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## Human Rights Council

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Agenda items 2 and 3

**Annual report of the United Nations High Commissioner  
for Human Rights and reports of the Office of the  
High Commissioner and the Secretary-General**

**Follow-up to and implementation of the Vienna  
Declaration and Programme of Action**

### **Implementation of the joint commitment to effectively addressing and countering the world drug problem with regard to human rights\***

#### **Report of the United Nations High Commissioner for Human Rights**

##### *Summary*

The present report is submitted pursuant to Human Rights Council Resolution 37/42. The report discusses the implementation of the joint commitment of States to effectively address and counter the world drug problem with regard to human rights.

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\* The present report was submitted after the deadline in order to reflect the most recent developments.

## I. Introduction

1. In its resolution 37/42, the Human Rights Council requested the Office of the High Commissioner for Human Rights to prepare a report on the implementation of the joint commitment to effectively addressing and countering the world drug problem with regard to human rights, and to present it to the Human Rights Council at its thirty-ninth session; and to share the report with the Commission on Narcotic Drugs.

2. The present report is prepared mainly on the basis of submissions received pursuant to a call for inputs to States and other stakeholders.<sup>1</sup> The report discusses human rights aspects of various joint commitments of States as provided in the Outcome Document of the United Nations General Assembly Special Session on the World Drug Problem of 2016 (UNGASS 2016).

## II. Joint commitments on prevention, treatment, other health-related issues and human rights

### A. Prevention of ‘drug abuse’

3. In the Outcome Document of UNGASS 2016, all States committed to take effective, practical, primary and scientific evidence-based prevention measures that protect people, in particular children and youth, from drug use initiation by providing them with accurate information about the risks of drug abuse.<sup>2</sup>

4. On several occasions, human rights treaty bodies recommended the adoption of preventive measures to address the drug problem, including through awareness-raising programmes and campaigns.<sup>3</sup> Special procedure mandate holders stated that prevention must be pursued through evidence-based interventions as well as accurate and objective educational programmes and information campaigns.<sup>4</sup>

5. In terms of national practice, Argentina, Cuba, Guatemala, Lebanon, Mexico, Myanmar, Paraguay, Switzerland and the Bolivarian Republic of Venezuela referred to existing prevention and awareness-raising measures. They include programmes to facilitate the communication of information and educational materials on drug use for groups potentially at risk, including children and adolescents; holding educational meetings; and evidence-based prevention measures targeting vulnerable groups.<sup>5</sup>

6. In its resolution 61/2, the United Nations Commission on Narcotic Drugs recommended that efforts to prevent drug abuse in educational settings should include developing and implementing “comprehensive, scientific evidence-based and tailor-made initiatives and programmes”. In this regard, the Commission invited States to strengthen interaction and partnerships with students, teachers, families and communities and also the private sector and civil society.”

7. The primary message of prevention has been one of complete abstinence from drug use. The Global Commission on Drug Policy stated that there is not only little evidence of the effectiveness of such a message, it may in fact be counterproductive. The Commission recommended that if there are to be public awareness campaigns on youth and drug use, a possible way forward is to give honest information, encouraging moderation in youthful

<sup>1</sup> All submissions are available at:

<https://www.ohchr.org/EN/HRBodies/HRC/Pages/WorldDrugProblem.aspx>.

<sup>2</sup> Recommendation 1(a)-(c), <https://www.unodc.org/documents/postungass2016/outcome/V1603301-E.pdf>.

<sup>3</sup> E/C.12/MKD/CO/2-4, E/C.12/ESP/CO/5, CRC/C/VCT/CO/2-3, CEDAW/C/SWE/CO/8-9.

<sup>4</sup> <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=19833&LangID=E>.

<sup>5</sup> Submission of States, and of NHRIs of Venezuela and Argentina [https://www.unodc.org/documents/southeastasiaandpacific/2018/02/Myanmar\\_Drug\\_Control\\_Policy.pdf](https://www.unodc.org/documents/southeastasiaandpacific/2018/02/Myanmar_Drug_Control_Policy.pdf) (Myanmar’s strategy).

experimentation, and prioritizing safety through knowledge.<sup>6</sup> Furthermore, pursuant to resolution 61/11 of the Commission of Narcotic Drugs, any prevention measures including educational programs should promote non-stigmatizing attitudes and reduce any possible discrimination, exclusion or prejudice people who use drugs may encounter.<sup>7</sup>

8. The mandatory testing of children for drug use, in educational setting, as a preventive measure, raises human rights concerns.<sup>8</sup> In accordance with articles 3 and 16 of the Convention on the Rights of Child, taking a child's bodily fluids without their consent may be inconsistent with the principle of the best interests of the child, and violate the right to bodily integrity and constitute arbitrary interference with their privacy and dignity; and. Depending on how such testing occurs, it could also constitute degrading treatment.<sup>9</sup>

## B. Treatment

9. The Outcome Document of UNGASS 2016 recognizes that drug dependence can be prevented and treated through, inter alia, effective scientific evidence-based drug treatment, care and rehabilitation programmes.<sup>10</sup> It encourages voluntary participation of individuals with drug use disorders in treatment programmes with informed consent; and recommends the prevention of social marginalization and promotion of non-stigmatizing attitudes. It also encourages drug users to seek treatment and care, and States to take measures to facilitate access to treatment.<sup>11</sup> States also committed to ensure that women, including pregnant and detained women, who use drugs have access to adequate health services and counselling.<sup>12</sup>

10. Under international human rights law, the right to health contains both freedoms and entitlements, including the right to be free from interference, such as the right to be free from non-consensual medical treatment (E/C.12/2000/4, para.8). All services, goods and facilities for treatment must be available, accessible, acceptable and of good quality. They must be accessible physically as well as financially and on the basis of non-discrimination.<sup>13</sup>

11. In their submissions, several States provided information on measures related to treatment. Norway focuses on availability, accessibility, acceptability and quality, and fighting stigmatization and discrimination against people who use drugs. Switzerland developed a national addiction strategy that focuses on the quality of life and health of the individual. Canada, Lebanon, and Myanmar's new drug policies include public health approach; and aim to reduce limitations on accessing and receiving compassionate and evidence-based treatment and increase the availability and affordability of treatment options for drug use disorders.<sup>14</sup>

12. The Committee on Economic, Social and Cultural Rights has addressed issues related to the treatment of people who use drugs and recommended that States incorporate public health, harm reduction and gender sensitive approach into national drug strategies; and ensure availability of treatment services that are evidence-based and respectful of the rights of drug users.<sup>15</sup>

13. In its 2017 Annual Report, the International Narcotics Control Board reminded States of their obligation to provide treatment services to those affected by drug use disorders. The

<sup>6</sup> [http://www.globalcommissionondrugs.org/wp-content/uploads/2018/01/GCDP-Report-2017\\_Perceptions-ENGLISH.pdf](http://www.globalcommissionondrugs.org/wp-content/uploads/2018/01/GCDP-Report-2017_Perceptions-ENGLISH.pdf).

<sup>7</sup> <http://undocs.org/E/2018/28>.

<sup>8</sup> See [www.drugs.ie/resourcesfiles/ResearchDocs/Europe/Research/2018/drugtestinginschools.pdf](http://www.drugs.ie/resourcesfiles/ResearchDocs/Europe/Research/2018/drugtestinginschools.pdf), [www.hrw.org/news/2018/06/22/philippine-school-kids-may-face-mandatory-drug-tests](http://www.hrw.org/news/2018/06/22/philippine-school-kids-may-face-mandatory-drug-tests).

