IDPC submission to the Office of the High Commissioner on Human Rights' report on UNGASS implementation and human rights

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The International Drug Policy Consortium (IDPC, www.idpc.net) is a global network of more than 170 NGOs coming together to promote drug policies based on human rights, health, development, human security, social inclusion and civil society participation.

In accordance with the Human Rights Council's Resolution 37/42,[1] this contribution from IDPC aims to feed into the report of the Office of the High Commissioner for Human Rights (OHCHR) on the implementation of the UNGASS Outcome Document entitled 'Our joint commitment to effectively addressing and countering the world drug problem'. This submission considers all relevant operational paragraphs (OP) within the Outcome Document and analyses their relationship with human rights, drawing from available data and experiences from the ground.

Chapter 1: Operational recommendations on demand reduction and related measures, including prevention and treatment, as well as other health-related issues

Various paragraphs within Chapter 1 focus on the ***right to health***. **OP 1.o** in particular covers the prevention of HIV, hepatitis and other blood-borne viruses among people who use drugs, and the UN comprehensive package of interventions aiming to reduce the risks and harms associated with drug use. And yet, only a fraction of the world's population has access to these services today. According to The Lancet, in 2017, of 179 countries with evidence of injecting drug use, needle and syringe programmes (NSPs) were only available in 93 countries, and opioid substitution therapy (OST) in 86 countries. Even in countries where such services are available, coverage varies widely but remains appallingly low – globally, less than 1% of all people who use drugs live in countries with a high coverage of both NSP and OST.[2] As a result of the severe lack of harm reduction interventions, people who use drugs continue to be severely impacted by HIV and hepatitis C infections. According to the UNODC, 1 in 10 people who inject drugs are living with HIV and 60% are infected with hepatitis C.[3]

OP 1.m also promotes access to overdose prevention measures, including the distribution of naloxone. This measure is an intrinsic component of the ***right to health***, but also of the ***right to life***. Indeed, North America has recently faced an opioid overdose crisis which has claimed the lives of 64,000 people in the USA in 2016 alone.[4] In areas where opioid use remains high, the implementation of OP 1.m is of the utmost importance if governments are to meet their international human rights obligations. Canada has been a model in this regard, having revised elements of its drug legislation and invested heavily in harm reduction services such as the distribution of naloxone, but also safe injection facilities, heroin-assisted therapy and others.[5]

OP 1.k then turns to the ***right to be free from discrimination*** in accessing treatment and harm reduction services. People who use drugs continue to be victims of discrimination in accessing healthcare and treatment due to the high level of stigma associated with drug use. Women who use drugs face additional stigma and discrimination, especially if they are pregnant or with children – with reported cases of loss of child custody, coerced sterilisation or forced abortion.[6] This human right is further developed in **OP 4.b**.

Finally, **OP 1.j** mentions the ***right to informed consent*** in accessing drug dependence treatment. Sending people who use drugs to treatment and rehabilitation centres against their will remains a common practice in

many areas of the world, in particular in Asia and some Latin American countries – an issue which will be further developed below.

Chapter 2: Operational recommendations on ensuring the availability of and access to controlled substances exclusively for medical and scientific purposes, while preventing their diversion

OPs 2.a, **2.b** and **2.f** include a number of recommendations relevant to the ***right to health*** and represent the strongest language to date related to access to controlled medicines in a UN high-level document on drug policy. However, today 5.5 billion people worldwide have limited to no access to controlled medicines such as morphine, including 5.5 million people with terminal cancer and a million with late-stage AIDS. It is also estimated that 92% of the world's supply of morphine is consumed by just 17% of the global population in the global north.[7]

The right to health will only be achieved if member states commit to ensuring better access to pain medication and palliative care to those in need. Several countries from the global south – such as Uganda[8] and Mexico[9] – have recently undertaken positive steps to remove legislative and technical barriers hampering access. Reforms related to medicinal cannabis are also well underway, with more than 40 jurisdictions worldwide having adopted reforms to ensure better access to the substance for therapeutic purposes[10] – the latest to date being Zimbabwe.[11]

