



Submission to OHCHR study on children's rights to health (Human Rights Council Resolution 19/37 adopted on 23 March 2012)

Preventing illicit drug use and protecting children from illicit drugs and the right of the child to the enjoyment of the highest attainable standard of health under the Convention on the Rights of the Child

We welcome the Human Rights Council decision to focus its next full-day meeting on the right of the child to the enjoyment of the highest attainable standard of health, and the opportunity offered by the Office of the High Commissioner to civil society to submit inputs particularly on issues of relevance for this topic.

The issue of illicit drugs is of relevance in the context of a study on the child's right to the enjoyment of the highest attainable standard of health. The Committee on the Rights of the Child indicated the need to address the issue of narcotic drugs and psychotropic substances in relation to Article 24 of the Convention on the Rights of the Child (the right of the child to the enjoyment of the highest attainable standard of health) in the *Proposed Scope of the General Comment* for its upcoming comment on CRC Article 24.¹

Article 33 of the Convention on the Rights of the Child is the only human rights provision to specifically address narcotic drugs and psychotropic substances. CRC Article 33 stipulates that "States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances."

The existence of this specific provision in this particular human rights instrument clearly indicates that an agreement was reached at the international level concerning children's particular vulnerability in relation to narcotic drugs and psychotropic substances.

Article 33 is very clearly worded. It is also specifically set in the context of the existing international drug control system, to which it makes direct reference. The international drug control system is founded on three international conventions, all of which have attained near universal ratification.² The cornerstone of the international drug control system, the 1961 Single Convention on Narcotic Drugs, is based on the "[recognition that] addiction to narcotic drugs constitutes a serious evil for the individual and is fraught with social and economic danger to

¹ CRC General Comment on the right of the child to the enjoyment of the highest attainable standard of health (art. 24). *Proposed Scope of the General Comment*.

<http://www2.ohchr.org/english/bodies/crc/callsubmissionsCRC.htm>

² The 1961 Single Convention on Narcotic Drugs as amended by the 1972 Protocol (183 state parties); the 1971 Convention on Psychotropic Substances (183 state parties); and the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (188 state parties). The number of state parties is as of 29 September 2012.

mankind”,³ and, together with the other conventions, obligate State Parties to “limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs”.⁴ The preamble of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 addresses the particular concern of the Parties for the “fact that children are used in many parts of the world as an illicit drug consumers market and for purposes of illicit production, distribution, and trade in narcotic drugs and psychotropic substances, which entails a danger of incalculable gravity”.⁵ The *Legislative History of the Convention on the Rights of the Child* indicates that the issue of illicit drugs use was initially proposed as a paragraph of Article 12 of the revised Polish draft, as contained in document A/C.3/36/6, on health.⁶ However, in the final text of the Convention adopted by the General Assembly in 1989 the illicit drugs became the object of a separate article, namely Article 33, providing for protective and preventive measures.

Article 33 belongs to the “special protection measures” of CRC, alongside provisions addressing exploitative and hazardous child labour; child sexual exploitation and sexual abuse; abduction of, the sale of or traffic in children; torture or other cruel, inhuman or degrading treatment or punishment; children in armed conflict, et cetera. All the special protection measures are linked to and relevant for right of the child to the enjoyment of the highest attainable standard of health and vice versa, but all go further than being only health related concerns.

The word “protect” is used in the text of CRC Article 33 and in several other articles of the Convention on the Rights of the Child, including the special protection measures. There can be little doubt that the legislator, the CRC drafters, intended that for active protection provisions in CRC, States Parties must ensure that each of the threats depicted are eliminated as a whole.

UNICEF's 2008 Child Protection Strategy very clearly states that “successful child protection begins with prevention”⁷ and that the aim in relation to special protection measures has to be to create a protective environment where the child's protection rights are respected, “and where laws, services, behaviours and practices minimize children’s vulnerability.”⁸ Environments where illicit drug use is accepted and normalized, or where exploitative child labour or child prostitution are seen as inevitable, are in direct conflict with the explicit protection standards and increase children's vulnerabilities in this regard. Therefore, in relation to narcotic drugs and psychotropic substances, it is submitted that in order to be truly effective, prevention must address not only illicit use by children but in society in general.

³ 1961 Single Convention on Narcotic Drugs as amended by the 1972 Protocol, preambular paragraph 3.

⁴ 1961 Single Convention on Narcotic Drugs as amended by the 1972 Protocol, Article 4.

⁵ United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, preambular paragraph 2.

