
Article

Addressing Human Rights Abuses against People Who Use Drugs: A Critical Role for Human Rights Treaty Bodies and Special Procedures

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Abstract

Since the 1980s, United Nations (UN) Member States have seen issues of drug policy predominantly as problems of law enforcement and security, alienated from other UN priorities, including human rights. However, developments in the UN and global challenges, like HIV/AIDS have made it more difficult to separate drug policy from its impact on the health and human rights of people who use drugs, particularly drug dependent people. As a result, several UN and human rights bodies have all begun to include human rights considerations in their policy documents. Despite these positive developments, the UN human rights system lags behind and UN human rights bodies fall short in addressing human rights violations against people who use drugs. To remedy this shortfall, this article first explains the need for new guidelines on drug policy and human rights by describing the impact of drug policy on human rights and the ways in which UN human rights bodies have thus far failed to adequately address violations suffered by people who use drugs. The authors join other international organizations and activists calling for the adoption of the guidelines (a human rights impact assessment tool) to provide the UN human rights treaty bodies and special procedures with clear guidance on how to assess drug policy issues through the prism of international human rights standards.

Keywords: drug policy; drug use; UNGASS 2016

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Introduction

Since the 1980s, United Nations (UN) member states have seen issues of drug policy predominantly as problems of law enforcement and security, alienated from other UN priorities, including human rights ([Transform Drug Policy Foundation 2011](#)). As a result, despite the significant intersection between drug policy and human rights, UN member states considered drug policy exclusively as part of the international security agenda, which focuses on tough law enforcement rhetoric and approaches and leaves out human rights concerns ([Barrett 2010](#)). This led the UN to develop fairly independent systems for dealing with issues of drug policies and human rights. Indeed, the systems sometimes seem so separate that Paul Hunt, the UN Special Rapporteur on the right to health, remarked:

It is imperative that the international drug control system—the UN Commission on Narcotic Drugs, the UN Office on Drugs and Crime, the International Narcotics Control Board and so on—and the complex international human rights system that has evolved since 1948, cease to behave as though they exist in parallel universes. ([Hunt 2008](#))

The [1993 Vienna Declaration and Programme of Action](#) and global challenges, such as HIV and AIDS, have made it more difficult to separate drug policy from its impact on the health and human rights of people who use drugs, particularly people with drug dependence. Drug policy has therefore increasingly come under the spotlight of human rights. The UN Commission on Narcotic Drugs (CND), the International Narcotic Control Board (INCB), and the UN specialized drug agency, the UN Office on Drugs and Crime (UNODC), have all begun to include human rights considerations in their policy documents. The outcome document adopted by the UN General Assembly Special Session on Drugs (UNGASS) in April 2016 (the UNGASS 2016 Declaration) includes explicit references to human rights, the protection of vulnerable populations, and the importance of proportionality in drug control ([UN General Assembly 2016](#)). This is an important step forward in recognizing the need for considering human rights when addressing drug policy.¹

Despite these recent positive developments, the UN human rights system lags behind, and UN human rights bodies have consistently fallen short in addressing human rights violations that occur as a result of drug policy.

1 The UNGASS 2016 Declaration added to previous drug policy documents of a similar political level, which also contained human rights language. For example, the UN General Assembly Political Declaration and Global Programme Resolution, adopted at its Seventeenth Special Session, devoted to the question of international co-operation against illicit production, supply, demand, trafficking and distribution of narcotic drugs and psychotropic substances, contains only one reference to human rights and only with regard to drug dependence treatment ([UN General Assembly 1990](#)). The subsequent Twentieth Special Session held in 1998 adopted a Political Declaration ([UN General Assembly 1998a](#)), which includes only one reference to human rights. The Declaration on the Guiding Principles of Drug Demand Reduction ([UN General Assembly 1998b](#)) includes only two references to human rights, and the Measures to Enhance International Cooperation to Counter the World Drug Problem ([UN General Assembly 1998a](#)) contains two references to human rights. The 2009 Political Declaration and Global Plan of Action ([UN CND 2009](#)) contains a section entitled 'Human rights, dignity and fundamental freedoms in the context of drug demand reduction', in addition to multiple references to human rights in other sections of the Plan of Action.

This article calls for the development of International Guidelines on Human Rights and Drug Control ('the guidelines')—an important initiative proposed by human rights advocates to close the gap between drug policy and human rights and bring them together in a single analysis (Lines et al. 2017). In early 2016, the International Centre on Human Rights and Drug Policy and Amnesty International also called for the development of such guidelines (International Centre on Human Rights and Drug Policy and Amnesty International 2016). This article focuses on how these guidelines would address a current gap in the capacity of UN human rights bodies to engage with drug policy. The guidelines would provide critical guidance to enable UN human rights bodies to effectively recognize and address human rights violations caused by drug policy. The UNGASS 2016 Declaration is a good starting point for UN human rights and drug policy bodies to develop guidelines for reviewing drug policy within a human rights framework.

