International Centre on Human Rights and Drug Policy

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International GUIDELINES on HUMAN RIGHTS and DRUG POLICY

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Table of Contents

Introduction

Responding to the harms associated with drug use and the illicit drug trade is one of the greatest social policy challenges of our time. All aspects of this challenge have human rights implications.

The drugs issue cuts across the 2030 Agenda for Sustainable Development and multiple Sustainable Development Goals, including ending poverty, reducing inequalities, and, of course, improving health, with its targets on drug use, HIV, and other communicable diseases. Goal 16 on peace, justice, and strong institutions is particularly important, requiring attention to human rights across the Sustainable Development Goals. Since the late 1990s, United Nations (UN) General Assembly resolutions have acknowledged that 'countering the world drug problem' must be carried out 'in full conformity' with 'all human rights and fundamental freedoms'.[1] This has been reaffirmed in every major UN political declaration on drug control since, and in multiple resolutions adopted by the Commission on Narcotic Drugs.[2] The reality, however, has not always lived up to this important commitment.

Sustainable, rights-based action on drug control requires shared standards from which to begin. Yet there remains a lack of clarity as to what human rights law requires of States in the context of drug control law, policy, and practice. The International Guidelines on Human Rights and Drug Policy are the result of a three-year consultative process to address this gap.

The Guidelines highlight the measures States should undertake or refrain from undertaking in order to comply with their human rights obligations, while taking into account their concurrent obligations under the international drug control conventions: the 1961 Single Convention on Narcotic Drugs (as amended); the 1971 Convention on Psychotropic Substances; and the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.[3] Critically, they do not invent new rights. They apply existing human rights law to the legal and policy context of drug control in order to maximise human rights protections, including in the interpretation and implementation of the drug control conventions.

The Guidelines are not a 'toolkit' for a model drug policy. Rather, they respect the diversity of States and their legitimate prerogative to determine their national policies in line with applicable human rights law. States always retain the freedom to apply more favourable human rights protections than those provided for under international law. The Guidelines are therefore a reference tool for those working to ensure human rights compliance at local, national, and international levels, be they parliamentarians, diplomats, judges, policy makers, civil society organisations, or affected communities.

Structure

Section I presents general cross-cutting, or 'foundational', human rights principles underpinning the Guidelines, which may be seen as applicable irrespective of the issue or specific right in question.

Section II sets out universal human rights standards in the context of drug policy, taking the rights in question as its starting point. The section includes a brief overview of each human rights standard and its relation to drug policy before identifying consequent State obligations and recommended measures for human rights compliance. It should be noted that the order of this section does not imply any hierarchy of rights. It begins with the right to health to reflect the health goal of the international drug control system.

Section III addresses human rights concerns arising out of drug policy as it affects a number of specific groups: children, women, persons deprived of their liberty, and indigenous peoples. These, of course, are not the only groups with specific human rights needs or concerns of relevance to drug policy. They are emphasised as a consequence of more developed law concerning their specific human rights in relation to drug policy. Many others also experience disproportionate harm, inequities, and intersecting

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1 See, e.g., UN General Assembly, *Resolution 73/192: International Cooperation to Address and Counter the World Drug Problem*, UN Doc. A/RES/73/192 (2019).

2 UN General Assembly, *Resolution S-20/2: Political Declaration*, UN Doc. A/RES/S-20/2 (1998), annex, preamble; *Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem*, High-Level Segment of the Commission on Narcotic Drugs, Vienna, 11–12 March 2009, UN Doc. E/2009/28-E/CN.7/2009/12 (2009), para. 1; UN General Assembly, *Resolution S-30/1: Our Joint Commitment to Effectively Addressing and Countering the World Drug Problem*, UN Doc. A/RES/S-30/1 (2016), annex, preamble.

3 Single Convention on Narcotic Drugs (as amended by the 1972 Protocol) 520 UNTS 7515 (1961); Convention on Psychotropic Substances, 1019 UNTS 14956 (1971); Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1582 UNTS 95 (1988).

forms of discrimination on grounds of race, ethnicity, nationality, migration status, disability, gender identity, sexual orientation, economic status, and the nature and location of livelihood, including employment as rural workers or sex workers. The universal rights described in these Guidelines apply equally to these individuals and groups.

Sections IV and V conclude by outlining general matters related to the implementation of human rights obligations and relevant principles of treaty interpretation.

The Guidelines have been designed to place human rights at the forefront. However, many readers may approach the Guidelines with a focus on a specific drug policy topic or theme, or may be unfamiliar with specific rights. To assist with navigating the Guidelines, Annex I provides three thematic reference guides for development, criminal justice, and health. Each thematic guide brings together the most relevant guidelines for each of these issue areas.

