100-ngos-urge-unodc-director-to-mark-international-human-rights-day

[16] Report of the Working Group of Experts on People of African Descent, Visit to the United States of America, UN Doc. A/HRC/15/18 (2010), para. 47; Committee on the Elimination of Racial Discrimination, Concluding Observations: United States of America, UN Doc. CERD/C/USA/CO/7-9 (2014), paras. 11, 20; Fordham, “The Meaningful Participation of ‘Stakeholders’ in Global Drug Policy Debates—A Policy Comment”, 2020, Drug Policies and Development in International Development Policy, doi.org/10.4000/poldev.3861

[17] Amnesty International, “Deadly but preventable attacks: Killings and enforced disappearances of those who defend human rights” (ACT 30/7270/2017), 5 December 2017

[18] Report of the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Human Rights Council 44th session, 15 April 2020, UN Doc. A/HRC/44/48

and participation of individuals and organizations whose expertise and experience could otherwise inform and improve States' responses.[19] Undue restrictions on civil society organizations, including on their right to seek and receive funds, have further hindered their ability to engage in the respect and promotion of human rights in the context of drug control and to support affected communities.[20]

This Committee has previously acknowledged States obligations to allow public participation in decision-making processes and ensure the participation of the population in all health-related decision making.[21] The Committee has further clarified that, for the realization of the right to health, States should undertake coordinated efforts to enhance the interaction among all the actors concerned, including the various components of civil society.[22] Moreover, the Committee has recognized the need for States to guarantee a safe and enabling environment for human rights defenders and others working to uphold the Convention.[23]

As recognized by the UN Declaration on Human Rights Defenders, everyone has a right to defend human rights individually or in association with others.[24] The Declaration also recognizes the right to study, discuss and form opinions on the observance of human rights, as well as the right to develop and discuss new human rights ideas and principles and to advocate their acceptance.[25] Undoubtedly, this framework provides protection for individuals advocating for drug policy reform, providing harm reduction and other health services, and documenting human rights violations committed in the context of punitive drug policies.

In order to effectively guarantee the meaningful participation of affected people and communities in the design, implementation, monitoring and evaluation of drug laws and policies, **the General Comment should specifically urge States to put in place mechanisms and proceedings to involve and consult with people who use drugs and other affected communities in the decisions that affect them, as well as with civil society organizations and experts in health, social services and other relevant fields. This should also include the need to remove legal barriers that unduly restrict or prevent the participation of affected individuals and communities, including the criminalization of drug-related conduct.**[26]

Amnesty International also recommends the Committee to consider including in this section relevant obligations to protect human rights defenders and ensure a safe and enabling environment for civil society. In this sense, the General Comment should emphasize that states must guarantee the right to association of human rights defenders and civil society organizations advocating for drug policy reform, including their right to seek and receive resources, and ensure an environment that enables them to carry out their work without fear of reprisals.

---

[19] Amnesty International, "There is no help for our community: The impact of States' Covid-19 responses on groups affected by unjust criminalization" (POL 30/5477/2022), 31 May 2022, p. 12
[20] Amnesty International, "Agents of the people: Four years of 'foreign agents' law in Russia" (EUR 46/5147/2016), 18 November 2016; Amnesty International, "Hungary: NGO law a vicious and calculated assault on civil society", 13 June 2017;
[21] CESCR, General Comment No. 14, The Right to the Highest Attainable Standard of Health (Article 12), UN Doc. E/C.12/2000/4 para. 11.
[22] CESCR, General Comment 14: The Right to the Highest Attainable Standard of Health (Article 12), E/C.12/2000/4, para. 64
[23] CESCR, Human Rights Defenders and Economic, Social and Cultural Rights: Statement by the Committee on Economic, Social and Cultural Rights, 29 March 2017, UN Doc. E/C.12/2016/2
[24] UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, art. 1
[25] UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, arts. 6-7
[26] Office of the High Commissioner on Human Rights, "Guidelines for States on the effective implementation of the right to participate in public affairs", 20 July 2018, UN Doc. A/HRC/39/28, para. 36

3. SPECIFIC OBLIGATIONS UNDER ICESCR RELATED TO DRUG CONTROL

ENSURING COMPREHENSIVE HARM REDUCTION INTERVENTIONS

As pointed out in the annotated outline, this Committee and other human rights mechanisms have recognized that States must ensure comprehensive harm reduction interventions as part of their obligations under the right to health. In this sense, the Committee has recognized the importance of harm reduction interventions for the protection of the right to health and has recommended governments to expand these programmes, including in prisons, and to remove obstacles that limit the provision of such services.[27] Similarly, the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health has noted that access to harm reduction and other evidence-based health responses to drugs are essential for the protection of the right to health of people who use drugs.[28]

Amnesty International considers important that the General Comment reemphasises that harm reduction is a vital aspect of the right to health that needs to be incorporated as a central pillar of drug policies at the national and international level. In this sense, states must ensure that harm reduction services are available, acceptable, affordable, of good quality and easily accessible to everyone on a non-discriminatory basis, including in prisons and other situations where people are deprived of their liberty.[29] Moreover, harm reduction services must comply with human rights law and standards, be evidence-based and gender-sensitive.[30] This requires paying particular attention to the needs of the most marginalized and to the specific needs of women, children and adolescents that provide suitable environments with integrated sexual and reproductive healthcare, information and services, childcare facilities and other gender-specific needs.[31]

To date, harm reduction services have tended to focus more on the use of injecting drugs and the prevention of HIV transmission. **Thus, it is essential for the General Comment to recognize that harm reduction services can also be critical in reducing the risks and harms of other types and ways of using drugs. Therefore, the Committee should urge states to ensure that harm reduction services include not only programmes related to the use of opioids, such as needle and syringe programmes, prescription of substitute medications and naloxone distribution, but also other services that have proven to be successful in reducing the risks and harms associated with other type of drugs such as drug-checking services, supervised drug-consumption rooms, distribution of safer smoking kits, integration of harm reduction into nightlife settings (for example chill-out spaces and hydration points), peer-led information sharing and the promotion of non-injecting routes for the administration of drugs.**[32]

The Committee has also repeatedly denounced situations in which people who use drugs are prevented from accessing harm reduction services due to fear of reprisals, particularly in contexts

[27] Committee on Economic, Social and Cultural Rights, Concluding observations on the fourth periodic reporting on Ecuador, 14 November 2019, UN Doc. E/C.12/ECU/CO/4, para. 47; Committee on Economic, Social and Cultural Rights, Concluding observations on the third periodic report of the Plurinational State of Bolivia, 05 November 2021, E/C.12/BOL/CO/3, para. 57.

[28] Statement by the UN expert on the right to health on the protection of people who use drugs during the COVID-19 pandemic, 16 April 2020, available at https://www.ohchr.org/en/statements/2020/04/statement-un-expert-right-health-protection-people-who-use-drugs-during-covid-19. See also Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 6 August 2010, UN Doc. A/65/255. Hereafter the Special Rapporteur on the Right to Health.