This article is divided into two parts. To explain the need for UN human rights bodies to develop guidelines on drug policy and human rights, the background section describes the impact of drug policy on human rights and the ways in which UN human rights bodies have thus far failed to adequately address violations suffered by people who use drugs. We focus our analysis primarily on people who use drugs, leaving outside the scope of this article other complex issues, such as drug policy's impact on poor and racialized communities and the disproportionate effects of drug enforcement on people engaged with drug markets outside of the consumers' end, which deserve separate and thorough human rights analysis. Following this background section, the discussion consists of four components. First, it highlights the importance of a review of drug policy through a broad human rights lens, rather than a focus solely on the right to health. It then demonstrates how such a review is in line with the definition of human rights as indivisible, interdependent, and mutually reinforcing. Third, it examines how certain human rights bodies have already taken positive steps in this direction, and the ensuing backlash they have faced. Finally, it details how the UNGASS 2016 Declaration presents an opportunity for the UN to establish new guidelines that recognize the various human rights dimensions of drug policy.

While guidelines are important for various reasons, the focus of this article is on their relevance to UN human rights bodies of independent experts, such as the human rights treaty bodies and the Human Rights Council's special procedures. The independence of these bodies from the UN member states makes them the most promising authorities to ensure the routine application of these guidelines to drug policy in human rights reviews. Guidelines could also be used to further build on evolving positive practice of the regional human rights bodies, such as the European Court of Human Rights, to address human rights violations at the intersection with drug policy; such possible usage is worthy of full analysis elsewhere.²

2 Some of the most interesting cases of the European Court related to drug policy include: *McGlinchey and Others v. the United Kingdom* (ill-treatment of a drug dependent person by not providing medical treatment when she suffered drug withdrawal syndrome); *Shelley v. the United Kingdom* (European Court found inadmissible an application challenging the UK authorities' decision not to implement a needle-exchange programme for drug users in prisons to help prevent the spread of viruses); *Teixeira de Castro v. Portugal*, *Ramanauskas v. Lithuania*, *Khudobin v. Russia*, *Bannikova v. Russia*, *Veselov and Others v. Russia*, *Yeremtov and Others v. Russia* (all these judgments concern violation of the right to a fair trial related to the plea of police entrapment); *Wenner v. Germany* (access to opioid substitution therapy for drug dependence treatment); *A. M. and*

1. Background

1.1 The impact of drug policy on human rights

Many activists, scholars, lawyers, legal and policy researchers, international organizations, and UN agencies reported significant negative impacts of drug policy on human rights. Many of these reported impacts were referenced in the 2015 report of the UN High Commissioner for Human Rights, entitled ‘Study on the impact of the world drug problem on the enjoyment of human rights’, including violations of the right to life, right to health, right to be free from torture and other forms of ill-treatment, right to be free from arbitrary arrest and detention, right to non-discrimination and equality, and right to a fair trial (UN Human Rights Council 2015). The recent special section on drug control and human rights of the *Health and Human Rights Journal* contains an in-depth legal analysis of the negative impacts drug policy has on access to controlled medicines, women’s rights, children’s rights, and the rights of Indigenous people (Health and Human Rights Journal 2017). The application of a human rights framework to drug policy demonstrates how the overreliance on prohibition and law enforcement in dealing with the complex social and medical problem of drug use and drug dependence leads to the marginalization and stigmatization of large groups of people whose lives do not match the desired ‘drug-free world’.

By marginalizing and stigmatizing drug use, the traditional law enforcement approach to drug policy increases the vulnerability of people who use drugs, frequently leading to human rights violations of this marginalized group. This is particularly problematic because those who use drugs are often members of already socially and economically marginalized groups, such as ethnic and racial minorities, women, and people living with HIV/AIDS. As a result, people who use drugs are at risk of suffering numerous abuses, including torture, harassment, and ill-treatment by police and health-care professionals, coercive and abusive drug treatment programmes, extrajudicial killings, arbitrary detention, and denial of essential medicines and basic health services (Jurgens et al. 2010). Moreover, coercive drug policies bring negative health and social consequences—to the wider community as well (FXB Center for Health and Human Rights and Open Society Foundations 2013).

1.2 The failure of UN human rights bodies to address drug policy

In the past, the failure of UN human rights bodies to address drug policy resulted from a lack of reporting by civil society about human rights violations related to drug policy. In 2008, Paul Hunt, the UN Special Rapporteur on the right to health, noted:

When I was on that committee [the Committee on Economic, Social and Cultural Rights], my colleagues and I received a very large number of ‘shadow reports’ from NGOs on many countries and on many issues—from domestic violence to the right to education and the right to the highest attainable standard of health. But I have no recollection of ever receiving any NGO information about harm reduction and the human rights of those who use drugs. (Hunt 2008)

Since that time, while the number of such reports from non-governmental organizations has increased, various human rights treaty bodies still seem largely unable or unprepared to

A. K. v. Hungary (European Court found inadmissible applications challenging refusals of Hungarian authorities to provide access by the applicants to cannabis-based medication); *Kurmanayevskiy and Others v. Russia* (applications concern violations of the right to respect for private life and the right to be free from discrimination by Russian authorities’ refusal to provide applicants with access to opioid substitution therapy (OST) for drug dependence treatment).