<sup>9</sup> <https://www.hrw.org/news/2018/06/22/philippine-school-kids-may-face-mandatory-drug-tests>.

<sup>10</sup> Recommendations 1(i) & (o).

<sup>11</sup> Recommendation 1(j).

<sup>12</sup> Recommendation 4(b).

<sup>13</sup> <https://www.ohchr.org/Documents/Publications/Factsheet31.pdf>.

<sup>14</sup> <https://www.canada.ca/en/health-canada/news/2016/12/new-canadian-drugs-substances-strategy.html>; Submission of Lebanon, Norway, Switzerland ; Myanmar's Strategy.

<sup>15</sup> e.g. E/C.12/CAN/CO/6; E/C.12/ESP/CO/5; E/C.12/PHL/CO/5-6; E/C.12/GRC/CO/2 ; E/C.12/MKD/CO/2-4; E/C.12/SWE/CO/6.

Board also urged States to place more emphasis on treatment and rehabilitation rather than just focusing on prevention; and to invest in treatment and rehabilitation services.<sup>16</sup>

14. A major obstacle to accessibility of treatment is the criminalization of personal use and possession of drugs. A study shows that over 60 percent of people who inject drugs had been incarcerated at some point in their lives.<sup>17</sup> The Committee on Economic, Social and Cultural Rights (E/C.12/PHL/CO/5-6), the High Commissioner for Human Rights (A/HRC/30/65), the Special Rapporteur on the Right to Health (A/65/255) and the Global Commission on HIV and the Law<sup>18</sup> recommended that consideration be given to removing obstacles to the right to health, including by decriminalizing the personal use and possession of drugs. Reports also indicate that decriminalizing drug use and possession, along with the provision of a continuum of support, prevention and treatment measures, resulted in a decrease in overall drug use and drug-induced mortality rate (E/CN.7/2018/CRP.1).<sup>19</sup>

15. In its submission, Portugal stated that “criminal sanctions are ineffective and counter-productive and do not address drug use consequences”. Its policy on drugs encompasses a model of decriminalization as part of a broader approach designed to dissuade drug use and promote measures directed to public health concerns, with social benefits for all involved. The implementation of a more health and evidence based approach was facilitated by the decriminalization of consumption and possession for personal use of all drugs, below defined quantities.<sup>20</sup>

16. In June 2017, twelve UN agencies issued a joint statement recommending to review and repeal punitive laws, *inter alia*, that criminalize or otherwise prohibit drug use or possession of drugs for personal use.<sup>21</sup> In their submissions, several civil society organizations recommended decriminalization of drug use.<sup>22</sup>

### C. Harm Reduction

17. The General Assembly,<sup>23</sup> the Human Rights Council,<sup>24</sup> the Committee on Economic, Social and Cultural Rights,<sup>25</sup> the Committee on the Rights of the Child<sup>26</sup>, the Committee on the Elimination of All Forms of Discrimination, against Women,<sup>27</sup> the Special Rapporteur on the right to health<sup>28</sup> and the Special Rapporteur on Torture<sup>29</sup> have all considered that harm reduction measures are essential for people who use drugs.

18. In 2017, needle and syringe programmes were only available in 93 countries, opioid substitution therapy in 86 countries,<sup>30</sup> and drug consumption rooms in 10 countries.<sup>31</sup> People who use drugs continue to be severely impacted by HIV and hepatitis C infections.<sup>32</sup>

<sup>16</sup> [www.incb.org/documents/Publications/AnnualReports/AR2017/Annual\\_Report\\_chapters/Chapter\\_1\\_2017.pdf](http://www.incb.org/documents/Publications/AnnualReports/AR2017/Annual_Report_chapters/Chapter_1_2017.pdf).

<sup>17</sup> Dolan et. al., Global burden of HIV, viral hepatitis, and tuberculosis in prisoners and detainees; See [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(16\)30466-4/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(16)30466-4/fulltext).

<sup>18</sup> <http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/hiv-and-the-law--risks--rights---health.html>.

<sup>19</sup> See also <http://www.globalcommissionondrugs.org/wp-content/uploads/2016/11/GCDP-Report-2016-ENGLISH.pdf>.

<sup>20</sup> Submission of Portugal.

<sup>21</sup> <http://www.who.int/gender-equity-rights/knowledge/ending-discrimination-healthcare-settings.pdf>.

<sup>22</sup> Submissions of Global Commission on Drug Policy; Association for the fight against AIDS (Morocco); Youth RISE Nigeria; Russian Civil Society Mechanism of Drug Policy Reform in Russia.

<sup>23</sup> A/RES/65/277.

<sup>24</sup> A/HRC/RES/12/27.

<sup>25</sup> E/C.12/RUS/CO/5, E/C.12/ZAZ/CO/1, E/C.12/EST/CO/2 and E/C.12/UKR/CO/5.

<sup>26</sup> CRC/GC/C/15 on the right to health.

<sup>27</sup> CEDAW/C/GEO/CO/4-5; CEDAW/C/CAN/CO/8.

<sup>28</sup> A/65/255.

<sup>29</sup> A/HRC/22/53.

<sup>30</sup> Submission of IDPC.

<sup>31</sup> Submission of HRI.

<sup>32</sup> Submission of IDPC.

UNAIDS's 2018 report indicates that the risk of acquiring HIV is 22 times higher for people who inject drugs than for people who do not inject drugs.<sup>33</sup>

19. In their submissions, Austria, Myanmar, Norway, Spain and Switzerland indicated that they support harm reduction as part of their public health strategies. For example, Austria provides needle and syringe exchange facilities at fixed sites, outpatient drug services, client access to treatment for chronic hepatitis C infection, and overdose prevention measures including awareness raising, information and advice, and first aid instruction for drug users and staff. Myanmar's new National Drug Control Policy promotes and expands a comprehensive package of harm reduction measures, including overdose prevention and treatment.

20. The Kenya National Human Rights Commission reported that the Ministry of Health in Kenya has prioritised harm reduction strategies for persons who inject drugs as part of its HIV prevention strategy. The Commission, however, stated that enforcement of drug laws have a negative impact on the use of harm reduction services by drug users because of fear of imprisonment.

21. According to UNODC's World Drug Report 2018, opioids continued to cause the most harm, accounting for 76% of deaths where drug use disorders are involved.<sup>34</sup> In the United States, 64,000 people died from opioid overdose,<sup>35</sup> and in Canada there were 2,458 known deaths of opioid overdose in 2016.<sup>36</sup> Canada has recently adopted measures to counter opioid drug overdose.<sup>37</sup> In Poland, around 17% of people dependent on opioids have access to substitution therapy,<sup>38</sup> while Morocco introduced an opioid substitution programme in 2010.<sup>39</sup>

22. Opioid medications are essential not only for drug dependence treatment but also for pain management.<sup>40</sup> The Committee on Economic, Social and Cultural Rights expressed concerns at the restricted access to opioid substitution therapy, and recommended that States take effective measures to guarantee the right to health care among marginalized groups such as persons who inject drugs, including access to opioid substitution therapy.<sup>41</sup> The Special Rapporteur on the Right to Health also urged national authorities to consider scaling-up available opioid replacement therapies with respect to people who use drugs (A/HRC/20/15/Add.2).

#### **D. Access to treatment in prisons and other custodial settings**

23. The Outcome Document of UNGASS2016 calls for implementing treatment-related initiatives in prisons and other custodial settings;<sup>42</sup> and also call for access to health, care, social services, and treatment for those in prison or pre-trial detention.<sup>43</sup>

24. The Committee against Torture expressed concerns regarding insufficient health services for prisoners with substance addiction. The Committee recommended that the provision of medical services to prisoners, particularly those who are addicted to drugs, should be ensured, and all necessary measures to implement the Standard Minimum Rules

<sup>33</sup> [http://www.unaids.org/sites/default/files/media\\_asset/miles-to-go\\_en.pdf](http://www.unaids.org/sites/default/files/media_asset/miles-to-go_en.pdf).