Chapter 3: Operational recommendations on supply reduction and related measures; effective law enforcement; responses to drug-related crime; and countering money-laundering and promoting judicial cooperation

OP 3.b calls for 'preventive measures to address the socioeconomic-related factors' facilitating organised crime and drug-related crime – measures that are strongly linked to ***economic, social and cultural rights***. And yet, overly punitive drug policies are exacerbating the poverty and marginalisation of those most vulnerable, instead of addressing the underlying causes of involvement in the illicit drug market.

For instance, the implementation of forced crop eradication campaigns in the Andean region and in Afghanistan has resulted in the destruction of subsistence farmers' only means of subsistence.[12] The situation can turn even more extreme in conflict-afflicted areas. In Colombia, the conflict between the government and the FARC in coca cultivation areas has led to millions of Colombians being internally displaced, in regions with even more limited access to basic infrastructure (e.g. clean water, healthcare, schools, jobs, roads, etc.).[13] Aerial spraying campaigns with harmful pesticides have also led to the destruction of land, food crops and water supplies.[14] There are hopes that the recent peace agreement will resolve some of these critical issues.

Similarly, punitive drug policies targeting those engaged in drug trafficking generally end up focusing on those most vulnerable engaged at the lowest levels of the illicit supply chain. In Latin America, this has translated into a huge increase in the female prison population, with more than 60% of women in Brazil, Mexico and Costa Rica sent to prison for non-violent drug offences (generally for micro-trafficking or drug smuggling in male prisons).[15] These women are usually poor, with little formal education, are heads of household responsible for several children and other dependents, and with limited prospects in the licit economy. Their incarceration does little more than to exacerbate their situation of vulnerability and that of their family, including post-incarceration as their criminal record hampers future access to employment.[16]

Recognising this situation, Costa Rica has led on a series of reforms since 2013, including the revision of its Law No. 8204 which reduced prison sentences for women in situation of vulnerability for certain drug crimes,[17] introducing an inter-institutional network of support for women caught in the criminal justice system,[18] and approving Law 9361 to eliminate criminal records for minor offences committed by people in situation of vulnerability.[19] These are important steps forward in ensuring the fulfilment of ***economic and social rights*** in Latin America.

Chapter 4: Operational recommendations on cross-cutting issues: drugs and human rights, youth, children, women and communities

Chapter 4 covers a large array of critical human rights issues which are highlighted below.

OP 4.c mentions the ***right to be free from cruel, inhuman or degrading treatment or punishment*** in treatment and rehabilitation services. This recommendation is welcome as various countries worldwide – including China, Cambodia, Indonesia, Thailand, India, Vietnam and others – continue to lock up people who use drugs in compulsory drug detention centres where they are denied evidence-based treatment, and are instead humiliated, beaten and subjected to cruel punishments for months up to several years. Some of these centres, in particular in China, also require people to perform forced labour.[20] This is despite the strong stance, dating back to 2012, taken by 12 UN agencies against this practice.[21]

OP 4.d recognises the specific vulnerabilities faced by women in drug trafficking and drug-related crime – an issue strongly linked to the ***right to be free from violence*** and coercion – as many women report engaging in the illicit market because of coercion from a male partner or family member.[22] Here, it is also essential to acknowledge the ongoing inequalities between men and women in enjoying ***economic and social rights***. Indeed, women continue to face ***discriminations*** in accessing employment and education, in turn making them more vulnerable to engaging in criminal activities for lack of licit alternatives. This OP is closely linked to the implementation of the Convention on the Elimination of All Forms of Discrimination Against Women included in **OP 4.i** and of the Bangkok Rules in **OP 4.n**. As highlighted in Chapter 3, Costa Rica is an interesting example of how to address gender specific vulnerabilities.