address drug policy issues. This section analyses examples from 2010–2016 of shadow reports submitted to UN treaty bodies concerning the human rights of people who use drugs, particularly people with drug dependence, but where the treaty bodies failed to address any of these issues. The discussion covers shadow reports to the UN Committee against Torture (CAT Committee) on Cambodia in 2010 (2009), on Russia in 2011 ([Public Mechanism for Monitoring Drug Policy Reform in the Russian Federation 2011](#)), on Guatemala in 2013 ([University of Toronto 2013](#)) as well as two shadow reports to the UN Human Rights Committee on Ukraine in 2012 ([International AIDS Alliance in Ukraine et al. 2013](#)) and on Russia in 2014 ([Andrey Rylkov Foundation and Canadian HIV/AIDS Legal Network 2014](#)). These shadow reports detailed human rights violations taking place as a direct result of the state parties' drug policies and urged the treaty monitoring bodies to provide specific recommendations on how these policies must be revised to address these violations, prevent similar future violations, and ensure ongoing compliance with the human rights treaties. Unfortunately, while a few treaty bodies showed some initial signs of concern and interest in addressing the human rights violations brought to their attention by the shadow reports, they failed to make any specific recommendations to reform drug policy and prevent future violations.

For example, Human Right Watch submitted a shadow report detailing evidence of torture of people who use drugs in Cambodia to the CAT Committee ([Human Rights Watch 2009](#)), the UN body that monitors implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) by its state parties. In its Concluding Observations on Cambodia in 2010, the CAT Committee merely referenced the need to monitor drug detention centres for torture, but inexplicably failed to call for investigations, accountability, and redress of the numerous human rights violations detailed in the shadow report. In response to the Concluding Observations on Cambodia, civil society organizations emphasized that:

Responding to credible reports of torture with calls for further monitoring is inadequate and does not insist on or foster the accountability that the [CAT Committee] is there to ensure and to promote. When existing reports place credible documentation of torture in the public domain, then under the Convention on Torture there is a legal requirement on States Parties to ensure impartial investigation and prosecution of those responsible. Simply put, a CAT recommendation that simply requests further monitoring indefensibly ignores the torture of people who use drugs. It is, therefore, not surprising that the practice of torture and other ill-treatment of this particularly vulnerable population continues in Cambodia. ([Canadian HIV/AIDS Legal Network 2012](#))

Similarly, in 2012, a shadow report to the CAT Committee provided a detailed analysis of how Russian drug policy drives violations of the Convention against Torture and made specific recommendations for revisions to Russian drug policy that would bring the drug policy in line with internationally recognized human rights principles ([Golichenko and Sarang 2013](#)).

The CAT Committee's initial response to the shadow report was promising, since during the dialogue with the Russian delegation Committee members raised specific drug policy issues outlined in the shadow report. In particular, one of the CAT Committee's rapporteurs on Russia asked:

Now to the issue regarding drugs and drug dependent people. This is a very significant and massive problem. We've got information that there is a strategy in the state which includes zero tolerance to drug users. This leads to punishment instead of treatment. We've also heard of cases

of police brutality against drug addicts. Please inform us about this, including about the facts of investigation of police brutality against drug addicts. Also, please tell us about the situation in the private and state rehabilitation centres, if there were any cases of ill-treatment there and whether anybody was punished.³

The Russian delegation failed to answer this question.

Nevertheless, despite taking the report seriously enough to ask specifically about it, the CAT Committee adopted its Concluding Observations without any mention of drug policy. Again, this failure of the CAT Committee to address violations of the Convention against Torture raised by the shadow report did not pass unnoticed by the international community. Fernando Henrique Cardoso, a former president of Brazil and a chairman of the Global Commission on Drug Policy (GCDP), and Ruth Dreifuss, a former president of Switzerland and minister of home affairs and also a member of the GCDP, mentioned this failure with regret in their call for a human rights review of international drug policy:

Despite the evidence before it, the UN Committee against Torture failed to condemn the widespread abuse of people who use drugs in the Russian Federation. In Russia, drug users are routinely cramped into large numbers in one room in woeful conditions, with inadequate food, often tied to beds for periods of up to 24 hours. Those singled out as troublemakers are injected with haloperidol, which causes muscular spasms and spinal pain, and often are tortured and beaten to force confessions. Requests for medical assistance often results in more beatings. While tolerating such abuses, the Russian government continues, inexcusably, to prohibit the prescription of oral methadone treatment to people who are injecting heroin or other opioids, fueling the HIV epidemic and risks of overdose.

Additionally, the refusal of the CAT Committee to address drug policy issues in relation to Russia has led to concerns as to whether the CAT Committee is willing and able to address issues of drug policy, especially since this was not the first time the CAT Committee failed to address drug policy issues, despite having evidence of torture of drug users. (Cardoso and Dreifuss 2013)

In October 2012, the UN Special Rapporteur on the right to health also undertook an attempt to inform the CAT Committee about the nexus between the violations of the right to health and the violations of the right to be free from torture and other forms of ill-treatment ([Special Rapporteur on the Right to Health 2012](#)). Unfortunately, the Committee did not in any way address the Special Rapporteur's submission and did not even post the submission on the CAT Committee's website along with other submissions related to its 49th session.

