

Moving away from the punitive paradigm: An analysis of the 2023 OHCHR report on drug policy

Introduction

In September 2023, the UN High Commissioner for Human Rights released a landmark report on human rights in drug policy.¹ Prepared at the request of the Human Rights Council as a contribution to the mid-term review of the 2019 Ministerial Declaration on drugs,² this report constitutes the most ambitious and comprehensive UN document to date on the alignment of drug policies with human rights. The report consolidates existing human rights standards, develops new recommendations, and proposes a blueprint for transformative change, from a global punitive paradigm to drug policies based on health and human rights.

Through a close reading of the 2023 OHCHR report and a comparison with its predecessor from 2018,³ this note focuses on three key issues. First, the new standards and recommendations developed in the OHCHR report, which update our understanding of the human rights dimension of drug policies. Secondly, the consolidation of prior human rights standards developed by other UN bodies. Lastly, we lay down our recommendations for an effective implementation of the vision proposed by the report.

New standards and recommendations developed in the 2023 OHCHR report

The 2023 OHCHR report updates and comple-

ments the existing body of standards and recommendations by UN bodies on human rights in drug policy. This includes the following novel elements:

- **Recognising the world drug situation as a major driver of human rights violations.** The main finding of the report is that the world drug situation has a ‘major impact on the enjoyment of human rights’ (paras. 8 & 64). Reaffirming the centrality of the human rights dimension of drug policies in both Geneva and Vienna, the report calls for increased engagement by human rights mechanisms and by the global drug control bodies (para. 68u).
- **Moving away from the global punitive paradigm.** The report recognises that current drug policies have ‘primarily taken a punitive approach’, with consequent impacts on human rights (paras. 3 & 29). It also acknowledges that the global drug control regime has contributed to this trend (para. 28), and calls for transformative change. ‘Drug control policies should be understood as a way of achieving broader objectives’ than a punitive model, ‘including the protection of human rights, in particular the right to health, ensuring equality and non-discrimination’ (para. 67). This requires ‘address[ing] the underlying socio-economic factors that increase the risks of using drugs or that lead to engaging in the drug trade’ (para. 68o).
- **‘Zero tolerance’ policies are incompatible with human rights.** Whilst acknowledging the serious health implications of drug use, a

major conclusion in the 2023 OHCHR report is that ‘zero tolerance’ policies that seek to achieve a society free of drugs are incompatible with a health and human rights-based approach to drugs (para. 68a), particularly with regards to policies such as harm reduction or decriminalisation.

- **A call on States to consider the responsible regulation of drugs.** The High Commissioner notes the emergence of a broad range of initiatives to legally regulate controlled drugs such as cannabis (para. 59), as well as calls to regulate all drugs in the context of Colombia’s Truth Commission (para. 62). The High Commissioner recommends that States consider the responsible regulation of drugs to tackle the links with organised crime, and insecurity (paras. 68a and 68c). The report does not claim that regulation is required by a human rights approach to drugs, however it calls on States to take it into consideration. This is a major development, as it is the first time that a UN body breaks the taboo by recognising that responsible regulation is an appropriate and legitimate approach to drug markets.
- **Equality and non-discrimination at the centre of drug policies.** Non-discrimination has already been a central element in recent resolutions on drug policy at the Human Rights Council⁴ and the General Assembly.⁵ The 2023 OHCHR report pays significant attention to the disproportionate impact of drug control on people of African descent, Indigenous Peoples and women. In addition to calling for an end to discriminatory practices such as stop and searches, the High Commissioner takes a step further by urging Member States to ‘Adopt drug policies that explicitly protect against discrimination’ (para. 68j).
- **The impact of drug policies on children and youth.** Young people are the population with the highest prevalence of drug use, and yet they are failed by current drug policies. The 2023 OHCHR report highlights that many activities labelled as ‘drug prevention’ are not evidence-based (para. 38). The coverage and quality of drug treatment and harm reduction services for the youth is to be improved (para. 37). Practices such as fear-based drug pre-

vention, random mandatory drug testing in schools, and expulsion from education raise human rights concerns, as does creating criminal records for young people (para. 39).