The Guidelines recognise the potential tensions between drug control and human rights obligations. Associated commentaries, to be available on an interactive website, will also include an analysis of the relationship between relevant human rights obligations and the obligations set out in the UN drug control conventions, where applicable. In doing so, the commentaries also highlight the potential for compatibility between the promotion of human rights and the stated object and purpose of the drug control conventions, that of promoting the 'health and welfare of mankind'.

Sources

The Guidelines are based on both 'hard law' and 'soft law' sources – those that are legally binding and those that are authoritative but not binding per se. With very few exceptions, the general descriptions of rights are drawn from binding treaty provisions. However, since very few human rights treaty provisions address drug control directly, and since the application of general rights to specific groups requires a more in-depth analysis, much of the guidance presented throughout the document is based on UN resolutions and declarations, the general comments and concluding observations of UN human rights treaty bodies, and the work of UN human rights Special Procedures. Findings of regional human rights courts and national courts are also cited. Such jurisprudence, which is binding for the relevant countries, is cited in the Guidelines as being persuasive of a particular application of a right. (See Annex II: Methodology.)

Terminology

Given the differing treaty obligations of States and the need to use both hard and soft law sources, not all parts of the Guidelines have equal strength. The Guidelines aim to clarify States' obligations and suggest human rights-compliant measures based on authoritative sources while taking care not to overstate binding international law. The word 'should' is therefore used throughout to reflect the authoritative sources underpinning the Guidelines, but without making claims as to binding law. In some cases, however, there is a clear legal standard that necessitates the stronger formulation of 'shall'. In some places, a permissive norm allows States to take steps that may be more human rights compliant. In these cases, the word 'may' is used.

Scope

These Guidelines cannot address all areas of public international law that potentially intersect with drug policy or that relate to the illicit drug trade and State responses. States also need guidance with regard to other relevant international legal obligations, such as those deriving from civil aviation law, the law of the sea, and international humanitarian law applying to conditions of armed conflict. These, however, are beyond the scope of the Guidelines.

Interactive website

This document is complemented by extensive commentaries and references. This longer version of the Guidelines will be available on an interactive website where readers may search by specific rights, drug control themes, and other key words, as well as follow links to source material. **www.humanrights-drugpolicy.org**

I. FOUNDATIONAL HUMAN RIGHTS PRINCIPLES

1. Human dignity

Universal human dignity is a fundamental principle of human rights. It is from the inherent dignity of the human person that our rights derive. No drug law, policy, or practice should have the effect of undermining or violating the dignity of any person or group of persons.

2. Universality and interdependence of rights

Human rights are universal, inalienable, indivisible, interdependent, and interrelated, including in the contexts of drug policy, development assistance, health care, and criminal justice.

A person's involvement in drug-related criminality affects the enjoyment of some rights and specifically engages others. In no case are human rights entirely forfeited.

3. Equality and non-discrimination

All persons have the right to equality and freedom from discrimination. This means that all are equal before the law and are entitled to equal protection and benefit of the law, including the enjoyment of all human rights without discrimination on a range of grounds (such as health status, which includes drug dependence).

In accordance with this right, States shall:

i. Take all appropriate measures to prevent, identify, and remedy unjust discrimination in drug laws, policies, and practices on any prohibited grounds, including drug dependence.

ii. Provide equal and effective protection against such discrimination, ensuring that particularly marginalised or vulnerable groups can effectively exercise and realise their human rights.

To facilitate the above, States should:

iii. Monitor the impact of drug laws, policies, and practices on various communities – including on the basis of race, ethnicity, sexual orientation, gender identity, economic status, and involvement in sex work – and collect disaggregated data for this purpose.

4. Meaningful participation

Everyone has the right to participate in public life. This includes the right to meaningful participation in the design, implementation, and assessment of drug laws, policies, and practices, particularly by those directly affected.

In accordance with this right, States should:

i. Remove legal barriers that unreasonably restrict or prevent the participation of affected individuals and communities in the design, implementation, and assessment of drug laws, policies, and practices.

ii. Adopt and implement legislative and other measures, including institutional arrangements and mechanisms, to facilitate the participation of affected individuals and groups in the design, implementation, and assessment of drug laws, policies, and practices.

iii. Remove laws depriving people of the right to vote as a consequence of drug convictions.

5. Accountability and the right to an effective remedy

Every State has the obligation to respect and protect the human rights of all persons within its territory and subject to its jurisdiction. Everyone has the right to request and receive information about how States have discharged their human rights obligations in the context of drug policy. Everyone has the right to an effective remedy in the event of actions and omissions that undermine or jeopardise their human rights, including where these actions or omissions relate to drug policy.