In 2013, advocates from Guatemala also approached the CAT Committee with evidence of human rights violations resulting from the country's drug policy. The Committee's response was confusing and sent mixed signals regarding human rights protections for people who use drugs. In response to ample evidence of the widespread ill-treatment in private, coercive religious drug rehabilitation centres, the CAT Committee, on the one hand, urged the government of Guatemala to investigate and punish ill-treatment in these centres, but on the other hand recommended that Guatemala 'accredit' such centres 'by the competent authority' ([UN Committee against Torture 2013](#): para. 20). The latter recommendation is particularly surprising in view of evidence that these centres already operate with the

3 One of the authors of this article was present during the dialogue between the Committee and the Russian delegation in November 2012.

authorities' tacit approval and police often bring people who use drugs there. Moreover, in calling for the accreditation of these centres, the CAT Committee seemingly went directly against the recommendations of the 2012 Joint Statement of 12 UN entities, including the World Health Organization (WHO), UNODC, the Joint UN Programme on HIV/AIDS (UNAIDS), and the UN Office of the High Commissioner for Human Rights (OHCHR), which 'call[s] on States to close compulsory drug detention and rehabilitation centers and implement voluntary, evidence-informed and rights-based health and social services in the community' (UN Entities 2012). By urging the government's recognition of these coercive and compulsory drug rehabilitation centres, rather than their closing, the Committee missed an opportunity to put a stop to a core cause of mass ill-treatment of people who use drugs in Guatemala.

Similar to the shadow reports submitted to the CAT Committee for Russia, Cambodia, and Guatemala, Ukrainian and international civil society organizations submitted a shadow report to the Human Rights Committee addressing how Ukrainian drug policy allowed for and perpetuated violations of the International Covenant on Civil and Political Rights (ICCPR), which that Committee is responsible for monitoring, and proposing recommendations for changing Ukrainian drug policy to ensure the protection of the human rights of people who use drugs (International HIV/AIDS Alliance in Ukraine et al. 2013). The report described how the decision of the Ukrainian Ministry of Health to increase the punishment for possession of drugs with no intention to sell led to higher numbers of disproportionately tough sentences and higher rates of incarceration for petty drug offences, as well as arbitrary arrests and detention of people who used drugs. In addition, the shadow report explained how the failure of law enforcement agencies to establish the purity of street drugs led to the imprisonment of people with drug dependence for lengthy periods of time for possession of trace amounts of illicit drugs, thus imposing a penalty that was vastly disproportionate to the crime committed (Golichenko and Merkinaitė 2011). Accordingly, the shadow report requested specific recommendations to address these violations of the civil and political rights of people who use drugs.

Again, the Human Rights Committee seemed initially responsive to the concerns raised in the shadow report by including treatment of persons who use drugs in the List of Issues to be addressed by the Ukraine (UN Human Rights Committee 2012b). However, the government of Ukraine replied in very generic terms and failed to address the issues highlighted by the Committee (Government of Ukraine 2013). The Committee then did not include any recommendations concerning drug policy in its Concluding Observations, nor did it include a single remark regarding the issues highlighted in the shadow report.

More recently, the Human Rights Committee failed to adequately address torturous practices permitted under the guise of drug policy in its Concluding Observations on the seventh periodic report of the Russian Federation (UN Human Rights Committee 2015). Once again, the Committee appeared to be initially responsive to the need to address human rights violations resulting from drug policy and included many important issues in the List of Issues, including questions relating to whether people who use drugs are: (a) subjected to discriminatory searches, arrests and detentions, and their medical files are often used by law enforcement officials to target them; (b) denied, by law, opioid dependence treatment, such as opioid substitution therapy (OST), and this denial is often used to elicit forced confessions as a result of severe physical and mental pain due to opioid withdrawal syndrome; and (c) denied medical assistance while in custody, subjected to violence when requesting it, and not treated according to a human rights-based approach

(UN Human Rights Committee 2014). In its response, the Russian government either ignored these issues or addressed them cursorily (Andrey Rylkov Foundation and Canadian HIV/AIDS Legal Network 2015). Then, in its Concluding Observations, the Committee failed to address several important drivers for ill-treatment of people who use drugs, including the legal ban on OST, an essential and evidence-based drug dependence treatment, and discrimination against people who use drugs based on their health status. The Concluding Observations instead only addressed the most obvious of the violations—the use by police of withdrawal syndrome to obtain self-incriminating evidence (UN Human Rights Committee 2015: para. 16).

Thus, while both the Human Rights Committee and the CAT Committee seemed to recognize the importance of the drug policy issues raised in the shadow reports by civil society organizations by highlighting them during the country dialogues, both committees then largely disregarded these drug policy issues in the final text of the Concluding Observations with their recommendations to countries.

2. Discussion

As discussed in the previous section, drug policy can have significant negative impacts on the human rights of people who use drugs, including violations of civil, political, economic, social and cultural rights. This section sets out how a review of drug policy through a human rights lens, particularly through the lens of more than just the right to health, is in line with a core principle of human rights as indivisible, interdependent, and mutually reinforcing. As discussed above, certain human right bodies have already taken initial steps in this direction, but a comprehensive response that addresses the scope of human rights violations resulting from drug policy has yet to be adopted. The UNGASS 2016 Declaration presents an opportunity for building on these efforts and for a more comprehensive cross-sectoral human rights analysis of drug policy issues to take place. The creation of guidelines regarding the connection between human rights and drug policy would provide UN human rights bodies with a cross-sectoral human rights framework for the review of drug policy issues going forward.