<sup>34</sup> [https://www.unodc.org/wdr2018/prelaunch/WDR18\\_Booklet\\_1\\_EXSUM.pdf](https://www.unodc.org/wdr2018/prelaunch/WDR18_Booklet_1_EXSUM.pdf).

<sup>35</sup> Submissions of IDPC and INPUD.

<sup>36</sup> <http://www.globalcommissionondrugs.org/wp-content/uploads/2017/09/2017-GCDP-Position-Paper-Opioid-Crisis-ENG.pdf>, p.4.

<sup>37</sup> Submission of Canadian HIV/AIDS Legal Network.

<sup>38</sup> Submission of Polish Drug Policy Network.

<sup>39</sup> Submission by Association for the Fight against AIDS.

<sup>40</sup> Jürgens et al., *People who use drugs, HIV, and human rights*

See <http://www.joannecsete.com/documents/lancet-july-2010.pdf>.

<sup>41</sup> E/C.12/SWE/CO/6; E/C.12/LTU/CO/2; E/C.12/PHL/CO/5-6; E/C.12/BLR/CO/4-6; E/C.12/IDN/CO/1; E/C.12/POL/CO/6.

<sup>42</sup> Recommendations 1(k) and (o).

<sup>43</sup> Recommendations 4(b) and (m).

for the Treatment of Prisoners should be taken.<sup>44</sup> The Committee on the Elimination of Discrimination against Women recommended “gender-sensitive and evidence-based drug treatment services to reduce harmful effects for women who use drugs, including harm reduction programmes for women in detention.”<sup>45</sup> The Special Rapporteur on Torture recommended the introduction of effective drug-replacement therapy in detention centres.<sup>46</sup>

25. Furthermore, various human rights treaty bodies observed that detention settings are high-risk environments for HIV, hepatitis C and tuberculosis transmission and recommended that States should ensure access to harm reduction services in prison.<sup>47</sup> At the end of 2016, in prison or places of detention, opioid substitution therapy was only available in 52 countries, while only 8 countries provided needle and syringe programmes.<sup>48</sup> The International Association for Hospice and Palliative Care noted in its submission that access to controlled medicines for palliative care should also be available in custodial settings.<sup>49</sup>

### III. Joint commitments on effective law enforcement and human rights

26. In the Outcome Document of UNGASS 2016, all States committed to effective drug-related crime prevention and law enforcement measures.<sup>50</sup>

27. In recent years, there have been some alarming tendencies towards a deeper militarization of States’ responses to countering drug related crimes. In some instances, this is associated with the progressive militarization of civilian police forces. Several institutional reforms and new laws entered into force in Latin American countries that facilitated militarization processes in the context of drug operations. Submissions indicated that excessive use of force is more likely to occur when military or special security forces are involved in drug operations. Such approaches have disproportionately affected vulnerable groups and has repeatedly resulted in serious human rights violations.<sup>51</sup>

28. The former Special Rapporteur on extrajudicial, summary or arbitrary executions stated that “threats of organised drug crimes may challenge the adequacy of traditional law enforcement measures. However, it is important to affirm that the use of lethal force by law enforcement officers must be regulated within the framework of human rights law and its standard of strict necessity. The rhetoric of shoot-to-kill should never be used” (E/CN.4/2006/53).

29. Since the “war on drugs” was announced in the Philippines in 2016, there have been thousands of reported extrajudicial killings of people allegedly involved with drug trade and use. The Commission of Human Rights of the Philippines reported that impunity has been virtually guaranteed because of the President’s pronouncements that police officers responsible for the killing of individuals suspected of involvement in the drug trade will not face prosecution during his tenure, and, if ever prosecuted, will be pardoned.<sup>52</sup> In February 2018, the Prosecutor of the International Criminal Court opened a preliminary examination into crimes allegedly committed in the Philippines in the context of the recent “war on drugs” campaign.<sup>53</sup>

<sup>44</sup> e.g. CAT/C/CPV/CO/1 .

<sup>45</sup> CEDAW/C/GEO/CO/4-5, para.31(e).

<sup>46</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23193&LangID=E>.

<sup>47</sup> CERD/C/CAN/CO/21-23; CEDAW/C/CAN/CO/8-9; A/HRC/23/41/Add.1; CAT/OP/PRY/2; E/C.12/POL/CO/6; E/C.12/SWE/CO/6; E/C.12/LTU/CO/2; CEDAW/C/GEO/CO/4-5; A/HRC/13/39/Add.3 (b).

<sup>48</sup> Submission of HRI.

<sup>49</sup> Submission of IAHP.

<sup>50</sup> Recommendations 3.

<sup>51</sup> Submission by CELS, CMDPDH.

<sup>52</sup> Submissions by Commission on Human Rights of the Philippines and the Human Rights Watch.

<sup>53</sup> <https://www.icc-cpi.int/Pages/item.aspx?name=180208-otp-stat>.

30. In May 2018, the Government of Bangladesh deployed the Rapid Action Battalion (RAB), a specialized police unit with “excessive power” and a long history of responsibility of “high rate of extrajudicial killings” (CCPR/C/BGD/CO/1, para.2), to counter the drug problem. The Battalion has been accused of killing of more than 200 people during the so-called “war on drugs”. The High Commissioner for Human Rights condemned alleged extrajudicial killings and urged authorities in Bangladesh to bring perpetrators of serious human rights violations to justice.<sup>54</sup>

31. The Inter-American Commission on Human Rights recognized that the militarization of many areas of Mexico in the “War on Drugs” has led to an increase excessive use of force and the levels of impunity, and a record number of human rights violations.<sup>55</sup> Special Procedures and other human rights mechanisms have documented international crimes and severe violations of human rights in Mexico between 2006 and the present, in the context of the so called “war on drugs.”<sup>56</sup>

32. The “war on drugs” approach in many other States has cost the lives of thousands of people and caused serious human rights violations. The Secretary-General of the United Nations said it was “vital that we examine the effectiveness of the war-on-drugs approach and its consequences for human rights.”<sup>57</sup> The High Commissioner for Human Rights emphasized that the right to life should be respected and protected by law enforcement agencies in their efforts to address drug-related crimes, and only proportional force should be used, when necessary (A/HRC/35/65). Special procedure mandate holders stated that “allegations of drug-trafficking offences should be judged in a court of law, not by gunmen on the streets”.<sup>58</sup>

33. Similarly, the International Narcotic Control Board stated that extrajudicial responses to drug-related criminality are in clear violation of the international drug control conventions which require that drug-related crime be addressed through formal criminal justice responses; and which require adherence to internationally recognized fair trial and due process norms and standards.<sup>59</sup>

#### **IV. Joint Commitments on effective criminal justice responses to drug-related crimes and human rights**

34. In the Outcome Document of UNGASS 2016, all States committed to “promote and implement effective criminal justice responses to drug-related crimes to bring perpetrators to justice that ensure legal guarantees and due process safeguards pertaining to criminal justice proceedings, including practical measures to uphold the prohibition of arbitrary arrest and detention and of torture and other cruel, inhuman or degrading treatment or punishment, and to eliminate impunity [...] and ensure timely access to legal aid and the right to a fair trial”.