In accordance with these rights, States should:

i. Establish appropriate, accessible, and effective legal, administrative, and other procedures to ensure the human rights-compliant implementation of any law, policy, or practice related to drugs.

ii. Ensure that independent and transparent legal mechanisms and procedures are available, accessible, and affordable for individuals and groups to make formal complaints about alleged human rights violations in the context of drug control laws, policies, and practices.

iii. Ensure independent, impartial, prompt, and thorough investigations of allegations of human rights violations in the context of drug control laws, policies, and practices.

iv. Ensure that those responsible are held accountable for such violations in accordance with criminal, civil, administrative, or other law, as appropriate.

v. Ensure that adequate, appropriate, and effective remedies and means of redress are available, accessible, and affordable for all individuals and groups whose rights have been found to be violated as a result of drug control laws, policies, and practices. This should include accessible information on mechanisms and processes for seeking remedies and redress, and appropriate means of ensuring the timely enforcement of remedies.

vi. Take effective measures to prevent the recurrence of human rights violations in the context of drug control laws, policies, and practices.

II. OBLIGATIONS ARISING FROM HUMAN RIGHTS STANDARDS

1. Right to the highest attainable standard of health

Everyone has the right to enjoy the highest attainable standard of physical and mental health. This right applies equally in the context of drug laws, policies, and practices.

In accordance with this right, States should:

i. Take deliberate, concrete, and targeted steps to ensure that drug-related and other health care goods, services, and facilities are available on a non-discriminatory basis in sufficient quantity; financially and geographically accessible; acceptable in the sense of being respectful of medical ethics, cultural norms, age, gender, and the communities being served; and of good quality (that is, with a solid evidence base).

ii. Address the social and economic determinants that support or hinder positive health outcomes related to drug use, including stigma and discrimination of various kinds, such as against people who use drugs.

iii. Ensure that demand reduction measures implemented to prevent drug use are based on evidence and compliant with human rights.

iv. Repeal, amend, or discontinue laws, policies, and practices that inhibit access to controlled substances for medical purposes and to health goods, services, and facilities for the prevention of harmful drug use, harm reduction among those who use drugs, and drug dependence treatment.

In addition, States may:

v. Utilise the available flexibilities in the UN drug control conventions to decriminalise the possession, purchase, or cultivation of controlled substances for personal consumption.

1.1 Harm reduction

The right to health as applied to drug policy includes access, on a voluntary basis, to harm reduction services, goods, facilities, and information.

In accordance with their right to health obligations, States should:

i. Ensure the availability and accessibility of harm reduction services as recommended by UN technical agencies such as the World Health Organization, UNAIDS, and the UN Office on Drugs and Crime, meaning that such services should be adequately funded, appropriate for the needs of particular vulnerable or marginalised groups, compliant with fundamental rights (such as privacy, bodily integrity, due process, and freedom from arbitrary detention), and respectful of human dignity.

ii. Consider the development of other evidence-based interventions aimed at minimising the adverse health risks and harms associated with drug use.

iii. Remove age restrictions on access to harm reduction services where they exist, and instead ensure that in every instance in which a young person seeks access to services, access is determined based on the best interests and evolving capacity of the individual in question.

iv. Exclude from the scope of criminal offences, or other punitive laws, policies, or practices, the carrying and distribution of equipment, goods, and information intended for preventing or reducing the harms associated with drug use, ensuring also that criminal conspiracy laws do not capture people using drugs together for this purpose.

v. Ensure that any law prohibiting the 'incitement' or 'encouragement' of drug use contains safeguards protecting harm reduction services, excluding from liability those who provide information, facilities, goods, or services aimed at reducing harms associated with drug use.

vi. Ensure that victims of, or witnesses to, an overdose or other injury occurring as a result of drug use are legally protected against criminal prosecution and other punishment in situations in which they have sought medical assistance for the overdose or injury.

1.2 Drug dependence treatment

The right to health as applied to drug policy includes access to evidence-based drug dependence treatment on a voluntary basis.

In accordance with their right to health obligations, States should:

i. Ensure the availability and accessibility of drug treatment services that are acceptable, delivered in a scientifically sound and medically appropriate manner, and of good quality (that is, with a strong evidence base and independent oversight). This means that such services should also be adequately funded; appropriate for particular vulnerable or marginalised groups; compliant with fundamental rights (such as to privacy, bodily integrity, due process, and freedom from arbitrary detention), and respectful of human dignity.

ii. Ensure that voluntary, informed consent is a precondition for any medical treatment or preventive or diagnostic intervention and that drug use or dependence alone are not grounds to deprive someone of the right to withhold consent.