2.1 Drug policy through the lens of human rights as interrelated and mutually reinforcing

The understanding that human rights are interrelated and mutually reinforcing is a cornerstone of the modern system of human rights. This dates back to the Universal Declaration of Human Rights, where not only civil and political rights, but also economic, social and cultural rights are proclaimed to be indispensable to ensuring human dignity and the free development of an individual's personality. While historically there has been a divide between civil and political rights, on the one hand, and social, economic and cultural rights, on the other, privileging the former, currently, there is fairly strong agreement that these divisions and distinctions are not useful and instead the focus should be on the interconnectedness and interrelation of rights (Hannum 2004:15; Freeman and van Ert 2005: 37). For example, applying an anti-torture framework to abuses in health-care settings has shown how using an interrelated interpretation of rights can stop human rights violations that continue with impunity under the guise of medical 'expertise' or 'necessity' (Ezer 2014).

The 1993 Vienna Declaration affirms that ‘all human rights are universal, indivisible and interdependent’ and calls upon the international community to ‘treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis’.

The UN Committee on Economic, Social and Cultural Rights (CESCR) has been at the forefront of this interrelated interpretation of human rights, often reinforcing social and economic rights by linking them to civil and political rights. For instance, in its General Comment No. 14, the Committee acknowledges the concept of interdependence of human rights, stating that ‘health is a fundamental human right indispensable for the exercise of other human rights’ (UN CESCR 2000). Indeed, this concept of the interrelated needs and interdependence of the right to health and other rights appears as a golden thread throughout General Comment No. 14, as the Committee asserts that the realization of numerous other rights (including the rights to food, housing, work, education, human dignity, life, non-discrimination, equality, the prohibition against torture, privacy, access to information and the freedoms of association, assembly and movement, as well as other rights and freedoms) all ‘address integral components of the right to health’. Similarly, the UN Special Rapporteur on the right to health has interpreted the right to health as interrelated with and reinforced by other rights, stating that ‘while recognizing that violations could fall within the diverse legal framework, the principle of indivisibility and interdependency of human rights dictates that human rights violations should not fall through the cracks of classifications’ (Grover and Gaziyeu 2014: 6).

Following this trend, the UN Committee on the Rights of the Child (CRC) has asserted that:

The Convention [on the Rights of the Child] recognizes the interdependence and equal importance of all rights (civil, political, economic, social and cultural) that enable all children to develop their mental and physical abilities, personalities and talents to the fullest extent possible. Not only is children’s right to health important in and of itself, but also the realization of the right to health is indispensable for the enjoyment of all the other rights in the Convention. Moreover, achieving children’s right to health is dependent on the realization of many other rights outlined in the Convention. (UN CRC 2013: para. 7)

Thus, international human rights bodies have started to use the interdependency of human rights to reinforce all human rights and even expand the definitions of various rights when interpreting human rights law. Indeed, even those scholars who continue to prefer the delineation of the content of certain rights from overlapping rights do not dispute that delineated rights can and should be considered in conjunction with and interrelated with overlapping rights as well as mutually reinforcing those rights (Toebe 1999: Chapter V). It is now time for drug policy to be reviewed through this lens of interrelated and mutually reinforcing human rights, and to ensure that such a review is done routinely and consistently when human rights bodies are reviewing countries’ drug enforcement regimes.

2.2 Initial steps by human rights bodies towards a broad human rights assessment of drug policy

Certain UN officials and bodies, such as the UN special procedures, the OHCHR, the CESCR, the CRC, and the Committee on the Elimination of Discrimination against Women (CEDAW), have built upon this doctrine of interrelated rights discussed above and begun to recognize the interconnection between various human rights when reviewing the ways in which drug policy impacts the human rights of people who use drugs. Moreover, in some limited cases, where

violations of rights were explicit and obvious, such as the imposition of the death penalty for drug trafficking or the denial of habeas corpus to drug offenders, the Human Rights Committee has also addressed these interconnections (UN Human Rights Committee 2000, 2005).

Special procedures were, perhaps, the first among the UN human rights mechanisms to bring drug policy under the scrutiny of human rights (the Special Rapporteur on violence against women (UN Commission on Human Rights 1999); the Working Group on Arbitrary Detention (UN Human Rights Council 2006); the Special Rapporteur on the right to health (UN Human Rights Council 2007); and the Special Rapporteur on torture (UN Human Rights Council 2009)). The 2010 Report of the Special Rapporteur on the right to health identified the wide range of potential human rights violations caused by drug control policies that negatively stigmatize and discriminate against people who use drugs, including violations of the right to be free from torture, the right to be free from arbitrary detention, the right to freedom of information, the right to education, and the right to private life (UN General Assembly 2010).

In 2009 and 2013, the UN Special Rapporteur on torture conducted a human rights assessment of drug policy through the lens of the right to be free from torture and other cruel, inhuman or degrading treatment in health-care settings (UN Human Rights Council 2009, 2013). The Special Rapporteur discussed how unbalanced drug policy can be the underlying cause as well as the driver of the ill-treatment of people who use drugs.