- **Meaningful participation by civil society and communities.** Recognising the role of civil society and affected communities in moving away from the punitive paradigm, the High Commissioner calls for policy makers to meaningfully engage and consider the knowledge and experience of civil society and community organisations. In a novel development, ‘people who use drugs’ and ‘youth’ are explicitly highlighted as communities to engage (para. 68(k)).
- **New themes.** The 2023 OHCHR report updates its existing recommendations on human rights and drug policy to reflect some of the most recent developments in international policy, as well as in global drug policy debates:
 - **Drug policy and the right to a healthy environment.** The report recognises the environmental effects of illegal drug economies, but also highlights that crop eradication practices using pesticides or chemicals – in particular via aerial spraying – can have serious negative impacts on the environment and health (para. 52).
 - **Drug policy and Indigenous Peoples.** Indigenous Peoples’ rights have been central to recent resolutions on drug policy at the Human Rights Council,⁶ the General Assembly,⁷ and the CND.⁸ The 2023 OHCHR report provides a range of recommendations (paras. 44 to 44), including ensuring that drug services are culturally appropriate and consider traditional preventive care, healing practices and medicines; highlighting the importance of vital medicinal plants for the enjoyment of the right to health of Indigenous Peoples; and underscoring Indigenous Peoples’ right to traditional medicines and to maintain their health practices.
 - **Humanitarian crises.** The High Commissioner calls on the international commu-

nity to address the situation of people who use drugs in humanitarian settings as a key human rights concern (para. 68m). Barriers to address include restrictive laws, limited resources, competing priorities, cultural and linguistic barriers, sudden shortages, and intersecting mental health conditions (para. 50).

Consolidating and systematising prior human rights standards

In addition to developing new recommendations, the 2023 OHCHR report consolidates and systematises the growing body of research and standards on human rights in drug policy developed by UN human rights bodies. While too broad and comprehensive to summarise here, this section provides some of the main highlights.

- **Strong support for decriminalisation.** For years, UN bodies have recognised that the criminalisation of drug use and possession for personal use is a major barrier to the right to health, and this is also one of the recommendations from the UN System Common Position on drugs.⁹ The 2023 OHCHR report goes a step further by calling for decriminalisation ‘as a powerful instrument to ensure that the rights of people who use drugs are protected’ (para. 57).
- **Harm reduction as a core element of the right to health.** The OHCHR and UN human rights mechanisms have long recognised harm reduction as an essential part of drug policies. The 2023 OHCHR report consolidates this position and makes it clear that harm reduction is a core element of the right to health of people who use drugs (para. 11). Specific interventions such as drug consumption rooms for injecting and inhaling are also recommended (para. 60). The report emphasises the need for these interventions to be strictly voluntary and with informed consent, and available both in the community and in prisons (para. 12).
- **Ending militarisation.** The 2023 OHCHR report highlights that the militarisation of drug law enforcement is often connected to serious and systematic human rights violations, including extrajudicial killings (para. 17). The High Commissioner recommends that enforcement is ‘primarily reserved for civilian law enforcement agencies, properly trained’; and that the military might be involved but only ‘extraordinarily, temporarily, and when strictly necessary’, and be subject to the same rules as civilians (para. 68r).
- **Proportionality in criminal legal responses.** The report describes a range of punitive practices that are incompatible with the absolute prohibition of arbitrary detention, including: the criminalisation of possession of small amounts of drugs, meaning that people who use drugs are often sentenced for drug supply activities; prolonged pretrial detention; and compulsory treatment and detention (all in para. 24); drug testing without consent or a judicial warrant; failure to promptly bring arrested persons before a judge; lack of observance of fair trial guarantees; disproportionate sentencing; and a ban on alternatives to incarceration for persons convicted for drug offences (all in para. 25). Punitive stereotypes undermine the application alternatives to incarceration even when these exist in the law (para. 29).
- **The abolition of the death penalty for drug offences and systemic drug policy reform.** The High Commissioner reiterates that crimes not resulting directly and intentionally in death, such as drug-related offences, should never be sanctioned by the death penalty. Any strategy to combat the death penalty for drug offences must be interwoven with a systemic reform of drug policies (para. 32).
- **The disproportionate impact of drug policies on women.** The 2023 OHCHR report recognises that women who use drugs face higher levels of stigma and discrimination (para. 45), including in accessing harm reduction programmes, treatment and basic health care (para. 47). Importantly, the High Commissioner calls on Member States to remove legislation that makes drug use a justification for removing children from their parent’s custody or that aims to punish women for using drugs during pregnancy (para. 68h). The

report also recognises that poverty, limited education, low-paid jobs, gender-based violence and stereotypes, are dominant factors in women’s involvement in drug activities and their disproportionate incarceration for drug offences (para. 49).