[29] Committee on Economic, Social and Cultural Rights, General Comment 14: The right to the highest attainable standard of health (Art. 12), 11 August 2000, UN Doc. E/C.12/2000/4, para. 12

[30] World Health Organization and United Nations Office on Drugs and Crime, *International Standards for the treatment of drug use disorders,* March, 2017, UN Doc. E/CN.7/2016/CRP.4

[31] 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 (UNGASS), which will take place in New York in April 2016, 7 December 2015; Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 3 August 2011, UN Doc. A/66/254; Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 4 April 2016, UN Doc. A/HRC/32/32

[32] *See* Harm Reduction International, "Harm reduction for stimulant use", April 2019, hri.global/files/2019/04/28/harm-reduction-stimulants-coact.pdf

in which the use and possession of drugs are criminalized.[33] In that sense, **the General Comment should acknowledge the way in which punitive drug policies that have relied on the prohibition and criminalization of drugs have directly undermined the implementation of harm reduction services despite their potential to protect the health and life of people who use drugs, including through the criminalization of drug paraphernalia and of people providing harm reduction services.**

The General Comment should also urge states to desist from law enforcement practices that hamper the provision of harm reduction services, including the seizure or destruction of drug use equipment and the prosecution of healthcare and harm reduction service providers. Furthermore, it should call on States to ensure that law enforcement agencies do not target health facilities, supervised drug-consumption rooms or needle and syringe programmes as a strategy for drug enforcement. Instead, states should reframe policing and other law enforcement efforts to promote public health and human rights, including by building a constructive engagement and partnership between law enforcement officials and healthcare providers around health and other human rights issues.

INCREASING ACCESS TO VOLUNTARY TREATMENT AND REHABILITATION SERVICES

The Committee has long paid attention to the shortcomings in the provision of treatment and rehabilitation services for people who use drugs, including with regards to its low availability and its often mandatory nature.[34] As recent estimates from UNODC show, only one in five people who needed treatment for drug dependence had access to medical services in 2021, with some regions severely underserved compared to others. [35] In addition, drug treatment continues to be disproportionally inaccessible for women and gender non-conforming individuals.[36]

This Committee has also previously analysed the implications of mandatory drug treatment to the right to health as thousands of people suspected or accused of using or possessing drugs have been held arbitrarily in drug-detention centres.[37] As noted by multiple international human rights mechanisms, people held in such centres are generally detained against their will and face systematic abuse rather than receiving evidence-based treatment.[38] Compulsory detention regimes for the purposes of drug "rehabilitation" through confinement, including those based on the perceived danger of persons to themselves or to others or on arguments of "medical necessity", have been found to be inherently arbitrary leading to calls for their immediate closure.[39] Conditions of detention in drug-detention centres have often been reported to be dire, operating in regulation grey areas without adequate oversight.[40] Various human rights mechanisms have also found that

---

[33] Committee on Economic, Social and Cultural Rights, Concluding observations on the third periodic report of Lithuania, 30 March 2023, UN Doc. E/C.12/LTU/CO/3, paras 62-63; CESCR, Concluding observations on the third periodic review of Uzbekistan, 31 March 2022, UN. Doc. E/C.12/UZB/CO/3, paras 52-53.

[34] Committee on Economic, Social and Cultural Rights, Concluding observations on the third periodic report of Lithuania, 30 March 2023, UN Doc. E/C.12/LTU/CO/3, paras 62-63; Committee on Economic, Social and Cultural Rights, Concluding observations on the third periodic report of Brazil, 15 November 2023, UN Doc. E/C.12/BRA/CO/3, para. 63-64; Committee on Economic, Social and Cultural Rights, Concluding observations on the second periodic report of Cambodia, 27 March 2023, UN Doc. E/C.12/KHM/CO/2, para. 46-47; Committee on Economic, Social and Cultural Rights, Concluding observations on the fourth periodic report of Switzerland, 18 November 2019, UN Doc. E/C.12/CHE/CO/4, para. 50; Committee on Economic, Social and Cultural Rights, Concluding observations on the second periodic report of Kazakhstan, 29 March 2019, UN Doc. E/C.12/KAZ/CO/2, para. 46

[35] United Nations Office on Drugs and Crime. *World Drug Report 2023 (previously cited)*, 2023, p. 4.

[36] United Nations Office on Drugs and Crime. *World Drug Report 2023 (previously cited)*, 2023, p. 20; 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 (UNGASS), which will take place in New York in April 2016, 7 December 2015

[37] Committee on Economic, Social and Cultural Rights, Concluding observations on the second periodic report of Cambodia, 27 March 2023, UN Doc. E/C.12/KHM/CO/2, para. 46-47; Committee on Economic, Social and Cultural Rights, Concluding observations on the third periodic report of the Republic of Moldova, 19 October 2017, UN Doc. E/C.12/MDA/CO/3, para. 66-67; Committee on Economic, Social and Cultural Rights, Concluding observations on the combined initial and second periodic reports of Thailand, 7 July 2015, UN Doc. E/C.12/THA/CO/1-2, para. 32

[38] OHCHR, *Human rights challenges in addressing and countering all aspects of the world drug problem* (previously cited), 2023, para. 24; UN Working Group on Arbitrary Detention, Arbitrary detention related to drug policies, 18 May 2021, A/HRC/47/40, para.84-90

[39] Working Group on Arbitrary Detention, Study on arbitrary detention relating to drug policies (previously cited), para. 99 and 126(e); Report of the Working Group on Arbitrary Detention, 10 July 2015, UN Doc. A/HRC/30/36, para. 74; Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 6 August 2010, UN Doc. A/65/255, para. 32; ILO, OHCHR, UNDP, UNESCO, UNFPA, UNHCR, UNICEF, UNODC, UN Women, WFP, WHO and UNAIDS, "Joint statement on compulsory drug detention and rehabilitation centres", March 2012.

[40] UN Working Group on Arbitrary Detention, Arbitrary detention related to drug policies, 18 May 2021, A/HRC/47/40, para. 84

beatings, caning or whipping, forced labour, sexual abuse and intentional humiliation are common methods used in such institutions.[41]

The General Comment offers an opportunity for **the Committee to reemphasise that states must ensure that drug treatment and rehabilitation services need to be available, acceptable and easily accessible to everyone on a non-discriminatory basis, and of good quality.**[42] This requires paying particular attention to the needs of marginalized people and to the specific needs of women, children and adolescents.[43] Furthermore, **the General Comment should underscore states obligations in contexts in which drug treatment and rehabilitation centres are privately run, including the need to ensure regular and adequate supervision by state authorities to prevent any abuses and the establishment of an independent complaints mechanism**.[44]