In addition, the Committee on Economic, Social and Cultural Rights has reviewed drug policy issues under Article 12 (the right to enjoyment of the highest attainable standard of physical and mental health) and Article 15 (the right to take part in cultural life and to enjoy the benefits of scientific progress) of the International Covenant on Economic, Social and Cultural Rights. In its Concluding Observations on Tajikistan, Poland, Ukraine, Russia, Kazakhstan, Mauritius, and Canada (UN CESCR 2006, 2008, 2009, 2010a, 2010b, 2011, 2016a), the Committee provided fairly strong recommendations regarding the need to improve drug policy at least concerning drug dependence treatment, prevention of HIV, hepatitis C, and overdose among people who use drugs. In September 2016 the Committee recommended that the Philippines reconsider the criminalization of the possession and use of drugs and adopt a right-to-health approach to drug abuse (UN CESCR 2016b).

The CEDAW Committee has also recognized that women who use drugs are more vulnerable to gender-based discrimination (UN CEDAW 2015b) and discrimination in the field of health care, and has issued drug policy related recommendations in order to address these forms of discrimination (UN CEDAW 2011, 2014, 2015a).

Acknowledging the indivisibility and interdependence of children's rights, the Committee on the Rights of the Child 'underscores the importance of adopting a rights-based approach to substance use and recommends that, where appropriate, harm reduction strategies should be employed to minimize the negative health impacts of substance abuse' (UN CRC 2013: 66). Arguably, it was the application of a human rights-based approach that shifted the CRC assessment of the implementation of the Convention on the Rights of the Child from the traditional 'save children from drugs' calls to more human rights-oriented and evidence-based harm reduction approach.⁴

4 In 2011 the Committee on the Rights of the Child recommended to Ukraine to develop, among other measures, youth-friendly harm reduction services as part of its obligation to protect children from illicit drug use (see UN CRC 2011). This recommendation was made in response to the report from civil society organizations.

The reports of the Special Rapporteurs and recommendations from the Committee on Economic, Social and Cultural Rights, the CEDAW Committee, and the Committee on the Rights of the Child all represent positive steps toward bringing a robust and broad human rights analysis to the review of drug policy. However, such analysis is not yet universal. For example, while the Special Rapporteur on torture has extended the anti-torture mandate into the right to health framework in other contexts, the CAT Committee has taken a more conservative view of the definition of torture when reviewing drug policy and has only commented on the effects of drug policy in areas that fall within the conventional definition of torture, such as ill-treatment in closed health institutions and prisons, and issues of redress and rehabilitation of victims of torture (Grossman 2014). One CAT Committee member suggested that non-inclusion of the drug policy issues into the Committee's recommendations was the result of the Committee's decision that 'the Committee was not ready to open this new page in its mandate' (from personal communications of one of authors and some CAT Committee members in November 2012).

The Human Rights Committee has been similarly conservative in its review of drug policy and thus far has refused to issue strong recommendations regarding drug policy, despite the fact that it has been willing to take an expansive view of the right to health and issues recommendations based on this broader perspective in other contexts.⁵ These committees' reluctance to fully engage in a human rights review of drug policy is further evidenced by the CAT Committee's and Human Rights Committee's reviews of Russia and the Ukraine discussed above. As a result, more work is necessary to ensure that both human rights and drug policy bodies have clear guidance on how to assess drug policy issues through the prism of human rights, and guidelines would provide that guidance. Guidance is especially needed because reviewing drug policy issues through the human rights lens has not been welcomed by all the UN member states and, notably, by some of the UN agencies.

2.3 Backlash and resistance to drug policy as an issue of human rights

It is in the interest of member states, who do not wish to have their human rights records closely scrutinized, to ensure that the framework of human rights remains highly divided into classes of rights and that individual rights remain within their own niche under a narrowly-defined mandate of a particular human rights body. Truly interrelated, indivisible, interdependent, and mutually reinforced human rights would mean that any issue that has impact on multiple human rights could become a subject matter for numerous human rights bodies and thereby increase the scrutiny on states. Drug policy is a good example of an issue that interacts with many fundamental rights, chiefly because punitive drug policy works to criminalize a significant portion of the population. Because of this, states that exercise a punitive drug policy, such as China, India, Iran, Japan, Russia, and the United States, could potentially fall into a continuous human rights cycle where the same issue

5 For example, the Human Rights Committee has applied an expansive definition of the right to health and viewed it as interrelated and interdependent to the right to life in connection with the prevention of infant mortality, vaccination of children, public health insurance for economically disadvantaged people, and reproductive health care (abortion) (UN Human Rights Committee 1988, 2012c). The Committee has also been willing to see the right to health as interrelated with the right to be free from ill-treatment, the right to be free from discrimination, the rights of prisoners, and the rights of minorities protected under Article 27 of the ICCPR (UN Human Rights Committee 2004, 2011, 2012a).

would bounce from committee to committee, procedure to procedure, session to session, as each different body would review drug policy in light of the specific rights it is meant to protect. Accordingly, there is a strong reason for states to be reluctant to accept a working system where human rights are truly interdependent and mutually reinforcing (Currie 2001).