##### **A. The right to fair trial: legal guarantees and due process safeguards**

35. The right to equality before courts and tribunals and to a fair trial is a key element of human rights protection. Article 14 of the International Covenant on Civil and Political Rights aims at ensuring the proper administration of justice, and to this end guarantees a series of specific rights.<sup>60</sup>

<sup>54</sup> [www.ohchr.org/EN/NewsEvents](http://www.ohchr.org/EN/NewsEvents).

<sup>55</sup> <https://www.oas.org/es/cidh/informes/pdfs/mexico2016-es.pdf>.

<sup>56</sup> A/HRC/26/36; A/HRC/28/68/Add.3; [https://www.fidh.org/IMG/pdf/mexique715anglais-1\\_final.pdf](https://www.fidh.org/IMG/pdf/mexique715anglais-1_final.pdf), p.15; Submission of CMDPDH.

<sup>57</sup> <https://www.un.org/press/en/2017/sgsm18585.doc.htm>.

<sup>58</sup> <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20388&LangID=E>.

<sup>59</sup> <https://www.incb.org/incb/en/publications/annual-reports/annual-report-2017.html>, para. 256.

<sup>60</sup> Human Rights Committee, General Comment No.32 [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f32&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f32&Lang=en).

36. In accordance with article 14 of the Covenant, the “right to be presumed innocent until proved guilty according to law” is essential to upholding the right to a fair trial. The use of legal presumptions in some countries, whereby persons found with amounts of drugs above specified thresholds, or in possession of keys to a building or vehicle where drugs are found are presumed to be guilty of drug trafficking, has been condemned as reversing the burden of proof in criminal proceedings, and may amount to a violation of the right to a fair trial. Some States also rely on statements made by suspects during police interrogation without a lawyer present as evidence to convict, even when the defendants argued that these statements were made under coercion.<sup>61</sup> In many cases, foreign nationals charged with drug trafficking abroad were not given fair trials.<sup>62</sup>

37. The large volume of drug-related offences for possession and drug use has led States to seek methods to move cases more quickly through the criminal justice system. This has resulted in a growth of ‘trial waiver system’. In such system, trials are being replaced by legal regimes that encourage suspects to admit guilt and waive their right to full trial.<sup>63</sup> Although trial waiver systems do succeed in moving multiple cases through criminal justice systems, the price is often less procedural protection and judicial oversight.<sup>64</sup> Furthermore, the ‘trial waiver system’ in drug-related cases poses particular challenges, including incentives to use pre-trial detention as a bargaining chip to encourage guilty pleas and other trial waivers. The Inter-American Commission on Human Rights noted that the growth of trial waivers has eroded procedural protection and access to legal representation.<sup>65</sup>

## **B. Prohibition of arbitrary arrest and detention**

38. A number of submissions highlighted continued issues concerning arbitrary arrest and detention in the context of drug control.<sup>66</sup> The Working Group on Arbitrary Detention noted with concern increasing, and in some cases, systematic, instances of arbitrary detention as a consequence of drug control laws and policies. Arbitrary detention for drug offences or drug use can occur across criminal and administrative settings, particularly when procedural safeguards are absent, causing a disproportionate impact on women, children, minority groups and people who use drugs (A/HRC/30/36).<sup>67</sup>

39. The Working Group on Arbitrary Detention has also expressed concern about the frequent use of various forms of administrative detention that entail restrictions on fundamental rights, and considers to be worthy of attention detention imposed as a means of controlling people who use drugs, especially when such detentions are framed as health interventions. The Working Group held that administrative drug detention justified on the basis of health grounds can lead to involuntary commitment or compulsory drug treatment that is inconsistent with either international drug control conventions or international human rights law (A/HRC/30/36).

## **C. Prohibition of Torture and other ill-treatment**

40. Torture and cruel, inhuman and degrading treatment, including sexual abuse, by security forces has been reported in some States as means to investigate drug-related crimes, obtain confessions and information from individuals accused of drug crimes. In some cases, law enforcement officials have intentionally withheld opioid substitution treatment from drug dependent suspects as a way to obtain confessions or other information (A/HRC/30/65).<sup>68</sup> The Human Rights Committee noted that such physical and mental pain and suffering

<sup>61</sup> Submission by Amnesty International.

<sup>62</sup> Submission by Justice Project of Pakistan.

<sup>63</sup> <https://www.fairtrials.org/wp-content/uploads/2017/12/Report-The-Disappearing-Trial.pdf>.

<sup>64</sup> Submission of Fair Trials.

<sup>65</sup> <http://www.oas.org/en/iachr/reports/pdfs/pretrialdetention.pdf>.

<sup>66</sup> Submissions by CELS, CMDPDH.

<sup>67</sup> See also E/CN.4/1998/44/Add.2; A/HRC/27/48/Add.3; A/HRC/16/47/Add.2.

<sup>68</sup> See also Submissions of CELS, CMDPDH.

associated with withdrawal symptoms may amount to torture or ill-treatment (CCPR/RUS/CO/7). The denial of methadone treatment in custodial settings has been considered to be a violation of the right to be free from torture and ill-treatment in certain circumstances (A/HRC/10/44).

41. In treatment centres in Latin American countries, human rights violations including torture and ill treatment have been reported.<sup>69</sup> Similar concerns relating to torture and ill treatment have been reported in compulsory drug detention and rehabilitation centres in East and South East Asian countries.<sup>70</sup> The Committee against Torture also expressed concerns with regard to reports of poor conditions in private drug rehabilitation centres and ill-treatment inflicted upon persons admitted to them (CAT/C/GTM/CO/5-6).

42. The Committee against Torture expressed concerns regarding the use of solitary confinement as a “management method” in “compulsory isolation drug treatment centres”. The Committee recommended to abolish all forms of administrative detention which confine individuals without due process and make them vulnerable to abuse (CAT/C/CHN/CO/5). Caning as a punishment in drug trafficking cases has also been reported, which violates the human rights prohibition of cruel and inhuman punishment.<sup>71</sup>

#### **D. Eliminating prison overcrowding and violence**

43. In the Outcome Document of UNGASS 2016, all States committed to addressing and eliminating prison overcrowding and violence.<sup>72</sup>

44. UN human rights mechanisms have expressed concern about the unnecessary and disproportionate use of the criminal justice system for drug-related offences. In accordance with the International Drug Policy Consortium, some legal policies and practices lead to overcrowding of prisons and other places of deprivation of liberty including tougher law and order approaches, mandatory use of pre-trial detention, disproportionate lengths of sentence, frequent delays in the judicial system, poor monitoring of inmate status and release entitlement, and the failure to grant parole.<sup>73</sup> They recommended that efforts to ease overcrowding include alternatives to deprivation of liberty, such as mediation, diversion, community service and administrative and monetary sanctions (A/68/261).

45. Human rights mechanisms also expressed concerns regarding violence in prisons associated with prison congestion and recommended enhanced efforts to prevent inter-prisoner violence by addressing the factors which contribute to it such as overcrowding e.g. (e.g. CAT/C/BLR/CO/5).

46. The Special Rapporteur on violence against women reported that, in many countries, there has been a disproportionate increase in the rates of imprisoned women, including for low-level drug dealing offences (A/68/340).<sup>74</sup> In several Latin American countries, women convicted of drug-related offences make up more than half of the female prison population. Very high levels of incarceration of women can also be found in East and Southeast Asia.<sup>75</sup>

47. The High Commissioner for Human rights recommended several measures for addressing overincarceration and overcrowding. These include: adopting a proactive and holistic approach; ensuring respect for detainees’ right to challenge detention, ensuring provision of assistance by legal counsel and access to legal aid; using places of detention only for the purpose for which they are fit; using pretrial detention only as a last resort; developing and implementing alternatives to custodial measures during pretrial and post-

<sup>69</sup> Submission by OSF; See also <https://www.opensocietyfoundations.org/publications/treatment-or-torture-applying-international-human-rights-standards-drug-detention>.