OP 4.f focuses on another vulnerable group – children and youth – and the implementation of commitments made in the International Convention on the Rights of the Child. Traditionally, article 33 of the Convention has been used by some NGOs and governments to develop prevention interventions focusing on stopping all drug use among young people. Even though prevention is a critical intervention, drug use among young people remains as high as ever.[23] Ensuring access to age-appropriate treatment and harm reduction services therefore constitutes a key aspect of fulfilling the ***rights of the child*** as well as the ***right to health***.

OP 4.j then turns to the ***rights of indigenous peoples***, recognising 'traditional licit uses, where there is historical evidence of such use, and of the protection of the environment'. Crucially, the article also refers to the UN Declaration on the Rights of Indigenous Peoples. Nevertheless, OP 4.j also mentions the three international drug control conventions, in which all traditional use of controlled substances is prohibited. This historical anomaly within the UN drug control system and the resulting tensions with the rights of indigenous peoples remains to be addressed globally. At national level, several governments have already moved towards reforms. In 2008, Bolivia recognised the right to grow and chew the coca leaf in its constitution, and has adopted a number of measures to ensure that indigenous groups are able to use coca for ancestral purposes within the country's borders.[24] More recently, the rights of the Rastafari community to grow, possess and use cannabis were recognised in Jamaica with the adoption of the Dangerous Drug (Amendment) Act in April 2015 (amending Section 7.c of paragraph 6).[25]

OPs 4.j and **4.l** promote the concepts of proportionality of sentencing and the provision of alternatives to conviction and punishment. The UN estimates that 1 in 5 people worldwide are incarcerated for a drug offence[26] – among those, more than 80% are in prison for drug use or possession for personal use.[27] Proportionate sentencing and alternatives to punishment for drug offences are essential aspects of the ***right to liberty***. Derived from this right is the general rule that persons awaiting trial should not necessarily be detained in custody.[28] Yet, in some countries, including in Mexico and Brazil, people accused of drug offences – whether high-level or minor – are automatically held in pre-trial detention. This leads to situations in which people may spend years in pre-trial detention before facing trial, greatly contributing to prison overcrowding.[29]

In contrast, countries such as Ghana,[30] Myanmar[31] and Thailand[32] have recently embarked on a comprehensive legislative reform to ensure more proportionate penalties for drug offenders. Although some of these proposals are far from perfect, they showcase political leadership for more humane drug policies. Similarly, around 45 countries and jurisdictions worldwide have moved towards the decriminalisation of drug use,[33] an important move which ensures a more humane approach towards people who use drugs, as well as the creation of an enabling environment for the provision of harm reduction and drug dependence treatment programmes.

Proportionate sentencing – and the ***right to life*** – also entail that people condemned for drug offences should never be imposed the death penalty. Nevertheless, 33 countries worldwide continue to impose capital punishment for drug offences. According to Harm Reduction International, the majority of those sentenced to death are 'low level couriers who often experience overlapping and intersecting forms of vulnerability, discrimination and exclusion and who are often subjected to forced confessions and unfair trials'.[34] In a welcome move, in 2017, Iran (one of the seven 'high application states') amended its Anti-Narcotics Law to reduce the scope of the death penalty for drug crimes. Since then, only one record of execution of a drug offender has been recorded.[35]

Finally, in **OP 4.o**, governments committed to a number of human rights related to ***due process and the right to a fair trial:***

- The ***Right to due process*** and the 'elimination of impunity' are particularly relevant in the context of the Philippines' war on drugs, launched by President Duterte in June 2016 – that is, only two months after the UNGASS Outcome Document was adopted. Since then, more than 12,000 people suspected of dealing or using drugs have been killed by police or vigilante forces with absolute impunity.[36] Other examples include Mexico's war on drugs launched in December 2006 by former President Felipe Calderon, which has claimed 150,000 lives, led to the disappearance of more than 26,000 people and displaced 281,000 more.[37]
- The ***right to be free from arbitrary arrest and detention*** is also of relevance as people who use drugs continue to be targeted by law enforcement officers to meet arrest quotas, and are often victims of police harassment and sexual abuse. Women who use drugs are particularly at risk of arbitrary arrest and violence at the hands of the police, and these violations generally remain unpunished.[38]
- The ***right to legal aid*** is also a critical element of a fair trial, affording people to take informed decisions. In many countries, those who cannot afford legal aid are more likely to plead guilty if they are offered a reduced sentence in exchange. For foreign nationals and indigenous communities, accessing legal aid may be further hampered by language issues.[39]