Amnesty International believes that **the General Comment should also emphasize that drug control policies need to distinguish the use of drugs from the dependence on drugs to avoid the misguided presumption that all drug use is inherently dangerous and leads to dependence and ensure that treatment is only provided when medically indicated.**[45] Punitive drug policies usually fail to distinguish between the use and dependence on drugs commonly based on the presumption that all drug use is inherently dangerous and leads to dependence. According to UNODC, 5.8% of the global population aged 15-64 used at least one drug in 2021, an estimated 296 million people, but only less than 13% (39.5 million people) of those who used drugs in the same period have developed drug dependence.[46]

Lastly, the organization believes that **the General Comment should unequivocally condemn mandatory or compulsory drug treatment as the right to health requires drug dependence treatment to be voluntary and with informed consent, based on the best available evidence, well-funded, and subjected to independent oversight.**[47] Moreover, as noted by the Special Rapporteur on health, drug treatment and rehabilitation should be prioritized in community settings rather than in institutions.[48] Thus, **the General Comment should reinforce previous calls on states to close without delay state-run compulsory drug detention centres and private treatment facilities that hold persons against their will, and to release people detained therein with sufficient provisions of health and social services available to them, as required**.[49]

CARRYING OUT PREVENTION CAMPAIGNS

Amnesty International recommends to also pay attention to the need for states to implement effective preventive measures to address drug-related harm, particularly highlighting the need to provide accurate information and education through non-stigmatizing language and attitudes, which are important elements to fulfil States' obligations under the right to health.[50]

---

[41] Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 1 February 2013, UN Doc. A/HRC/22/53, para. 41; Committee on Economic, Social and Cultural Rights (12 December 2012), Concluding Observations: Belarus, UN Doc. E/C.12/BLR/CO/4-6, para. 15; World Health Organization, "Assessment of Compulsory Treatment of People Who Use Drugs in Cambodia, China, Malaysia and Viet Nam", 2009. *See also* Richard Elliott *et al. Treatment or torture? Applying international human rights standards to drug detention centers.* Open Society Foundations. June, 2011.

[42] Committee on Economic, Social and Cultural Rights, General Comment 14: The right to the highest attainable standard of health (Art. 12), 11 August 2000, UN Doc. E/C.12/2000/4, para. 12

[43] Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 3 August 2011, UN Doc. A/66/254; Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 4 April 2016, UN Doc. A/HRC/32/32

[44] Human Rights Watch, *Torture in the name of treatment: Human rights abuses in Vietnam, China, Cambodia and Lao PDR.* New York, July 2012; Richard Elliott *et al. Treatment or torture? Applying international human rights standards to drug detention centers.* Open Society Foundations. June, 2011.

[45] Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 6 August 2010, UN Doc. A/65/255, para. 37

[46] United Nations Office on Drugs and Crime, *World Drug Report 2023* (previously cited).

[47] Committee on Economic, Social and Cultural Rights, General Comment 14: The right to the highest attainable standard of health (Art. 12), 11 August 2000, UN Doc. E/C.12/2000/4, para. 12; UNDP and others, *International Guidelines on Human Rights and Drug Policy* (previously cited), 2023, Guideline II, I; UNODC and WHO, *International standards for the treatment of drug use disorders: second revised edition (*previously cited), 2020;

[48] Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 6 August 2010, UN Doc. A/HRC/38/36, para. 98(d);

[49] UN Working Group on Arbitrary Detention, Arbitrary detention related to drug policies, 18 May 2021, A/HRC/47/40, para. 126(e)

[50] Committee on Economic, Social and Cultural Rights, General Comment 14: The right to the highest attainable standard of health (Art. 12), 11 August 2000, UN Doc. E/C.12/2000/4, para. 16

Amnesty International has expressed concern over fear-mongering, stigmatizing and abstinence-based campaigns to prevent the use of drugs since they have proven to be ineffective at curbing the levels of drug use and may have created barriers to the provision of healthcare by exacerbating the social stigmatization and demonization of people who use drugs.[51] Worryingly, according to UNODC data, the majority of countries continue to favour the implementation of this type of campaigns over family and community-based campaigns that have proven to be more effective.[52]

As recommended by the WHO and UNODC, prevention campaigns should include a range of different interventions and policies based on the age of the target group, the level of risk, and the environment in which the campaign will be implemented.[53] In this sense, it is important that efforts towards preventing drug-related harms incorporate evidence-based strategies to prevent or delay children's first use of drugs for non-medical purposes but also include campaigns for all people who already use drugs to avert drug dependence and other harms that may arise from the use of drugs, which require different strategies and approaches.

Amnesty International therefore recommends the Committee to recognize the need for states to implement public educational programmes and information campaigns that incorporate harm reduction information and are based on scientific evidence that accurately describe the effects of drugs, including the risks both to people who use drugs and to others. Furthermore, such programmes should contemplate efforts specifically tailored for children and adolescents both in educational settings and in environments outside of school, such as street and party scenes, aimed at empowering them to make informed decisions about their own conduct and provide them with information about where to find help if they require it.[54]

DISCONTINUING DRUG COURTS

Amnesty International welcomes the attention given in the annotated outline to the way in which drug courts have been set in various countries with serious implications for the right to health and other human rights.

As noted by the Working Group on Arbitrary Detention, drug courts have been found to provide fewer fair trial protections than ordinary courts and raise concerns over violations to the presumption of innocence and the right not to be compelled to incriminate oneself or to confess guilt.[55] The UN Special Rapporteur on the Independence of Judges and Lawyers has further found evidence of frequent human rights violations in the context of drug courts and has condemned instances in which drug courts have mandated non-evidence-based treatment.[56] Problematically, people who use drugs who are prosecuted in drug courts are prescribed treatment by judges who are not qualified to evaluate, monitor or supervise a medical treatment that should be dealt by health professionals. In some circumstances, people tend to choose treatment mandated by drug courts only to avoid prison, even in cases that may not be medically indicated, leading to high rates of relapse.[57]

In this sense, **Amnesty International encourages the Committee to build on the analysis made by the Working Group on Arbitrary Detention to condemn special courts that have the power to mandate drug treatment, including in drug-courts or other diversion programmes, and call for these programmes to be discontinued as they inherently coerce people into undergoing medical**

---

[51] Dan Werb, *et al.* (2011), 'The effectiveness of anti-illicit-drug public-service announcements: A systematic review and meta-analysis', *Journal of Epidemiology & Community Health*, October 2011.
[52] Commission on Narcotic Drugs (20 December 2017), Action taken by Member States to implement the Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem, Report of the Executive Director. UN Doc. E/CN.7/2018/6
[53] World Health Organization and United Nations Office on Drugs and Crime, *International Standards on drug use prevention.* Second updated edition, 2015, pp. 50-51
[54] Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 4 April 2016, UN Doc. A/HRC/32/32, para 101-102
[55] Working Group on Arbitrary Detention, *Study on arbitrary detention relating to drug policies* (previously cited), para. 28-32; Report of the Working Group on Arbitrary Detention, 10 July 2015, UN Doc. A/HRC/30/36, para. 58-59; Report of the Working Group on Arbitrary Detention: Visit to Canada, 5 December 2005, UN Doc. E/CN.4/2006/7/Add.2, para. 57.
[56] Submission of the Special Rapporteur on the independence of judges and lawyers for the OHCHR report on the implementation of the joint commitment to effectively addressing and countering the world drug problem with regard to human rights (A/HRC/39/39). Available at www.ohchr.org/EN/HRBodies/HRC/Pages/WorldDrugProblemHRC39.aspx
[57] Working Group on Arbitrary Detention, Report: Visit to Maldives, 2022, UN Doc. A/HRC/51/29/Add.1, para. 59-64.

treatment. States should ensure that neither drug courts nor regular courts use the threat of imprisonment as a means to coercively influence an individual into drug treatment as this would infringe on the right to choose one's treatment freely, to refuse treatment or to discontinue it at any time.[58]

REFRAINING FROM USING MANDATORY DRUG TESTING

Amnesty International would recommend to further elaborate States obligations under international human rights law regarding the use of mandatory drug testing and its implications for rights protected under the Covenant.