<sup>70</sup> <https://idhdp.com/media/1083/compulsory-drug-detention-in-east-southeast-asia.pdf>.

<sup>71</sup> Submission by AI.

<sup>72</sup> Recommendation 4(m).

<sup>73</sup> A/HRC/11/2/Add.2; A/HRC/16/47/Add.3; CCPR/CO/81/BEL; CAT/C/CRI/CO/2; A/HRC/16/47/Add.3; A/HRC/7/3/Add.3; A/65/255; A/HRC/10/44; CCPR/C/GC/35.

<sup>74</sup> Also [https://www.unodc.org/wdr2018/prelaunch/WDR18\\_Booklet\\_5\\_WOMEN.pdf](https://www.unodc.org/wdr2018/prelaunch/WDR18_Booklet_5_WOMEN.pdf).

<sup>75</sup> See also Submission of CLES.

conviction; reviewing penal policies and legislation to ensure proportionate sentencing; providing effective rehabilitation services to contribute to reducing reoffending rates; and ensuring the existence and proper functioning of independent oversight and complaints mechanisms (A/HRC/30/19, A/HRC/36/28).

48. The Outcome Document of UNGASS 2016 recommended (i) ‘alternative and additional measures’ and (ii) ‘proportionate sentencing’.<sup>76</sup> Both issues are relevant in addressing prison overcrowding.

### 1. Alternative and additional measures

49. The United Nations Standard Minimum Rules for Noncustodial Measures (the Tokyo Rules) provide a set of basic principles to promote the use of non-custodial measures, as well as minimum safeguards for persons subject to alternatives to imprisonment. The Tokyo Rules are intended to promote greater community involvement in the management of criminal justice, specifically in the treatment of offenders, as well as to promote among offenders a sense of responsibility towards society.

50. The Tokyo Rules provides that the dignity of the offender subject to non-custodial measures shall be protected at all times. In the implementation of non-custodial measures, the offender’s rights shall not be restricted further than was authorized by the competent authority that rendered the original decision. Since human rights violations may occur in the implementation of alternative measures, such as community service, it is vital that offenders should have recourse to a formal complaints system, set out clearly in legislation.

51. The Special Rapporteur on violence against women (A/68/340) and the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW/C/AUS/CO/8) have called on States to develop gender-sensitive alternatives to incarceration, and promote community-based sentencing for female offenders. The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders provide comprehensive standards for the treatment of women prisoners and offenders, addressing various issues including alternatives to incarceration.

52. In their submissions, stakeholders referred to several alternative and additional measures to incarceration. In the Russian Federation, a person who voluntarily applies for treatment in connection with the consumption of narcotic drugs or psychotropic substances is exempted from “administrative responsibility” for this offence. In Sweden, the sanction for personal use of drugs is a fine, not imprisonment. In some countries in West Africa, including Cape Verde, Senegal and Togo, there is a choice between imprisonment and a fine for low-level offences. In Cambodia, people who use drugs and drug traffickers were subject to community service given the serious overcrowding in prisons. In Costa Rica, the Public Defender’s Office has sought to divert women who use drugs away from the criminal justice system and offer them services such as counselling, drug treatment and job trainings. Probation has been also used in some countries.<sup>77</sup>

53. In some States, “drug courts”<sup>78</sup> offer people accused of drug use a choice between imprisonment and treatment. Given that the decision to undertake treatment is made under the threat of imprisonment, coercion may influence such a decision. The Inter-American Commission on Human Rights considered that drug courts which offer treatment as an alternative to imprisonment fail to conform to a public health approach and do not tackle mistreatment and human rights violations that occur in treatment centres, which are rarely investigated or properly supervised.<sup>79</sup>

54. Drug courts claim to reduce incarceration and represent a more humane approach to the criminal justice process. However, in their submissions, the Special Rapporteur on

<sup>76</sup> Recommendation 4(J).

<sup>77</sup> Submissions of the Russian Federation, Sweden, PRI; WOLA, EQUIS, IDPC & Dejusticia; See also [http://fileserv.idpc.net/library/Drug-laws-in-West-Africa\\_ENGLISH.PDF](http://fileserv.idpc.net/library/Drug-laws-in-West-Africa_ENGLISH.PDF).

<sup>78</sup> <https://www.opensocietyfoundations.org/sites/default/files/drug-courts-equivocal-evidence-popular-intervention-20150518.pdf>.

<sup>79</sup> <http://www.oas.org/en/iachr/reports/pdfs/PretrialDetention.pdf>; See submissions of CELS and Fair Trials.

independence of judges and lawyers and other stakeholders noted that there is no credible evidence to support such claims. Furthermore, they said the drug court system causes considerable harm to participants and frequently results in serious human rights violations. Such violations are exacerbated by racial and gender biases.<sup>80</sup>

55. The propensity for human rights violations in the context of drug courts is such that the London School of Economics and Political Science cautioned against the continued roll out of drug courts in countries where oversight and monitoring mechanisms are absent.<sup>81</sup>

## 2. Proportionate sentencing and decriminalization of certain crimes

56. Proportionate sentencing is an essential requirement of an effective and fair criminal justice system. It requires that custodial sentences be imposed as measures of last resort and applied proportionately to meet a pressing societal need (E/CN.4/2006/7, CAT/OP/MDV/1). In many States, low-level offences such as small-scale drug dealing or trafficking often are punished with harsher penalties than other serious crimes, raising questions about proportionate sentencing.<sup>82</sup> Furthermore, simple possession of drugs for personal use can result in significant terms of mandatory imprisonment.<sup>83</sup>

57. The Human Rights Committee stated that where measures limit a right protected under the ICCPR, such as the right to personal liberty, States ‘must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights’ (CCPR/C/21/Rev/1/Add.13). The Inter-American Court of Human Rights<sup>84</sup> and the European Court of Human Rights also highlighted the importance of proportionate sentencing.<sup>85</sup>

58. The principle of proportionality is also relevant to pre-trial detention, which is mandatory in several States for drug offences.<sup>86</sup> The Subcommittee on Prevention of Torture stated that ‘long periods of pre-trial custody contribute to overcrowding in prisons[.....]From the standpoint of preventing ill-treatment, this raises serious concerns for a system already showing signs of stress (CAT/OP/BEN/1). The Committee against Torture recommended that pre-trial detention be used only as a last resort, “for the shortest time possible, and only for the most serious offences (CAT/C/54/2). The Inter-American Commission on Human Rights noted that drug-related offences that are subject to mandatory pre-trial detention regimes violates the suspect’s human rights, and further inflates prison populations.<sup>87</sup>

59. A wide range of drug-related offences are punishable by death in more than 30 States. The Amnesty International reported that drug-related executions accounted for approximately 30 percent of all executions recorded in 2017.<sup>88</sup> In accordance with article 6(2) of the International Covenant on Civil and Political Rights, States that have not abolished the death penalty may only impose it for the “most serious crimes” which has been consistently interpreted as meaning intentional killing. The Human Rights Committee have consistently stated that drug-related offences do not meet the threshold of “most serious crimes” (CCPR/C/PAK/CO/1; CCPR/C/THA/CO/2; CCPR/C/KWT/CO/3). The International Narcotics Control Board encouraged all States that retain the death penalty for drug-related

<sup>80</sup> Submissions of Special Rapporteur on the Independence of Judges and Lawyers, Fair Trials, OSF, LSE; See also [http://physiciansforhumanrights.org/assets/misc/phr\\_drugcourts\\_report\\_singlepages.pdf](http://physiciansforhumanrights.org/assets/misc/phr_drugcourts_report_singlepages.pdf).