Chapter 5: Operational recommendations on cross-cutting issues in addressing and countering the world drug problem: evolving reality, trends and existing circumstances,

emerging and persistent challenges and threats, including new psychoactive substances, in conformity with the three international drug control conventions and other relevant international instruments

OP 5.v considers ***economic and social rights***, by calling for the intensification of 'development efforts to address the most pressing drug-related socioeconomic factors, including unemployment and social marginalization, conducive to their subsequent exploitation by criminal organizations involved in drug-related crime'. These issues are analysed in detail in Chapters 3 and 7.

Chapter 7: Operational recommendations on alternative development; regional interregional and international cooperation on development-oriented balanced drug control policy; addressing socioeconomic issues

Chapter 7 relates, again, to ***economic and social rights***. More specifically, **OPs 7, 7.b, 7.h** and **7.j** focus on the underlying causes of engagement in the illicit drug trade with 'economic growth and support initiatives that contribute to poverty eradication' (**OP 7.b**), as well as addressing 'risks factors' which 'may include a lack of services, infrastructure needs, drug-related violence, exclusion, marginalization and social disintegration' (**OP 7.h**) and 'access to legal titles to land for farmers and local communities' while 'ensuring that both men and women benefit equally from them' (**OP 7.j**).

Thailand is one of the few countries which has disregarded an overly punitive approach to tackle illicit opium cultivation – adopting instead a long-term, sustainable development approach. Thailand has embedded its strategy within a broader development plan for the past 30 years, promoting agricultural alternatives, as well as providing healthcare, education and the development of infrastructure (including roads, electricity and sanitation). Efforts to reduce areas where crops were cultivated only started when basic services were well established, and in partnership with local communities.[40]

Operating paragraph 9

OP 9, as well as **OPs 1.q, 4.g, 7.b** and **7.l** all point to 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 impact of drug policies on the ground. Their knowledge, know-how and understanding of the issue and of affected communities makes them an invaluable source of information and expertise for policy makers. It is critical, therefore, that the UNGASS Outcome Document contributes to a better involvement of civil society at all levels of decision making.

Conclusion

A number of human rights considerations covered within the UNGASS Outcome Document have been analysed in this submission. However, more is needed to ensure that these considerations are adequately implemented on the ground.

Ensuring that governments are held responsible for protecting human rights within drug laws, policies and strategies requires tracking data and conducting a regular assessment of the human rights situation as it relates to drug control. **OP 4.h** is critical in this regard, as it provides an opportunity for member states to

provide 'information to the Commission on Narcotic Drugs' on a 'voluntary basis' on 'the promotion of human rights and the health, safety and welfare of all individuals'. The OHCHR has a key role to play, and IDPC calls on the Office to include the following process-oriented recommendations in its final report:

- The OHCHR should consider establishing a focal person in Vienna to coordinate with UN drug control agencies on issues relevant to drugs and human rights
- The OHCHR should actively participate in key high-level UN events on drug control, including at the yearly Commission on Narcotic Drugs to report back on the human rights situation as it relates to drug control
- The OHCHR – with support from its special procedures – should conduct bi-annual assessments of the human rights situation in drug control, which should be submitted to the UNODC for inclusion in its World Drug Report.

Endnotes

[1] http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/37/L.41
[2] https://www.thelancet.com/pdfs/journals/langlo/PIIS2214-109X(17)30373-X.pdf
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