As stated by the UN Special Rapporteur on the Right to Health, mandatory drug testing is an arbitrary interference with an individual's privacy and is counterproductive as it can discourage people from seeking healthcare.[59] Therefore, the Special Rapporteur has urged States to refrain from using drug testing as a means to police private behaviour and ensure that any interference with the right to privacy are carefully justified by a public health necessity and implemented with participation, transparency and accountability.[60] The Working Group on Arbitrary Detention has also found that mandatory testing is a violation of the right to privacy and physical integrity and has called on States to ensure that testing is only undertaken after a warrant has been issued by a judicial officer.[61] In addition, the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has noted that drug testing without informed consent may constitute a violation of the right to physical integrity, especially in detention settings.[62]

The General Comment should therefore underscore that mandatory drug testing must therefore not be permitted as it is an arbitrary interference with an individual's privacy and is counterproductive from a right to health perspective. Drug testing must be conducted only after informed consent has been given, and carried out in a non-discriminatory, transparent and inclusive way. Testing should be intended to encourage counselling and treatment, if appropriate, and not used for judicial proceedings.

GUARANTEEING ADEQUATE AVAILABILITY OF DRUGS FOR MEDICAL PURPOSES

As pointed out by the annotated outline, the strict measures imposed by the international drug control regime and restrictive national drug regulations have obstructed the effective distribution of drugs for medical purposes, in particular for pain treatment and palliative care, which has resulted in further harm and suffering for millions of patients who require such medicines.[63]

According to the International Narcotics Control Board (INCB), nearly 80% of the world's population, living mainly in low and lower-middle income countries, have no access to essential medicines controlled under the UN Drug Conventions.[64] The WHO estimates that only 14% of people in need of palliative care have access to it,[65] leaving them without treatment for intense pain and other ailments. According to the INCB, 82% of the global population have access only to less than 17% of the world's morphine.[66]

The emphasis put by States and intergovernmental organizations in preventing diversion of controlled substances and enforcing the prohibition of drugs for non-medical use has been

[58] Working Group on Arbitrary Detention, Study*: Arbitrary detention relating to drug policies*, 18 May 2021, UN Doc. A/HRC/47/40, para. 83.
[59] Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Report, August 2009, UN Doc. A/64/272, para. 32.
[60] Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Anand Grover, Report, 2010, UN Doc. A/65/255, para. 20
[61] Working Group on Arbitrary Detention, *Arbitrary detention relating to drug policy* (previously cited), para. 10; WGAD, Report: visit to Bhutan, 2019, UN Doc. A/HRC/42/39/ADD.1, para. 73 and 93(a).
[62] Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 14 January 2009, UN Doc. A/HRC/10/44, para. 71
[63] World Health Organization, *Improving access to medications controlled under international drug conventions*, February 2009, p. 1.
[64] International Narcotics Control Board, *No Patient Left Behind: Progress in Ensuring Adequate Access to Internationally Controlled Substances for Medical and Scientific Purposes*, 09 March 2023, incb.org/documents/Publications/AnnualReports/AR2022/Supplement/E_INCB_2022_1_Supp_1_eng.pdf,
[65] World Health Organization, "Fact sheet: Palliative Care", 05 August 2020, who.int/news-room/fact-sheets/detail/palliative-care
[66] International Narcotics Control Board, *No Patient Left Behind: Progress in Ensuring Adequate Access to Internationally Controlled Substances for Medical and Scientific Purposes* (previously cited), 2023, p. iii.

detrimental for ensuring access to essential medicines.[67] Moreover, the prioritization of criminal justice measures over a public health approach has infringed upon the right to health and the right to enjoy the benefits of scientific progress.[68]

Therefore, **the General Comment should urge states to overcome the specific barriers to the effective realization of the right to health imposed by the UN Drug Conventions and national drug regulations with regards to access to essential medicines. In particular, states must ensure that the UN Drug Conventions are not interpreted or applied in a way that prevents or obstructs the use and distribution of controlled substances for medical and scientific purposes and take particular steps to reduce the disparities in accessibility and availability between and within countries. When considering scheduling or controlling a new substance at the national or international level, States must ensure that the impact on the availability of medicines does not disproportionately affect people who have a medical need for them.**

ADVANCING THE DECRIMINALIZATION OF DRUGS

The blanket prohibition of drugs has led governments to deliberately punish, violently attack, stigmatize and demonize millions of people around the world with the aim of stopping them and deterring others from using drugs. As noted by the UN Common Position on Drugs, the criminalization of drugs poses a direct threat to a person's health and well-being, leading to widespread human rights violations while failing to decrease the use and availability of drugs.[69] Moreover, people convicted for a drug-related offence face additional obstacles in obtaining employment and pursuing education, as well as adverse effects on the custody of children and accessing government benefits such as public housing, food assistance or student financial aid.[70]

To date, an estimated 40 countries around the world have implemented some sort of decriminalization model for drugs.[71] The evidence available so far shows that decriminalizing the use, possession and cultivation of drugs for personal use, if combined with an expansion of health and social services, does not lead to higher rates of use and can instead have a beneficial impact on public health, public security and human rights.[72] Additionally, decriminalization has also been applied in some jurisdictions to other minor drug offences, such as subsistence cultivation of drug crops, transportation of small quantities of drugs (drug couriers), social-sharing of drugs with no financial gain, or selling small amounts of drugs that a person previously owned for the purpose of supporting their personal use of drugs (also known as "user-dealer").[73]

This Committee has been at the forefront of international human rights mechanisms who have called on States to decriminalize the use and possession of drugs for personal use as an essential measure to protect the rights of people who use drugs.[74] Multiple other human rights mechanisms have issued similar recommendations, including the Committee on the Elimination of Discrimination against Women,[75] the Working Group on Arbitrary Detention,[76] the UN Special Rapporteur on the

---

[67] Global Commission on Drug Policy, *The negative impact of drug control on public health: the global crisis of avoidable pain*, October 2015, globalcommissionondrugs.org/reports-files/18102015/GCODP-THE-NEGATIVE-IMPACT-OF-DRUG-CONTROL-ON-PUBLIC-HEALTH-EN.pdf, p. 11-12.