<sup>81</sup> Submission of LSE.

<sup>82</sup> Submissions of PRI and Fair Trial.

<sup>83</sup> Submission of PRI and HRW; also See Gloria Lai, Drugs, crime and punishment: Proportionality of sentencing for drug offences, [https://www.tni.org/files/download/dlr20\\_1.pdf](https://www.tni.org/files/download/dlr20_1.pdf).

<sup>84</sup> [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_16\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_16_ing.pdf).

<sup>85</sup> *e.g.*, Dickson v. the United Kingdom, 2007-V E1 r. (Ct. II.R.) 75; Bioulois v. Luxembourg, App. No. 37575 04, E ar. Ct. II.R., § 83 (2012). See also <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-122664&filename=001-122664.pdf>, page 130.

<sup>86</sup> *E.g.*, See [https://www.wola.org/sites/default/files/downloadable/Drug%20Policy/2011/TNIWOLA-Systems\\_Overload-def.pdf](https://www.wola.org/sites/default/files/downloadable/Drug%20Policy/2011/TNIWOLA-Systems_Overload-def.pdf).

<sup>87</sup> <http://www.oas.org/en/iachr/reports/pdfs/PretrialDetention.pdf>.

<sup>88</sup> Submission of Amnesty International.

offences to commute death sentences that have already been handed down and to consider the abolition of the death penalty for drug-related offences (E/INCB/CES/C.L.10/2014).

60. In order to meet the requirement of proportionate sentencing, States should revise their penal policies and legislation in order to reduce minimum and maximum penalties and decriminalize personal use of drugs and minor drug offences, which would also contribute to reducing the total prison population.

## V. Joint commitments on women, youth, children, vulnerable members of society and communities

### A. Women

61. In the Outcome Document of UNGASS 2016, all States committed to identify and address risk factors and conditions that continue to make women and girls vulnerable to exploitation and participation in drug trafficking.<sup>89</sup> States also committed to mainstream a gender perspective in, and ensure the involvement of women, at all stages of the development, implementation, monitoring and evaluation of drug policies and programmes.<sup>90</sup>

62. The UNODC's World Drug Report 2018 highlighted the importance of gender and age sensitive drug policies exploring the particular needs and challenges of women.<sup>91</sup> Globally, women who use drugs face significant stigma and discrimination in accessing harm reduction, drug dependence treatment and basic healthcare. They may face high levels of violence or harassment from law enforcement officers.<sup>92</sup>

63. In terms of national practice, Spain reported that it aims to improve the integration of gender-specific aspects in all of its programmes of prevention and assistance, including the prevention and early detection of gender-related violence against women who are drug dependent or at places where drugs are consumed.<sup>93</sup> New drug strategies in Argentina, Ireland, Lebanon and Myanmar provides various gender sensitive programmes.<sup>94</sup> The Plurinational State of Bolivia adopted a new presidential decree with a specific focus on the rights of women deprived of liberty, including those convicted for drug related crimes.<sup>95</sup>

64. Civil society organizations recommended practical measures for the implementation of gender related joint commitments of UNGASS 2016. These include, *inter alia*, to ensure that all drug treatment and rehabilitation services are non-discriminatory, evidence-based and meet women's, including pregnant women's, specific medical, psychological, and social needs; and to ensure women involved in civil or criminal proceedings have access to fair trials, including timely access to legal representation.<sup>96</sup>

65. The Committee on the Elimination of All Forms of Discrimination against Women has addressed drug issues and women in several occasions. For example, the Committee expressed concerns about the high level of drug addiction experienced by women in the Sri Lankan fisheries industry, and recommended the provision of health and counselling support to women with drug addictions in line with its general recommendation No. 34 on the rights of rural women (CEDAW/C/LKA/CO/8). The Committee expressed concerns about the "excessive use of incarceration as a drug-control measure against women and the ensuing female overpopulation in prison in Canada (CEDAW/C/CAN/CO/8-9). It recommended that Ukraine should intensify the implementation of strategies to combat drug consumption among women in line with its general recommendation No. 24 on women and health.

<sup>89</sup> Recommendation 4(d).

<sup>90</sup> Recommendation 4(g).

<sup>91</sup> [https://www.unodc.org/wdr2018/prelaunch/WDR18\\_Booklet\\_5\\_WOMEN.pdf](https://www.unodc.org/wdr2018/prelaunch/WDR18_Booklet_5_WOMEN.pdf).

<sup>92</sup> Joint Submission of WOLA, EQUIS, IDPC & Dejusticia; Submission of Release.

<sup>93</sup> Submission of Spain.

<sup>94</sup> Ireland's Strategy, p.87; Myanmar's Strategy; Submissions of Lebanon and Defensor del Pueblo de la Nación Argentina.

<sup>95</sup> Bolivian Presidential Decree 3030. Submission of Fundación Acción Semilla, Bolivia.

<sup>96</sup> Submission of the National Advocates for Pregnant Women, endorsed by AI and others.

(CEDAW/C/UKR/CO/8). The Committee further recommended that Kyrgyzstan ensure equal rights and opportunities for women who face intersecting forms of discrimination including women who use drugs (CEDAW/C/KGZ/CO/4). It recommended that Georgia provide gender-sensitive and evidence-based drug treatment services to reduce harmful effects for women who use drugs (CEDAW/C/GEO/CO/4-5).

## B. Youth and children

66. In the Outcome Document of UNGASS 2016, all States committed to address the specific needs of children and youth.<sup>97</sup>

67. Since its earliest State reports, the UN Committee on the Rights of the Child has addressed issues related to the protection of children from the illicit use of narcotic drugs and psychotropic substances, pursuant to article 33 of the Convention on the Rights of the Child and has made consistent recommendations in this regard.<sup>98</sup> The Committee consistently recommended States to address the incidence of drug use by children and adolescents by, inter alia, providing children and adolescents with accurate and objective information, as well as life skills education on preventing substance abuse, including with respect to tobacco and alcohol, and developing accessible and youth-friendly drug dependence treatment and harm reduction services (e.g. CRC/C/PER/CO/4-5). The Committee has also addressed drugs issues in its general comments on HIV and the rights of the child, adolescent health, children in street situations, the right to health, and the right to freedom from all forms of violence<sup>99</sup>

68. Guatemala, Ireland, Lebanon, Mexico, Myanmar, Paraguay and the Russian Federation reported that they have undertaken drug prevention and treatment measures aimed at children and youth.<sup>100</sup>

69. Consequences of a criminal record for a drug-related offence for a young person include discrimination, stigmatization and reduced prospects for access to higher education and employment. Children of parents incarcerated for a drug-related offence may also suffer harm and face stigma.<sup>101</sup> The best interests of the child should be taken into account when a parent is charged with a drug-related offence, and non-custodial measures should be considered.<sup>102</sup>

## C. Other vulnerable members of societies<sup>103</sup>

### 1. Minorities and indigenous peoples

70. Pursuant to article 17 of the International Covenant on Civil and Political rights Religious minorities and indigenous peoples have the right to manifestations of their freedom of religion or belief. This has been found, in some cases, to include the use of controlled substances in religious and ceremonial practices when there is a historical basis for this (A/HRC/30/65). The right of indigenous people to use controlled crops, such as coca leaves, in their traditional, cultural and religious practices is also supported by the Declaration on the Rights of indigenous Peoples (articles 11, 24, 31) and ILO Convention 169 (articles 3.2, 5(a) and 23).<sup>104</sup> The Special Rapporteur on the rights of indigenous peoples recommended that ‘indigenous peoples that might be affected should be consulted on anti-drug policies and

<sup>97</sup> Recommendation 4(f). For statistical purposes, the UN defines youth as persons between the ages of 15 and 24 years.(A/36/215).