⁶ Office of the High Commissioner for Human Rights, *Legislative History of the Convention on the Rights of the Child*, Part II UN, 2007, p. 709.

⁷ United Nations Children’s Fund *Child Protection Strategy*, E/ICEF/2008/5/Rev.1, Annual session 2008, paragraph 3.

⁸ United Nations Children’s Fund *Child Protection Strategy*, E/ICEF/2008/5/Rev.1, Annual session 2008, paragraph 2.

It should also be noted that the General Comment No.14 issued by the UN Committee on Economic, Social, and Cultural Rights (CESCR) on Article 12 of the International Covenant on Economic, Social, and Cultural Rights, on the right of everyone to the highest attainable standard of physical and mental health provides guidance on “violations of the obligation to protect”, considering that such a violation could occur when a State Party fails to “discourage production, marketing and consumption of...narcotics and other harmful substances...”⁹

The benefits of a preventive approach targeting the whole society for child health and development of the child are obvious.

1. Avoid the negative health consequences of non-medical use and dependence of narcotic drugs and psychotropic substances.

As mentioned above, effective prevention measures have to target the whole population, not just children.

2. Avoid the health risks associated with transmission of infectious disease including that related to HIV, hepatitis B (HBV), hepatitis C (HCV) and tuberculosis (TB).¹⁰

The Committee on the Rights of the Child indicated in its General Comment No. 3 (2003) on HIV/AIDS and the rights of the child that “The Committee wishes to emphasize that policies and programmes aimed at reducing substance use and HIV transmission must recognize the particular sensitivities and lifestyles of children, including adolescents, in the context of HIV/AIDS prevention. Consistent with the rights of children under articles 33 and 24 of the Convention, States parties are obligated to ensure the implementation of programmes which aim to reduce the factors that expose children to the use of substances, as well as those that provide treatment and support to children who are abusing substances.”¹¹

3. Avoid the health and developmental consequences of violence against children by preventing risk factors associated to child maltreatment.

The *United Nations Secretary-General's Study on Violence against Children*¹² indicates parents or caregivers' substance abuse as one of the factors contributing to violence against children and that violence experienced by children can lead to lifelong consequences for their health and

⁹ Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights- General Comment No. 14 (2000) – The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights). Committee on Economic, Social and Cultural Rights. Twenty-second session Geneva, 25 April-12 May 2000. E/C.12/2000/4.

¹⁰ Injection drug use is a well-known route of transmission of blood borne infections.

¹¹ Committee on the Rights of the Child, General Comment No. 3 (2003) on HIV/AIDS and the rights of the child, CRC/GC/2003/3, 17 March 2003, paragraph 39.

¹² Paulo Sérgio Pinheiro, Independent Expert for the United Nations, Secretary-General's Study on Violence against Children, *World Report on Violence against Children*, 2006. The Study indicates parents or caregivers substance abuse as one of the factors contributing to violence against children, p. 66 and 68. It also indicates that childhood experience of violence leads to drug abuse, 64-65.




development. Similar findings are indicated by the WHO Fact sheet N°150¹³ of August 2010 on Child maltreatment. The WHO Fact sheet identifies misuse of drugs,¹⁴ including during pregnancy, as one of the “characteristics of a parent or caregiver”¹⁵ that may increase the risk of child maltreatment. The Fact Sheet also identifies the availability of drugs in the community as one contributing factor that may increase the risk of child maltreatment.

It should be noted that the child exposed to illicit drug use and/or the child involved in the production and trafficking of illicit drugs must be considered as a victim, as in other special protections measures cases. States Parties should provide physical and psychological recovery and social reintegration of a child victim in an environment, which fosters the health, self-respect, and dignity of the child, according to CRC Article 39.

It should be stressed that children have a legal right under CRC Article 33 to be protected from illicit drugs, and that policy and programmes formulation in relation to illicit drugs have to start with children right to protection and consider the best interest of the child.

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¹³ WHO Fact sheet N°150, August 2010.

<http://www.who.int/mediacentre/factsheets/fs150/en/index.html>.

¹⁴ The *Lexicon of alcohol and drug terms* published by the World Health Organization defines drugs misuse as following: “use of a substance for a purpose not consistent with legal or medical guidelines, as in the non-medical use of prescription medications. The term is preferred by some to abuse in the belief that it is less judgmental.”

¹⁵ WHO Fact sheet N°150, August 2010.

<http://www.who.int/mediacentre/factsheets/fs150/en/index.html>.