[68] Burke-Shyne, N., Csete J., and others, *How drug control policy and practice undermine access to controlled medicines,* 2017, Health and Human Rights Journal, Volume 19, Number 1.

[69] UN System Chief Executives Board for Coordination, United Nations system common position supporting the implementation of the international drug control policy through effective inter-agency collaboration", 18 January 2019, UN Doc. CEB/2018/2

[70] Office of the High Commissioner on Human Rights, "Study on the impact of the world drug problem on the enjoyment of human rights", 4 September 2015, UN Doc. A/HRC/30/65, para. 50

[71] Talking Drugs, Release, IDPC, *Drug decriminalisation around the world*, talkingdrugs.org/drug-decriminalisation/

[72] Release – Drugs, The Law & Human Rights, *A Quiet Revolution: Drug Decriminalisation Across the Globe*, March 2016, release.org.uk/sites/default/files/pdf/publications/A%20Quiet%20Revolution%20%20Decriminalisation%20Across%20the%20Globe.pdf; Scheim AI, Maghsoudi N, Marshall Z, et al*, Impact evaluations of drug decriminalisation and legal regulation on drug use, health and social harms: a systematic review*, BMJ Open 2020, doi: 10.1136/bmjopen-2019-035148

[73] The Global Commission on Drug Policy, *Advancing drug policy reform: A new approach to decriminalization*. September, 2016.

[74] Committee on Economic, Social and Cultural Rights, Concluding Observations: Philippines, 7 October 2016, UN Doc. E/C.12/PHL/CO/5-6, para. 54; Committee on Economic, Social and Cultural Rights, Concluding Observations: Benin, 27 March 2020, UN Doc. E/C.12/BEN/CO/3, para. 42; Committee on Economic, Social and Cultural Rights, Concluding Observations: Serbia, 6 April 2022UN Doc. E/C.12/SRB/CO/3, para.63.

[75] Committee on the Elimination of Discrimination against Women, Concluding Observations: Kyrgyzstan, 29 November 2021, UN Doc. CEDAW/C/KGZ/CO/5, para. 46.a

[76] Working Group on Arbitrary Detention, *Study on arbitrary detention relating to drug policies*, 18 May 2021, UN Doc. A/HRC/47/40

right to health,[77] and the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions.[78] More recently, a set of legal principles elaborated by jurists for a human rights-based approach to criminal law, known as the "8 March Principles", clarified that under general principles of criminal law and international human rights law, states have limited discretion when prohibiting the use, possession, purchase, or cultivation of drugs for personal use.[79]

The upcoming General Comment is therefore an important opportunity to deepen the analysis conducted by the Committee with regards to the decriminalization of drugs to ensure that punitive drug policies do not hamper the effective realization of economic, social, and cultural rights. In this sense, **the General Comment should call on states to end the criminalization of, and punishment for, the use, possession, cultivation and purchase of all drugs for personal use and ensure that this reform is accompanied by an expansion of health and other social services to address the risks related to the use of drugs. States should also ensure a process to review convictions and sentences for such offences and, where appropriate, quash, commute or reduce existing convictions and/or sentences.**

IMPLEMENTING ALTERNATIVES TO THE CRIMINALIZATION OF OTHER MINOR AND NON-VIOLENT DRUG OFFENCES

Amnesty International shares the concern reflected in the annotated outline over the impact that the criminalization of other minor and non-violent drug-related offences may have on several rights. As noted by OHCHR, the criminalization of minor and non-violent drug-related offences has disproportionately affected people from poor or marginalized groups, often women and people from racial, ethnic or other minorities or Indigenous peoples, due to over-policing around their communities and the stigmatization of people who use drugs.[80]

In this sense, the organization considers important to ensure that the General Comment will consider that decriminalization should also be applied to other minor and non-violent drug offences, such as subsistence cultivation of drug crops, transportation of small quantities of drugs (drug couriers), social-sharing of drugs with no financial gain, or selling small amounts of drugs that a person previously owned for the purpose of supporting their personal use of drugs (also known as "user-dealer").[81] These acts, in themselves, do not cause a direct harm to public health and their criminalization targets behaviour that generally poses little to no risk of harm to others.

When determining whether minor and non-violent drug-related conduct should be maintained as a criminal offence, states must ensure that the crime is clearly defined in law; that proscribing the conduct is aimed at addressing a specific public health problem directly associated with the possible abuse of a particular drug; and that the conduct puts others at risk of serious harm, for example by knowingly supplying adulterated drugs.

The Committee should also consider the opportunity of giving further guidance on states on laws and policies that impose threshold quantities to determine what is considered as 'possession for personal use' to distinguish it from other offences such as trafficking. Amnesty International believes that such thresholds should only be used to set minimum quantities below which a person cannot be prosecuted. If a person is found with a quantity that exceeds the threshold, it should not be assumed that a person can be charged with an offence for distribution or trafficking unless the intent to sell or distribute is proven. Thresholds should be meaningful enough to ensure that these are not so low that people continue to be prosecuted merely for their use of drugs and be based on the realities and meaningful participation of people who use drugs.

---

[77] Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 6 August 2010, UN Doc. A/65/255, para. 49, 62.

[78] Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, *Deaths in Prison,* 18 April 2023, UN Doc. A/HRC/53/29, para. 22

[79] International Commission of Jurists, *The 8 March Principles for a Human Rights-Based Approach to Criminal Law Proscribing Conduct Associated with Sex, Reproduction, Drug Use, HIV, Homelessness and Poverty*, 8 March 2023, available at www.icj.org/icj-publishes-a-new-set-of-legal-principles-to-address-the-harmful-human-rights-impact-of-unjustified-criminalization-of-individuals-and-entire-communities/

[80] Office of the High Commissioner on Human Rights, *Study on the impact of the world drug problem on the enjoyment of human rights.* 4 September 2015. UN Doc. A/HRC/30/65, para. 51; *See also* Niamh Eastwood *et. al*, "*The colour of injustice: 'Race', drugs and law enforcement in England and Wales",* Stop Watch, Release and LSE. October, 2018.

[81] The Global Commission on Drug Policy, *Advancing drug policy reform: A new approach to decriminalization.* September, 2016.

PROTECTING THE RIGHT TO AN ADEQUATE STANDARD OF LIVING OF PEOPLE WHO DEPEND ON THE DRUG TRADE

As noted by the annotated outline, forced eradication campaigns have been a concern for the international community given their particular impact on the right to an adequate standard of living on many communities who depend on illicit drug economies.