<sup>98</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5473055/>.

<sup>99</sup> CRC/C/GC/3, CRC/C/GC/4, CRC/C/GC/13, CRC/C/GC/15, CRC/C/GC/20, CRC/C/GC/21.

<sup>100</sup> Submission of States and Defensoria del Pueblo; See also <https://health.gov.ie/wp-content/uploads/2018/07/Reducing-Harm-Supporting-Recovery-2017-2025.pdf>.

<sup>101</sup> Submission of SSDP.

<sup>102</sup> Submission of Quakers.

<sup>103</sup> Recommendation 4(f).supra note.2; See also Resolution 61/7 on Addressing the specific needs of vulnerable members of society in response to the world drug problem at <http://undocs.org/E/2018/28>.

<sup>104</sup> E/2009/43- E/C.19/2009/14; Also See Submissions of Maloca Internationale and Transnational Institute.

operations’, and ‘guarantees should be given that the lives, cultures, lands and natural resources of the indigenous peoples are not violated as a result of such operations’ (A/HRC/33/42/Add.2).

71. The Committee on the Elimination of Racial Discrimination was concerned at the reported disproportionately high rate of incarceration of indigenous peoples and persons belonging to minority groups in Canada, in particular African-Canadians, due to various reasons including drug policies. The Committee recommended that Canada address the root causes of such overrepresentation of African-Canadians and indigenous peoples at all levels of the justice system by, inter alia, re-examining drug policies and providing evidence-based alternatives to incarceration for non-violent drug users (CERD/C/CAN/CO/21-23).

72. The Working Group of Experts on People of African Descent stated that People of African descent are disproportionately affected by excessively punitive drug policies. In addition, racial profiling in many countries has made people of African descent a targeted group in the so-called ‘war on drugs’. The Working Group called for an end to racism, racial discrimination, xenophobia, Afrophobia and related intolerance, including their manifestations in the adoption and implementation of international and national drug policies.<sup>105</sup>

73. Ireland’s new drug strategy aims to improve the capacity of services to accommodate the needs of people who use drugs from specific minority communities including the Traveller community.<sup>106</sup>

## 2. People with disabilities

74. In many States, punitive drug policies do not recognize the unique vulnerability of persons with psychosocial disabilities who use drugs. Such policies affect them negatively by not providing appropriate drug dependence treatment and harm reduction prevention services.

75. The Committee on the Right of Persons with disabilities has addressed this issue while reviewing the State reports of Peru and the Russian Federation. The Committee expressed concern with regard to the Peruvian law that permits involuntary detention of persons with a “perceived disability” i.e. “persons with a drug or alcohol dependence”, and recommended the repeal of the related legal provision (CRPD/C/PER/CO/1). The Committee recommended that the Russian Federation revise its current legislation and practices regarding drug policy and preventive measures which have a negative impact on persons with disabilities (CRPD/C/RUS/CO/1).

## 3. Lesbian, gay, bisexual, transgender and intersex (LGBTI) people

76. LGBTI people who use drugs are disproportionately impacted by drug policies in many countries, and experience a range of harms flowing from drug use, drug induced mental trauma. LGBTI people who use drugs may not seek support or treatment from healthcare providers because of previous or anticipated experiences of discrimination.<sup>107</sup> Ireland’s new drug strategy proposes targeted interventions for LGBTI people.<sup>108</sup>

<sup>105</sup> [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19852&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19852&LangID=E); Also A/HRC/33/61/Add.2, and submission of FAAAT.

<sup>106</sup> <https://health.gov.ie/wp-content/uploads/2017/07/Reducing-Harm-Supporting-Recovery-2017-2025.pdf>.

<sup>107</sup> Joint submission of MSMGF and COC; Joint Submission of WOLA, EQUIS, IDPC and Dejusticia.

<sup>108</sup> Ireland Strategy, p.47 [http://opensiuc.lib.siu.edu/gs\\_rp/182](http://opensiuc.lib.siu.edu/gs_rp/182).

## VI. Joint Commitments on Alternative Development, International Cooperation, Measuring Drug Policy and Human Rights

### A. Alternative development

77. In the Outcome Document of UNGASS 2016, all States reiterated their commitment to “alternative development”.<sup>109</sup> Alternative development is “a process to prevent and eliminate the illicit cultivation of plants containing narcotics and psychotropic substances through specifically designed rural development measures in the context of sustained national growth and sustainable development efforts in countries taking action against drugs, recognizing the particular socio-economic characteristics of the target communities and groups, within the framework of a comprehensive and permanent solution to the problem of illicit drugs (A/RES/S-20/4).

78. The 2013 UN Guiding Principles on Alternative Development provide that alternative development should take place, “taking into account the promotion and protection of human rights.”<sup>110</sup>

79. UNDP observed that the displacement of populations because of illicit-crop eradication measures exacerbates the poverty and insecurity of poor farmers, with a disproportionate impact on rural, ethnic minority and indigenous peoples.<sup>111</sup> Individuals in these rural communities hold the rights set out in the ICESCR including the right to work and to earn a decent living for themselves and their families, the right to have an adequate standard of living including adequate food, clothing and housing, the right to social security, the right to health and the right to education.<sup>112</sup>

80. In terms of the design of alternative development programmes, participation of those affected, including women, minorities and indigenous peoples, should be essential. Sequencing is crucial and alternative livelihoods should be functioning and providing an adequate standard of living before illicit crop eradication starts.<sup>113</sup>

81. Furthermore, illicit-crop eradication should not negatively affect the environment or the health and welfare of farmers, their families or other stakeholders. CRC, the Special Rapporteurs on the right to health, indigenous peoples and the right to food have all objected to aerial spray for crop eradication because of the harm it can cause to farmers and their children, as well as to environment.<sup>114</sup>

### B. International cooperation

82. The Outcome Document of UNGASS 2016 recommended that UN agencies and other international stakeholders assist States in effectively addressing “the health, socioeconomic, human rights, justice and law enforcement aspects of the world drug problem.”<sup>115</sup> In its resolutions 71/211 and 72/198, the General Assembly encouraged all relevant UN bodies and specialized agencies to “identify operational recommendations in the UNGASS 2016 that fell within their area of responsibility and specialization and to commence implementing those recommendations”.

<sup>109</sup> Recommendation 7(a)-(g).

<sup>110</sup> [https://www.unodc.org/documents/commissions/CND/Drug\\_Resolutions/2010-2019/2013/A\\_RES\\_68\\_196.pdf](https://www.unodc.org/documents/commissions/CND/Drug_Resolutions/2010-2019/2013/A_RES_68_196.pdf).

<sup>111</sup> Submission of UNDP; Submission of Association for the Fight against AIDS (Morocco), p.2.

<sup>112</sup> Also the draft United Nations declaration on the rights of peasants and other people working in rural areas, A/HRC/WG.15/5/2.

<sup>113</sup> UNODC/CND/2008/WG.3/2.

<sup>114</sup> CRC/C/COL/CO/3, A/HRC/4/32/Add.2; A/HRC/7/11/Add.3; A/HRC/4/30/Add.1; Also see Submission of Transnational Institute.

<sup>115</sup> Recommendation 6(a).