- **The disproportionate impact of drug policies on people of African descent.** The High Commissioner notes that policing based on racial profiling remains widespread, while access to evidence-based treatment and harm reduction for people of African descent remains critically low (para. 41).
- **Development policies for communities involved in the illegal cultivation of crops.** Moving away from a punitive paradigm means that policies should put the focus on improving the living conditions of communities that depend on the drug economy rather than on the eradication of crops (para. 66). The High Commissioner calls on Member States to secure alternative livelihoods before removing existing livelihoods earned from the cultivation of illegal crops (para. 68n).
- **Human rights in international drug control.** The High Commissioner recommends ‘the consistent incorporation of human rights in the work of international drug control mechanisms’ (para. 68u), and that any financial and technical assistance provided to countries for drug enforcement operations ‘does not contribute, or carry a risk of contributing, to the commission of human rights violations’ (para. 68t).

Recommendations for the effective implementation of the report

Recognising that the global punitive paradigm has had a major human rights impact, the High Commissioner calls for transformative change in global and national drug policies. The report urges Member States to move away from a focus on prohibition, criminalisation and zero tolerance, to drug policies based on health and human rights, including decriminalisation and harm reduction. The report also abandons the taboo on regula-

tion across the UN system by inviting Member States to consider the regulation of all drugs as a pragmatic strategy to address drug markets. We provide the following recommendations for the implementation of this vision.

Launch and dissemination of the report

- We encourage Member States to welcome the report in individual, regional, and cross-regional statements both at the 54th session of the Human Rights Council and the meetings of the CND up to and including the mid-term review in March 2024. We recommend that these statements:
 - express support for OHCHR’s work on the human rights dimension of drug policies
 - call on the UN and other States to move away from a punitive paradigm towards drug policies based on health and human rights
 - encourage the High Commissioner and human rights mechanisms to continue contributing to this topic
 - call on all Member States and relevant UN entities – including the UNODC and the INCB – to pay due attention to the substantive recommendations set in the report
 - Member States that support a legal regulation model should welcome the fact that this is the first time a UN agency recommends responsible regulation as part of a pragmatic, health and human rights-based approach to drugs.
- The intersessional panel discussion at the Human Rights Council that will take place ahead of the 55th session should offer concrete strategies for the implementation of the report, both at the UN and at national level, including discussions on decriminalisation, harm reduction, and legal regulation, with the aim of identifying how the OHCHR and the UN human rights system can continue to contribute meaningfully to these debates, and bridge the divide between human rights bodies in Geneva and drug control bodies in Vienna.

- We encourage OHCHR to present the findings of the report to the UN, regional, and where appropriate, national drug control and human rights mechanisms. This should include the presentation of the report by the High Commissioner at the CND, as well as technical discussions with the UN Task Team for the implementation of the common position on drugs, with the UNODC and the INCB, as well as regional bodies (e.g., the African Union, ASEAN, the European Union, and the OAS), on how they can support the implementation of the report's recommendations.
- Delegations in Geneva and Vienna are strongly encouraged to share the report with national drug control and human rights authorities. Where appropriate, we encourage Member States to invite OHCHR staff to present the findings of the report, and to initiate a dialogue on how its recommendations can be translated into national laws, policies, and practices.

Strategic actions for the transformation of the global punitive approach to drugs

Strengthening the contribution of the UN human rights system on human rights in drug policy

- The human rights dimension of drug policy has proven to be a polarising issue at the Human Rights Council, but negotiations over Resolution 52/24 and its adoption by consensus show that diplomacy can be used to create space for a meaningful dialogue. We encourage delegations in the Geneva core group on drug policy and like-minded countries to remain coordinated in welcoming the OHCHR report, while initiating cross-regional dialogues with other delegations on specific themes raised in the report, such as the right to health or the right to be free from arbitrary detention.
- Considering the major impacts of the world drug situation on the enjoyment of human rights, and the constantly evolving drug policy environment, periodic reporting and recommendations are necessary. Member States should consider requesting periodic reporting by the High Commissioner, and/or the creation of a special mandate on the human rights impacts of drug policies.
- We encourage UN human rights mechanisms to continue and intensify their contributions on human rights in drug policy, taking into consideration the themes and recommendations laid down in the 2023 OHCHR report.