People living in poverty in rural areas or with limited access to fertile land have on many occasions been driven to the cultivation of illicit crops to obtain means of minimal subsistence. Cultivating illicit crops such as coca, opium poppy or cannabis has also become a livelihood option for many peasant farmers that do not have other viable alternatives as these crops are non-perishable, high-value commodities that can be grown in marginal terrain, in poor soil with limited or no irrigation, and that can provide income for those who are land-, food-, and cash-poor.[82] Involvement in the drug trade can also often be seen as a viable option for people living in poverty, including unemployed youth and others with limited job opportunities.[83]

This Committee has previously expressed concern over the forced eradication of illicit crops and further recommended alternative development programs with the possibility of including community farmers affected in newly regulated markets.[84] Similarly, the Committee on the Rights of the Child,[85] the Special Rapporteur on the Right to Health,[86] and the Special Rapporteur on Indigenous Peoples[87] have all criticized crop eradication programmes and have called for their suspension. The UNDP has also recommended states to ensure that efforts to curb the supply of drugs are mainstreamed into national poverty reduction strategies to ensure the integration of sustainable livelihood strategies into local, regional and national development plans.[88] The OHCHR has also called on the international community to increase their efforts to ensure that alternative development programmes are focused on improving living conditions of communities that depend on the drug economy, particularly in the Global South.[89]

The General Comment should underline that in order to protect the right to an adequate standard of living of communities that depend on illicit drug economies, states must first secure alternative livelihoods before removing existing opportunities linked to the drug trade.[90] Authorities must ensure that efforts to prevent the illicit cultivation of drugs, to eradicate crops cultivated for illicit purposes or to disrupt the production and distribution of drugs do not have an adverse impact on Indigenous peoples, rural farmers and other communities who depend on the cultivation, production and distribution of drugs for their livelihood. In particular, states should address the underlying socio-economic causes of the cultivation of illicit crops and take measures to avoid entrenching poverty and deprivation, including through measures to guarantee that rural farmers and Indigenous peoples have adequate access to markets, alternative livelihoods, and social protection measures.

AVOIDING MILITARIZED APPROACHES TO DRUG ENFORCEMENT

As noted in the annotated outline, the militarization of anti-drug operations has often resulted in the suspension of essential services with a great impact on economic, social and cultural rights. The militarization of drug enforcement, together with the punishment and demonization of people who

[82] UNDP, *Perspectives on the Development Dimensions of Drug Control Policy*. New York 2015, p. 4; Committee on the Elimination of all forms of Discrimination against Women (14 August 2009), Concluding Observations: Lao People's Democratic Republic, UN Doc. CEDAW/C/LAO/CO/7, para. 44.

[83] UNDP, *Addressing the Development Dimensions of Drug Policy.* New York, 2015, p. 6.

[84] Committee on Economic, Cultural and Social Rights, Concluding Observations: South Africa, 29 November 2018, UN Doc. E/C.12/ZAF/CO/1

[85] Committee on the Rights of the Child (8 June 2006), Concluding Observations: Colombia, UN Doc. CRC/C/COL/CO/3, para. 72

[86] Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 6 August 2010, UN Doc. A/65/255, para. 75; Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health: Preliminary note on the mission to Ecuador and Colombia, 4 March 2007, UN Doc. A/HRC/7/11/Add.3

[87] Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people: Mission to Colombia. 10 November 2004. UN Doc. E/CN.4/2005/88/Add.2; Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people: Mission to Ecuador, 28 December 2006, UN Doc. A/HRC/4/32/Add.2, para. 86

[88] UNDP, *Addressing the development dimensions of drug policy* (previously cited), 2015, p.15.

[89] OHCHR, *Human rights challenges in addressing and countering all aspects of the world drug problem* (previously cited), 2023, para. 66.

[90] OHCHR, Human rights challenges in addressing and countering all aspects of the world drug problem (previously cited), 2023, para. 17

use drugs, has brought alarming levels of violence and human rights violations with a devastating effect around the world, particularly among the poorest and most marginalized sectors of society.[91]

States in all regions of the world have relied on military forces and have adopted military techniques, training and equipment for use by the police and other law enforcement agencies as part of their efforts to stem the use and distribution of drugs based on the premise that national security or public safety is at stake. The control of the trade in illicit drugs by criminal groups operating in certain marginalized communities has further served as a pretext for authorities in many countries to feed a narrative of war that portrays low-income and marginalized neighbourhoods as 'spaces that are out of control and in need to be won back from an enemy'. In some instances, militarized police operations have repeatedly targeted whole communities and disrupted the provision of local services resulting in violations of a range of economic, social and cultural rights, including the rights to health, education and food.[92]

It is therefore key for the General Comment to address the impact of militarized approaches to drug enforcement on economic, social and cultural rights and to urge states to comply with international standards that require that the maintenance of public order is primarily reserved for civilian police forces who should be properly trained and equipped to allow for a differentiated use of force in accordance with the principles of necessity and proportionality.[93] States should only resort to military forces extraordinarily, temporarily and restricted to what is strictly necessary in the specific circumstances. In such exceptional circumstances, the participation of the armed forces must be subordinated and complementary to civilian forces and be regulated and supervised by civilian authorities. When military personnel perform functions that would normally correspond to civilian forces, they must be subjected in all respects to the same rules and procedures as those established for law enforcement officials.[94]

4. INTERSECTIONAL DISCRIMINATION AND ACCESS TO ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Punitive drug policies have exacerbated and justified discriminatory practices against people who use drugs, including in the fields of health, housing, education and employment.[95] Repressive policies have also promoted a stigmatized approach towards people who use drugs, usually considered to be 'sick', 'mentally ill', 'criminal' or 'immoral', which has segregated and further marginalized this sector of the population.[96]

As a result, punitive drug policies have produced profoundly unequal outcomes across marginalized communities even when rates of drug use and sales are broadly similar across groups.[97] Moreover, people facing intersecting forms of discrimination, including based on their gender, age, race, ethnicity, sexual orientation, gender identity, disability, Indigenous identity, migrant or socio-economic status, have encountered additional obstacles when seeking to access their economic, social and cultural rights.

---

[91] OHCHR, Human rights challenges in addressing and countering all aspects of the world drug problem (previously cited), 2023, para. 35

[92] Amnesty International (2015), "You killed my son: Homicide by military police in the city of Rio de Janeiro" available at https://www.amnesty.org/en/documents/amr19/2068/2015/en

[93] OHCHR, Human rights challenges in addressing and countering all aspects of the world drug problem (previously cited), 2023, para. 68(q)

[94] Commentary to the UN Code of Conduct for Law Enforcement Officials, nb 2 to Article 1

[95] UN system coordination Task Team on the Implementation of the UN System Common Position on drug-related matters, *What we learned over the last ten years: A summary of knowledge acquired and produced by the UN system on drug-related matters,* March 2019, (previously cited), p.22.

[96] Report of the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Human Rights Council 44th session, 15 April 2020, UN Doc. A/HRC/44/48, para. 27.

[97] UNDP, *Addressing the Development Dimensions of Drug Policy, 2015*, p. 7.

Amnesty International encourages the Committee to ensure that the analysis on discrimination addresses the ways in which the prohibition and criminalization of drugs produces multiple and intersecting forms of discrimination. Intersectionality should be used in the General Comment as a perspective of analysis which makes explicit the underlying structural factors and root causes behind poorer outcomes for groups facing discrimination and making clearer the barriers to access social determinants of health for people affected by multiple or intersecting forms of discrimination.