As a result, even the small steps taken by the Special Rapporteurs, the Committee on Economic, Social and Cultural Rights, and the CEDAW Committee to bring drug policy under the prism of human rights have encountered significant resistance. Specifically, states have claimed that the issues raised by human rights activists regarding the rights violated by drug policy do not fit within the realm of drug policy review. For example, Russia has resisted the inclusion of drug policy issues in any discussion of civil and political rights and tried to limit the discourse around drug policy to discussions of the right to health. The Russian delegation strongly objected to the 2013 Report of the Special Rapporteur on torture, seeing it as an unauthorized expansion of the Rapporteur's mandate because, in the delegation's opinion, much of the report was in fact about the right to health and not the right to be free from ill-treatment. Specifically, the representative of the Russian delegation stated that:

We still don't understand in which way the question of abuse in medical institutions is related to the whole issue of torture and thus is related to your mandate. ... We believe that the violation of the right to health belongs to the work of the WHO and the Special Rapporteur of the [Human Rights Council] on the question of health.⁶

Moreover, many countries do not want their drug policy to become a human rights issue and have gone so far as to suggest that human rights law is not binding when drug policy issues have been raised by UN agencies. For example, in a debate at a 2008 session of the Commission on Narcotic Drugs regarding the CND's first resolution on human rights and international drug control, China claimed that it was 'ridiculous to require the [CND] to operate in line with human rights' and Japan challenged whether the 'Universal Declaration [of Human Rights] was part of international law at all' (Barrett 2012: 60). Similarly, Russia has claimed that UN bodies' attempts to analyse drug policy under human rights principles were the result of Western countries pushing doubtful political agendas under the guise of human rights.⁷ Russia has also accused the United Nations Educational, Scientific and Cultural Organization (UNESCO) of promoting drug propaganda when it accepted a complaint about Russian drug policy.⁸ And perhaps most outrageously, Russia suggested

6 Video: Clustered ID - Torture and HR Defenders (cont'd) 15th Meeting 22nd Regular Session Human Rights Council (UN Webcast 2013). See 1:24 to 1:26 for comments of the Russian Delegation, available at <http://webtv.un.org/search/clustered-id-torture-and-hr-defenders-contd-15th-meeting-22nd-regular-session-human-rights-council/2203796116001> (referenced 6 August 2017).

7 Interview with Gennadiy M. Gatilov, Deputy Minister of Foreign Affairs of the Russian Federation (in Russian) (2013) http://www.mid.ru/brp_4.nsf/newsline/320448C40025369544257BFE0048F0C9 (referenced 6 August 2017). The Deputy Minister pointed to the promotion of OST as an example of the misuse of human rights to push Western agendas. While the UN has strongly recommended the use of OST as an evidence-based method of drug treatment, Russia has strongly rejected the use of OST, outlawing it completely and characterizing this type of treatment as giving up the fight against drugs and drug addiction.

8 In 2013, a complaint was filed with UNESCO arguing that the Russian Federal Drug Control Service violated the right to information by banning a website that promoted recommendations of the

that the Global Commission on Drug Policy's 2011 Report, which called for rethinking of international drug policy due to the fact that it drives numerous human rights violations and undermines public health (GCDP 2011), constituted a 'very skilful PR [public relations] action' for the international drug mafia (Ivanov 2011) and accused members of the GCDP, such as Kofi Annan, of receiving payment from the international drug mafia.

2.4 Next steps to ensure drug policy respects human rights

The time is right for human rights bodies to expand upon the positive steps already taken and begin reviewing drug policy through the lens of human rights. UN drug control bodies are ready for such review. In 2014, the CND conducted a high-level mid-term review of the 2009 Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem (UN CND 2014). As a result of that review, the UNGASS 2016 Declaration contains fairly strong human rights language with respect to all matters of international drug control and is not restricted to the area of drug demand reduction. This represents an opportunity for the international human rights community to ensure that international drug control is underpinned by respect for human rights and to demonstrate that the principles of the UN Charter that 'provide foundation for, and impetus to further improvement in, the protection of human rights' must be applied in connection with drug policy (Brownlie 1998: 573). Any guidelines that are adopted need to be based on the principle of indivisibility, interdependence, and mutual reinforcement; should include the input of the UN special procedures, who have been at the forefront of developing this principle; and should specifically address the particular vulnerability of people who use drugs.

The UNGASS 2016 Declaration is an opportunity to ensure that UN human rights bodies become part of the impact assessment of drug policies on both the international and national levels. The human rights language of the UNGASS 2016 Declaration should serve as an entry point for the adoption of international guidelines on drug policy and human rights while simultaneously ensuring that such guidelines will contribute to the overall development of the principle of indivisibility, interdependence, and mutual reinforcement of human rights. In April 2016 and June 2017, international human rights and drug policy organizations and human rights advocates called upon states and UN entities to develop International Guidelines on Human Rights and Drug Control (Lines et al. 2017). With the assistance of the OHCHR in partnership with the UN specialized agencies, the human rights treaty bodies and special procedures should be a strong force of support for the guidelines.⁹ In order to ensure that international and national drug policies respect human

Committee on Economic, Social and Cultural Rights regarding drug policy and the right to health. The complaint also alleged a violation of the right to benefit from scientific progress based on the Federal Drug Control Service's banning of access to information related to OST (see [Canadian HIV/AIDS Legal Network and Andrey Rylkov Foundation 2012](#)). The Russian Federal Drug Control Service responded by suggesting that if UNESCO pursued the complaint, it would be overstepping its boundaries. Russia characterizes information regarding OST as drug propaganda, and UNESCO as having no right to deal with issues of drug propaganda. Immediately following Russia's response, UNESCO proclaimed the complaint inadmissible without any further assessment of the violations alleged.