Enshrining UN drug policy in a human rights approach

- The protection of health, human rights, equality and non-discrimination should be integrated as an essential objective of the global drug control regime. Following the recommendations laid down in the 2023 OHCHR report, Member States are urged to:
 - use the mid-term review in 2024 to recognise that the protection of health, human rights, equality and non-discrimination are key aims of the global drug control regime
 - call for a standing agenda item at CND on the protection of human rights in drug policy
 - call for regular reporting on human rights in drug policy by the UNODC, including in the World Drug Report, taking into account contributions by the OHCHR and civil society.
- UN drug control bodies, particularly the UNODC and the INCB, should integrate and mainstream the recommendations of the 2023 OHCHR report into their work and strategies. This should include ending their historical reticence towards speaking against human rights violations committed in the name of drug control, and in favour of harm reduction, decriminalisation, and the possibility of legal regulation.
- To make the foregoing possible, Member State delegations in Vienna should establish a group of friends on human rights in drug policy, to coordinate systematically on how to highlight the human rights dimension at the work of the CND, the UNODC, and the INCB.

Initiatives towards structural change

- Member States should reinforce cross-regional coordination in order to explore and propose normative developments to review the UN drug conventions in order to move away from the global punitive paradigm and enshrine the centrality of a health and human rights-based approach to drugs, including by allowing countries to consider the legal regulation of drugs.
- UN bodies with relevant mandates should elaborate evidence-based guidance and recommendations on how to implement the responsible regulation of drugs in line with existing standards and best practices on health, human rights, and development. This should include inputs from civil society and affected communities, as well as lessons learned from jurisdictions that have already legally regulated certain markets.
- Relevant UN agencies and academia, in partnership with civil society, should update the International Guidelines on Human Rights and Drug Policy in order to include guidance on the legal regulation of drugs.

Endnotes

1. Office of the United Nations High Commissioner for Human Rights (2023), *Human rights challenges in addressing and countering all aspects of the world drug problem*, A/HRC/54/53, <https://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session54/list-reports>
2. Human Rights Council (2023), *Resolution 52/24*.

Contribution of the Human Rights Council with regard to the human rights implications of drug policy, <https://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session52/res-dec-stat>

3. Office of the United Nations High Commissioner for Human Rights (2018), *Implementation of the joint commitment to effectively addressing and countering the world drug problem with regard to human rights*, A/HRC/39/39, https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/39/39
4. See: Human Rights Council (2023), *Resolution 52/24. Contribution of the Human Rights Council with regard to the human rights implications of drug policy*, A/HRC/RES/52/24, <https://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session52/res-dec-stat>
5. See: UN General Assembly (2022), *Resolution 77/238. Addressing and countering the world drug problem through a comprehensive, integrated and balanced approach*, <https://digitallibrary.un.org/record/4000190?ln=en>
6. See: Human Rights Council (2023), *Resolution 52/24. Contribution of the Human Rights Council with regard to the human rights implications of drug policy*, <https://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session52/res-dec-stat>
7. See: UN General Assembly (2022), *Resolution 77/238. Addressing and countering the world drug problem through a comprehensive, integrated and balanced approach*, <https://digitallibrary.un.org/record/4000190?ln=en>
8. See: Commission on Narcotic Drugs (2023), *Resolution 66/4. Promoting alternative development as a development-oriented drug control strategy that is sustainable and inclusive*, https://www.unodc.org/documents/commissions/CND/Drug_Resolutions/2020-2029/2023/Res_66_4_2305857E.pdf
9. Available here: <https://unsceb.org/united-nations-system-common-position-supporting-implementation-international-drug-control-policy#:~:text=The%20common%20position%20reiterated%20the,to%20the%20world%20drug%20problem.>

About this advocacy note

In this advocacy note, IDPC highlights the major gains from the 2023 OHCHR report on human rights and drug policy, and provides recommendations to Member States and UN entities for its effective implementation.

International Drug Policy Consortium

61 Mansell Street
London E1 8AN, United Kingdom

Email: contact@idpc.net

Website: www.idpc.net

About IDPC

The International Drug Policy Consortium is a global network of NGOs that come together to promote drug policies that advance social justice and human rights. IDPC's mission is to amplify and strengthen a diverse global movement to repair the harms caused by punitive drug policies, and to promote just responses.

© International Drug Policy Consortium Publication 2023

Funded, in part, by:



OPEN SOCIETY
FOUNDATIONS

**ROBERT
CARR
FUND** For civil
society
networks