The General Comment should also clarify that states have an obligation to address the underlying socio-economic factors that increase the risks of using drugs or that lead people to engage in the drug trade, including ill-health, lack of access to healthcare, denial of education, unemployment, lack of housing, poverty or discrimination. Drug control policies should be understood as a way to achieve broader objectives, including the protection of the right to health, ensuring equality and non-discrimination, and avoiding the violence associated with illicit markets.

5. INTERNATIONAL COOPERATION AND ASSISTANCE

In addition to addressing the need for increasing resources for international cooperation and assistance in efforts to promote health and sustainable livelihoods in the context of drug control, Amnesty International recommends that the Committee also addresses the extraterritorial obligations related to international assistance and cooperation in the area of drug control, including the need to ensure that such cooperation does not lead to human rights abuses in other countries either directly or indirectly.[98]

The UN Special Rapporteur on Extrajudicial Executions has highlighted this obligation in relation to the imposition of the death penalty for drug related offences and the potential responsibility of countries engaging in cooperation with law enforcement programmes, providing technical or legal assistance, or extraditing individuals to countries where the death penalty is still imposed for drug-related offences.[99] The OHCHR has also noted that states may be responsible for their failure to take reasonable steps to prevent or stop human rights abuses committed as part of their international assistance and cooperation in the area of law enforcement, including the sale and transfer of arms used to violate human rights during drug enforcement operations.[100]

In this sense, **Amnesty International recommends that the General Comment incorporates an analysis of extraterritorial obligations in the context of drug control which require states to ensure that their drug control laws, policies and practices do not lead to violations of human rights, either directly or indirectly, for people living in other countries. States and intergovernmental organizations must ensure that any financial and technical assistance provided to third countries for drug-enforcement operations does not contribute, or carry a real risk of contributing, to the commission of human rights violations. Any such cooperation, including training or technical advice, must be halted if used (or if there is a real risk of it being used), either directly or indirectly, to commit human rights abuses or violations.**

6. THE FUTURE OF DRUG POLICY

STATE REGULATION AND ADEQUATE CONTROLS

Drugs can certainly pose risks to individuals and communities, and states therefore have an obligation to adopt adequate measures to protect people from the harmful effects of drugs. However,

---

[98] See Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights

[99] Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 7 August 2015, UN doc. A/70/304; Report of the Secretary-General to the Human Rights Council, 2 July 2012, UN doc. A/HRC/21/29

[100] Report of the Office of the United Nations High Commissioner for Human Rights, “Impact of arms transfers on the enjoyment of human rights”, 3 May 2017, UN Doc. A/HRC/35/8

the way in which states have responded to the risks and challenges posed by drugs and organized crime has created more harm than good. It is precisely because of the risks associated to drugs that governments need to take control and regulate how these substances are produced, sold and used.

State regulation does not mean allowing unrestricted access for all people to all drugs; rather, it sets out rules to allow for the adequate control of specific substances and provide the legal channels for those permitted to access them. For example, some countries have imposed restrictions on alcohol and tobacco over the last decades mostly centred on a public health approach and created concrete obstacles to curb consumption, including through age limits, restrictions on advertisement, targeted taxation and quality controls.[101]

OHCHR has recommended states to aim to take control of illegal drug markets through responsible regulation rather than pursuing policies that have facilitated human rights abuses and contributed to the existence of unregulated criminal markets.[102] Moving away from a blanket prohibitionist approach would thus allow flexibility for states to take control away from illicit markets that are inherently prone to violence and detrimental to public health.

Many countries have already taken steps to regulate certain drug markets – particularly cannabis – as a way to take the control away from criminal organizations, ranging from limiting access for medical use to the sale of drugs for recreational purposes. Some countries have also taken steps to legally regulate the cultivation of certain crops, including cannabis, coca and opium.[103]

In this sense, **it becomes essential for the General Comment to acknowledge the important trend towards the legal regulation of drugs as a way to protect the right to health and other human rights. The General Comment should encourage states to draw key lessons from successful alternatives that have proven to better protect and respect human rights and that have provided evidence on the positive impact of such reforms on public health and human rights, such as the WHO Framework Convention on Tobacco Control (FCTC) that establishes an international regime for the control of tobacco products, the regulation of medical cannabis, medical assisted therapy programmes for people who use heroin, or the regulation of the cultivation of illicit crops.**

When moving towards the regulation of drug markets, states must consider different tools to impose distinct controls and restrictions depending on the risks and harms associated with each drug and the different environments in which regulation will apply. These tools may include, for example, restrictions and regulations that control the purity, dosage and potency of the product; its price and taxation; licensing of growers and producers; licencing and vetting vendors; restrictions on marketing, advertising, branding and promotion of products; regulations on location, capacity and appearance of retail outlets, restrictions on the use of drugs in public spaces; and access controls such as age limits, buyers' registries, club membership schemes and medical prescriptions.[104] States must put in place effective mechanisms to monitor compliance with the regulations and impose adequate sanctions for activities that take place beyond the established parameters.

REPARATIONS FOR THE HARMS CAUSED BY THE "WAR ON DRUGS"

As governments advance towards the regulation of drug markets, it is critical to ensure a focus on social justice and reparations for those historically impacted by punitive drug policies while avoiding the harms of corporate capture. For example, some governments that have already regulated cannabis markets have accompanied these reforms with a series of measures to repair damages caused by decades of prohibition, including by quashing the sentences of people previously convicted under anti-drug laws and prioritizing their access to the newly regulated markets.[105]

---

[101] Global Commission on Drug Policy, *Regulation: The Responsible Control of Drugs*, 2018, globalcommissionondrugs.org/wp-content/uploads/2018/09/ENG-2018_Regulation_Report_WEB-FINAL.pdf, p.22.
[102] OHCHR, *Human rights challenges in addressing and countering all aspects of the world drug problem* (previously cited), para. 68 (a)(c).
[103] For more information on Morocco, see Tom Blickman, *Morocco and Cannabis: Reduction, containment or acceptance.* Drug Policy Briefing, Transnational Institute. March 2017. For more information on Turkey, see Steve Rolles, *Turkey's opium trade: successfully transitioning from illicit production to a legally regulated market.* Transform Drug Policy Foundation. May, 2016.
[104] Stephen Rolles, *After the war on drugs: Blueprint for regulation.* Transform Drug Policy Foundation, UK, 2009
[105] Laura Garius and Amal Ali, *Regulating Right, Repairing Wrongs: Exploring Equity and Social Justice Initiatives within UK Cannabis Reform*, January 2022, Release

The General Comment should promote a social justice approach to the regulation of drugs and urge states to include and prioritise communities that have been affected by punitive drug laws and policies, including rural farmers and those who have been imprisoned for non-violent drug offences. Moreover, if a state permits the sale of drugs by the private sector, it must ensure affected communities have adequate opportunities to participate in the newly regulated market and that regulatory processes are insulated from any undue influence by businesses with a stake either in the drug trade or in its regulation.