83. UNDP is supporting the development of international guidelines on human rights and drug control, together with the International Centre on Human Rights and Drug Policy, UNODC and OHCHR.<sup>116</sup> UNODC has undertaken activities to implement the joint commitments with regard to human rights. These include, working with OHCHR and Colombia to ensure human rights are incorporated into Colombia's national drug policy.<sup>117</sup> OHCHR and UNDP in Cambodia are jointly implementing a project on "Access to Justice without Barriers for Persons with Disabilities" which aims to enhance the capacity of duty-bearers to better understand the obstacles of persons with disabilities, including those who use drugs, in accessing justice.

84. OHCHR participated in inter-sessional meetings organized by the Commission on Narcotic Drugs on the human rights commitments of the Outcome Document of UNGASS 2016.<sup>118</sup> OHCHR also participated in the general debates of the 61<sup>st</sup> session of the Commission, highlighting human rights issues related to the world drug problem.<sup>119</sup>

85. The Council of Europe's Pempidou Group initiated work "to explore the application of human rights standards and tests as a basis for national and local led initiatives to incorporate human rights into drug policy development, monitoring and evaluation". This work has resulted in the report entitled "*Drug Policy and Human Rights in Europe: Managing tensions, maximising complementarities*".<sup>120</sup>

### C. Measuring drug policies from a human rights perspective

86. Ensuring that governments are held responsible for protecting human rights through drug laws, policies and strategies requires tracking data and conducting regular assessments of the human rights situation as it relates to drug control. On several occasions, human rights treaty bodies have recommended that States provide data, statistics and information on issues related to human rights in drug control efforts.<sup>121</sup> There is a growing realization that traditional indicators regarding arrests, seizures and criminal justice responses are inadequate to show the real impact of drug policies on communities. The success of drug control strategies should be measured through an assessment of the impact of drug control efforts in the enjoyment of human rights and other critical aspects such as security, health and social-economic development.<sup>122</sup>

87. States are encouraged to collect up-to-date, comprehensive, disaggregated and transparent data on drug control efforts.<sup>123</sup> The data gathered should be used by States to: analyse the impact of drug control efforts on the enjoyment of human rights; and enhance compliance with international human rights norms and standards in the administration of drugs policies.

88. The Outcome Document of UNGASS 2016 recommends that States consider the inclusion of information- on voluntary basis, concerning, *inter alia*, the promotion of human rights when furnishing information to the Commission on Narcotic Drugs, pursuant to the three international drug control conventions and relevant Commission resolutions.<sup>124</sup> OHCHR has developed a set of human rights indicators for the realization of human rights<sup>125</sup>

<sup>116</sup> <http://www.undp.org/content/undp/en/home/blog/2017/human-rights-and-drug-control--we-must-provide-solutions-that-le.html>; See also Submission of UNDP.

<sup>117</sup> Submission of UNODC.

<sup>118</sup> E/CN.7/2018/CRP.1.

<sup>119</sup> E/2018/28 E/CN.7/2018/13.

<sup>120</sup> <https://rm.coe.int/drug-policyandhumanrights-in-europe-eng/1680790e3d>.

<sup>121</sup> CEDAW/C/MDV/CO/4-5; CEDAW/C/MKD/CO/4-5; CEDAW/C/ITA/CO/6; CRC/C/KWT/CO/2; E/C/MDG/CO/3-4; E/C.12/DEU/CO/5; E/C.12/MCO/CO/2-3.

<sup>122</sup> [https://cdpe.org/measuring\\_drug\\_policy\\_outcomes\\_intersections\\_with\\_human\\_rights\\_and\\_the\\_sustainable\\_development\\_goals\\_sdgs/#](https://cdpe.org/measuring_drug_policy_outcomes_intersections_with_human_rights_and_the_sustainable_development_goals_sdgs/#); See Submission of the Global Drug Policy Observatory.

<sup>123</sup> E/CN.7/2018/CRP.2.

<sup>124</sup> Recommendation 4(h).

<sup>125</sup> <http://www.ohchr.org/EN/Issues/Indicators/Pages/documents.aspx>.

and guidance on a human rights based approach to data collection in the implementation of the SDGs.<sup>126</sup> Both can provide guidance in strengthening and streamlining existing data-collection and analysis tools in drug control efforts.

## VII. Conclusion and Recommendations

89. The cross-cutting approach of the Outcome Document of UNGASS 2016 constitutes a new and better linkage of the objective of drug-control – protection of the health and welfare of humanity – with the key priorities of the UN system, including the SDGs. States should make greater efforts to more comprehensively implement the Outcome Document of UNGASS 2016 in accordance with their human rights obligations.

90. People who use drugs should be treated with dignity and humanity in treatment centres. Harm reduction and evidence-based treatment should be available and delivered only by trained health personnel. States should also undertake rigorous and independent monitoring of treatment centres to ensure treatment takes place on a voluntary basis with informed consent and individuals are not confined there against their will. Any allegation of torture or other ill treatment in treatment centres should be investigated. Any treatment centres that do not meet human rights standards should be closed.

91. States should consider doing away with drug courts, and allowing regular courts to consider alternative, non-custodial measures for persons accused of minor, non-violent drug-related offences. Mandatory minimum sentences for drug-related offences should be repealed and replaced by sentencing guidelines that are proportionate and give sufficient flexibility to judges regarding sentencing decisions. The death penalty should be abolished for all crimes, including for drug offences.

92. Law enforcement in drug control efforts should be consistent with States' human rights obligations. Law enforcement officials should always adhere to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Measures consistent with international standards should be considered in addressing prison overcrowding and overincarceration, including through alternatives to incarceration and applying the principle of proportionality.

93. States should make concerted efforts to combat impunity by conducting prompt, independent, impartial and effective investigations into serious human rights violations and bringing alleged perpetrators to justice. Cooperation with international judicial or other mechanisms, such as the International Criminal Court, responsible for investigating and prosecuting heinous crimes under international law should be also ensured.

94. 'Alternative development' should take place with the participation of local communities, including farmers, women, minorities and indigenous peoples. Alternative livelihoods should be secured before removing existing livelihoods, earned from illicit-crop cultivation, thereby contributing to the full enjoyment of human rights and fundamental freedoms.

95. States should adapt their drug policies to address the specific needs of women, children and youth and members of groups in a situation of vulnerability such as minorities, indigenous peoples, people with disabilities and LGTBI people.

96. International and regional human rights mechanisms, including human rights treaty bodies and Special Procedures of the Human Rights Council, consistently address human rights issues related to drug control efforts. States and other actors involved in addressing the world drug problem, such the Commission on Narcotic Drugs and the International Narcotic Control board, should consider the findings,

<sup>126</sup> <http://www.ohchr.org/EN/NewsEvents/Pages/DataForSustainableDevelopment.aspx>.

views and recommendations of these human rights mechanisms. They should encourage and assist States in the implementation of those recommendations.

97. At the national level, national human rights institutions and other independent State bodies, such as ombudspersons for children, also play important roles in monitoring the human rights aspects of drug control efforts. They can provide human rights guidance to national authorities in the development and the implementation of national drug policies and laws. Participation and capacity of national human rights institutions should be encouraged and strengthened in order to implement the joint commitments made in UNGASS 2016.

98. The Outcome Document of UNGASS 2016 recognizes the importance of including civil society and affected communities in the design, implementation and/or evaluation of drug policies and programmes. Civil society organisations and representatives of affected groups play a significant role in analysing drugs issues, in delivering services and evaluating the human rights impact of drug policies. Participation of civil society organizations should be encouraged and their capacities be strengthened in the implementation of the joint commitments of UNGASS 2016. Civil society organisations should be protected from any intimidation, threat, harassment, or reprisal.

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