- 9 Examples of guidelines that have begun to bring drug policy into the realm of human rights include the [International Guidelines on HIV/AIDS and Human Rights](#) which provide some recommendations relevant to drug policy in Guidelines 4, para 21(d). Another example is the [Maastricht Principles on](#)

rights and ensure that people who use drugs have special protection from disproportionately punitive applications of drug laws, the guidelines should emphasize the principle of indivisibility and interdependence of human rights and should recognize the vulnerability of people who use drugs to human rights violations.

A review of drug policy within a human rights framework can also test the international human rights system as a whole as to whether there is genuine commitment to human rights as indivisible, interdependent, and mutually reinforcing. As an area of international cooperation, drug policy intermingles with many issues that have already been the focus of human rights review by different UN human rights treaty bodies and special procedures. However, the cross-sectoral review of drug policy has thus far been missing and such a review can only be possible when the UN human rights treaty bodies and special procedures address the root causes of human rights violations in the area of drug policy. Introducing guidelines into the routine work of the UN human rights treaty bodies and special procedures, with a particular emphasis on the principle of indivisibility and interdependence, can help ensure that—when dealing with cross-sectoral drug policy issues—the human rights bodies will reinforce human rights that are not necessarily directly under their mandate, but interrelated with those that are. Thus, the guidelines would help to fulfil the spirit of the Universal Declaration of Human Rights where fundamental rights and freedoms apply with no division or hierarchy.

Additionally, to ensure that guidelines embrace the principle of indivisibility and interdependence, they should provide the thematic mandate holders of the UN Human Rights Council special procedures (such as the UN Special Rapporteur on the right to health, the UN Special Rapporteur on torture, and the UN Working Group on Arbitrary Detention) with open access to human rights sessions when drug policy is being reviewed. In particular, the UN Special Rapporteurs should be invited to dialogue and consult regarding drug policy, including the pre-session dialogues of the UN committees. The UN Human Rights Council should also give strong consideration to the idea of establishing a special thematic mandate on drug policy and human rights (Barrett 2012). The special procedures have thus far demonstrated more flexibility in acting upon the principle of indivisibility and interdependence of human rights. As a result, the input of the special procedures will be instrumental in ensuring that this principle is incorporated into any drug policy guidelines. Their input would provide explanations, helpful in addressing the complexity of drug policy issues and support the inclusion of drug policy issues within the mandate of certain committees.¹⁰

In addition to needing to embrace the principle of indivisibility and interrelatedness, the guidelines should address the particular vulnerability of people who use drugs. The need to address this vulnerability follows from the fundamental freedom from discrimination and

[Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, 2011](#). Finally, the UNODC published its position paper on promotion of human rights (2012). Unfortunately, that position paper does not go far enough to adopt a review of drug policy under an expansive view of human rights that recognizes the ways in which drug policy is a cross-cutting human rights issue. An example for human rights impact assessment is 'Human rights due diligence policy', Section II of [UN Secretary-General \(2013\)](#).

- 10 The Report of the Special Rapporteur on violence against women (UN General Assembly 2013) is a good example of how the principle of interdependence of human rights is included in human rights analysis.

obligations of states to ensure special protection for the most vulnerable (see e.g. European Court of Human Rights, *A. v. The United Kingdom*: 22). Legal scholars (Jurgens et al. 2010), the UN High Commissioner for Human Rights (Pillay 2014), and the UN Office on Drugs and Crime (UN CND 2010) have already confirmed the special vulnerability of people who use drugs to human rights violations. Creating guidelines that are based on recognizing the particular vulnerability of people who use drugs will provide a very powerful platform for cross-sectoral protection of this population. To understand how to address the special vulnerability of people who use drugs and those living with drug dependence, UN bodies can look to treaties like the UN Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the Convention on the Rights of Persons with Disabilities, as well as the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, all of which are the practical reflection of the special protection of human rights of vulnerable groups.

Finally, the guidelines would benefit from providing examples of how drug laws and policies can infringe on fundamental rights and freedoms, guaranteed by international human rights treaties, while also providing guidance on how to assess a situation implicating several rights and mandates.¹¹

Conclusion

The UN human rights system devotes woefully inadequate attention to drug policy, despite numerous human rights violations propagated in its name. While there have been some positive steps taken to bring drug policy under human rights review, there has also been some backlash by resisting countries, and this review is not yet universal and comprehensive. To address this gap, UN agencies, led by the UN Office of the High Commissioner for Human Rights, should support the proposed guidelines for a human rights assessment of drug policy and introduce the guidelines into the routine work of the UN human rights treaty bodies. Apart from laying out the specific state obligations to respect, protect and fulfil human rights in the area of drug policy, these guidelines would strengthen the ability of UN human rights bodies to take a position and recognize the various human rights violations caused by drug policy. The UNGASS 2016 Declaration is a good starting point for discussions regarding the creation of guidelines that ensure human rights analysis of drug policy underpinned by the principle of indivisibility, interdependence and mutual reinforcement of human rights.

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11 To address this type of situation, the guidelines could look to the cases of the European Court of Human Rights where the Court managed to defend the right to health under umbrellas of the right to be free from ill-treatment (*Kalashnikov v. Russia*; *R. R. v. Poland*), the right to respect for private life (*Bensaid v. the United Kingdom*), and the right to be free from discrimination (*Kiyutin v. Russia*).

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