NEW INDICATORS TO EVALUATE DRUG POLICIES

Governments and intergovernmental organizations have commonly used indicators to evaluate drug policies in terms of market flows and scale as a way to measure progress against the wide-ranging objective of fully eradicating the illicit trade of drugs. In this sense, data collection has been mostly focused on measuring the number of people arrested or incarcerated, hectares of eradicated drug crops, or amounts of seized drugs. However, indicators measuring the human rights impact of drug policies, including around access to treatment and other social services, have been sidelined and largely ignored.

The World Drug Report, produced every year by UNODC, continues to be the main document providing a global perspective and overview of drug markets and assessing the impact of drug policies at a global level. While the CND adopted an updated version of the questionnaire used by UNODC to gather data from countries,[106] including new questions regarding access to healthcare and alternatives to coercive sanctions, the focus of the questionnaire and the report have remained anchored in outdated metrics aimed at the reduction of the demand and supply of drugs without considering the human rights impact these policies may have.

The General Comment should therefore insist on the need to change the indicators used to evaluate the success of drug policies at the national, regional and international level by focusing instead on their impact on people and communities. In this sense, metrics and indicators to evaluate drug control policies should focus on the reduction of drug-related harms and the enjoyment of human rights (for example on access to drug treatment and social support, reduction of overdose deaths or HIV transmission, as well as tackling crime, violence and human rights violations) rather than the historically prioritised enforcement indicators that ignore harms to individuals and communities, such as hectares of crops eradicated, amounts of drugs seized or number of people arrested, prosecuted and imprisoned for drug-related offences.

Amnesty International further considers that the General Comment presents an opportunity to engage with the way in which international drug control mechanisms monitor and evaluate the impact of drug policies on economic, social and cultural rights.

REFORMING THE UN DRUG CONVENTIONS

Several civil society organizations and experts have argued that, as states explore alternatives to the current prohibitionist approach, it is necessary to consider amending the UN Drug Conventions in order to preserve the integrity of international law, ensure a public health and human rights-based approach to drug policies and promote the wider interest of compliance.[107] Other legal options to adapt a State's relationship to the UN Drug Conventions have also been put forward, including reforms that apply only to a group of states or to individual states.[108]

There are important examples of previous reforms to the UN Drug Conventions that can be explored as relevant precedent. In 1972, State parties to the 1961 Single Convention convened in a Conference of all Parties agreed to substantially modify the treaty via the adoption of a protocol. At that time, the US government argued that the international community was in a position to identify

[106] Commission on Narcotic Drugs (2020), Decision 63/15. Improved and streamlined annual report questionnaire
[107] Wells Bennett and John Walsh. *Marijuana legalization is an opportunity to modernize International Drug Treaties,* Center for Effective Public Management at Brookings, October 2014, pp. 3
[108] David Bewley-Taylor *et. al., Cannabis regulation and the UN Drug treaties: Strategies for Reform.* GdPO, TNI, WOLA, TDPF, MUCD, ICHRDP and Canadian HIV/AIDS Legal Network. June 2016

the strengths and weaknesses of the 1961 Single Convention after a decade since its adoption and to reinforce the architecture of the international drug control regime.[109]

A more recent precedent, however, showed the complexities of overcoming the rigidness of the current international drug control regime. In March 2009, Bolivia introduced to ECOSOC a proposal to amend Article 49, paragraphs 1(c) and 2(e), of the 1961 Single Convention in order to remove the obligation of states to abolish the practice of coca leaf chewing.[110] The government of Bolivia argued that coca leaf chewing is an ancestral practice of Indigenous Peoples in the country with ceremonial, religious and sociocultural connotations that, as such, should not be prohibited.[111] Eighteen countries expressed their objection to this amendment and it was thus rejected.[112] The rejection was underpinned by a belief that even a minor change to the UN Drug Conventions would lead to further, more extensive reforms and ultimately undermine the entire international drug control regime.[113] As a result, Bolivian authorities pursued an alternative route by denouncing the 1961 Single Convention and, immediately after, re-accessed with a reservation under Article 49.[114]

Mismanaged tensions and conflicts between obligations under the UN Drug Conventions and international human rights law risk numerous human rights violations resulting from or facilitated by drug control policies. It may also affect international law in general due to contradictions between the two bodies of law.

States should therefore explore options for reforming or altering their relationship with the UN Drug Conventions to ensure these do not hinder the adoption of new drug control policies that enable the fulfilment of human rights obligations and the reduction of drug-related harms, including state regulation of drugs which is currently not allowed under the UN Drug Conventions. Such steps may involve, for example, proposing amendments, making reservations, understandings or declarations, or denouncing the relevant treaties. When confronted with conflicting obligations, states should interpret and implement the UN Drug Convention consistently with their human rights obligations, with a view to ensure the adoption of health and human rights-consistent laws and policies.

[109] David Bewley-Taylor *et al., Cannabis regulation and the UN Drug treaties: Strategies for Reform*. GdPO, IDPC, WOLA, Transform. June 2016, pp. 10; Julia Buxton, *The historical foundations of the narcotic drug control regime*, World Bank Policy Research Paper series, Washington DC, 2008, pp. 84-85

[110] Proposal of amendments by Bolivia to article 49, paragraphs 1 (c) and 2 (e). Note by the Secretary General. 15 May 2009, UN Doc. E/2009/78

[111] Letter dated 12 March 2009 from the President of Bolivia addressed to the Secretary-General, UN Doc. E/2009/78

[112] The 18 objections came from Bulgaria, Canada, Denmark, Estonia, France, Germany, Italy, Japan, Latvia, Malaysia, Mexico, Russian Federation, Singapore, Slovakia, Sweden, Ukraine, United Kingdom and United States. Costa Rica, Ecuador, Spain, Uruguay and Venezuela explicitly submitted their support to the amendment.

[113] Dave Bewley-Taylor, *Towards revision of the UN drug control conventions: The logic and dilemmas of Like-Minded groups.* Series of Legislative Reform of Drug Policies No. 19. Transnational Institute and IDPC, March 2012, pp. 4

[114] The reservation imposed by Bolivia at the moment of re-accession states that "The Plurinational State of Bolivia reserves the right to allow in its territory: traditional coca leaf chewing; the consumption and use of the coca leaf in its natural state for cultural and medicinal purposes, such as its use in infusions; and also the cultivation, trade and possession of the coca leaf to the extent necessary for these licit purposes."

AMNESTY INTERNATIONAL IS A GLOBAL MOVEMENT FOR HUMAN RIGHTS. WHEN INJUSTICE HAPPENS TO ONE PERSON, IT MATTERS TO US ALL.

CONTACT US

info@amnesty.org

+44 (0)20 7413 5500

JOIN THE CONVERSATION

www.facebook.com/AmnestyGlobal

@Amnesty