



HRC47 Side Event

Strengthening the role of the UN human rights system in drug policies: The case of arbitrary detention

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Statement delivered by

Elina Steinerte

Chair - Rapporteur

Working Group on Arbitrary Detention

*Dear Chair,
Excellencies,
colleagues from UN agencies and civil society,
distinguished participants,*

On behalf of the Working Group on Arbitrary Detention, I thank organisers of this special event for extending invitation to the Working Group to introduce its latest study on arbitrary detention relating to drug policies prepared by the Group at the request of the Council.

From the outset, the Working Group would also like to thank all stakeholders for their contributions, prepared and provided to the Group during the trying period of the global pandemic. Overall, 21 States, 6 National Human Rights Institutions and 27 civil society organizations sent their written submissions. This was followed by consultations with the United Nations Office on Drugs and Crime and the International Narcotics Control Board as well as a virtual expert consultation.

This study follows previous concerns raised by the Working Group in its numerous reports to the Human Rights Council about the increasing, and in some cases, systematic, instances of arbitrary detention as a consequence of drug control laws and policies worldwide. The Working Group has also previously expressed concern about the frequent use of various forms of administrative detention imposed to control people who use drugs, often framed as a health intervention, which may lead to involuntary commitment or compulsory drug treatment in turn leading to arbitrary deprivation of liberty. Through this study, we therefore hope to provide further guidance to States on practical measures to prohibit and indeed prevent arbitrary arrest and detention in the context of drug policy.

Dear Chair,

Let me now highlight some of the main findings and recommendations of the study.

The Working Group notes the punitive drug control laws and policies continue to be used in many States, despite being ineffective in reducing drug trafficking or addressing non-medical drug use and supply. Such policies have resulted in the increasing use of arbitrary detention in the context of drug control with people who use drugs being particularly at risk of arbitrary detention.

The so-called “war on drugs” has resulted in further increase in detention and imprisonment for drug-related offences. Disproportionate actions by some States to apply criminalization provisions of drug-control treaties or to incorporate these in their domestic legislations have frequently resulted in widespread human rights violations leading to increased arbitrary detention. Evidence shows that the so-called “war on drugs” has failed to address the drug problem. Abusive, repressive, and disproportionate drug control policies and laws are counterproductive, while also violating human rights, undercutting public health, and wasting public resources.

In this study, the Working Group identified several human rights violations in the so called “war on drugs” context, such as interrogating suspects under the influence of drugs and subjecting persons to testing without their consent or a judicial warrant; the overuse of and prolonged pre-trial detention, lasting in some instances for months or even years and physical or psychological violence towards detainees, including inter alia the withholding of substitution therapy from drug dependent suspects. Another serious concern is the identified wide range of violations of fair trial standards for persons accused of drug-related crimes.

Furthermore, disproportionate sentences for drug-related offences, often accompanied by the ban on parole or amnesty for those convicted

for drug-related offences in some jurisdictions, contribute to prison overcrowding and call into question the compliance with international standards requiring respect for the dignity of persons deprived of their liberty.

The Working Group also notes that the imposition of the death penalty for drug-related offences and the misuse of drug control to silence human rights defenders, journalists and political opponents is incompatible with international standards. Any death penalty sentence following a trial that did not meet fair trial standards, would be equal to an arbitrary deprivation of life. Furthermore, we also recall that if the legislation under which detention took place did not meet international standards, the detention in pursuit of such legislation is also arbitrary.

In light of these findings, the Working Group recommends that States decriminalize the use and possession of drugs for personal use, including the possession of associated paraphernalia and release persons detained only for drug use or possession for personal use, review their convictions and expunge their records.

The States are also encouraged to review procedures relating to detention, arrest, search, testing, pre-trial detention, trial and sentencing in order to address situations enabling arbitrary detention and other human rights violations.

Abolishing the mandatory pre-trial detention and mandatory sentences for those convicted of minor drug-related offences to ensure alternatives to incarceration and ensuring proportionate sentencing for drug-related offences through amending relevant legislation and sentencing guidelines also figure prominently among recommendations.

The Working Group has also observed that criminalization of drug use facilitates the deployment of the criminal justice system against drug users in a discriminatory way, with law enforcement agencies often targeting members of vulnerable and marginalized groups, such as minorities, people of African descent, indigenous peoples, women, persons with disabilities, persons with AIDS and lesbian, gay, bisexual,

transgender and intersex persons. Homeless persons, sex workers, migrants, juveniles, the unemployed and ex-convicts may also be vulnerable.

The Working Group therefore recommended that States address how the justice process approaches specific groups that may be the object of discrimination in order to stop their targeting and the disproportionate drug control enforcement efforts. States are also encouraged to protect the rights of indigenous peoples to produce crops and plants that they have traditionally grown for their religious, medicinal and customary purposes and ensure that such production is not criminalized. States should also not take punitive action against subsistence and small-scale farmers who produce illicit crops, but should work with them to develop income from alternative agricultural crops.

I would also like to highlight findings and recommendations concerning health care for drug users in detention. The study has revealed the insufficient availability of harm reduction services and drug treatment for drug-dependent persons in detention. Only 56 States provide opioid substitution therapy in prisons, and when provided, it may be available only to limited percentage of inmates.

The Working Group also found that despite the evidence in terms of the lack of effectiveness of compulsory treatment, the practice of confining people who use or are suspected of using drugs against their will in State-run or in private compulsory drug treatment centres is still widespread and can give rise to arbitrary deprivation of liberty. Similarly, courts often coerce defendants with a choice between imprisonment and drug treatment.

The Working Group considers that emphasis should be placed on harm reduction whilst addressing the social and economic vulnerabilities and follow up. Specifically trained healthcare professionals and appropriately trained social care professionals should be solely responsible for treatment of and care for people who use drugs.

In the view of the Working Group, the shift from punitive to supportive approach should be translated into making drug treatment voluntary

and based on informed consent. All compulsory drug detention and treatment centres should therefore be closed and further admissions stopped. Instead, voluntary, evidence-informed and rights-based health and social services should be made available in the community.

Dear Chair,

The Working Group will now turn its attention to disseminating the study amongst the widest possible range of stakeholders and invite initiatives in supporting further dissemination and implementation of its recommendations. I would like to share few steps we intend to take.

Firstly, as requested by the Human Rights Council in its Resolution 42/22, the report will be shared with the Commission on Narcotic Drugs, as the policymaking body of the United Nations with prime responsibility for drug-control matters. The Working Group also hopes to be able to present the study to the Commission at its reconvened 64th session, to be held on 9 and 10 December of the current year.

Moreover, the Working Group intends to share this report with the International Narcotics Control Board (INCB) and to initiate a discussion on how to promote the implementation of recommendations through the work of INCB's members. The Working Group considers that this independent quasi-judicial monitoring body for the implementation of the United Nations international drug control conventions could play a key role in furthering the study and the recommendations made, including, *inter alia*, through regular consultations with Governments as well as its country missions arranged in agreement with the concerned Governments.

The Working Group also plans to share the study with a wide range of regional partners, including the Horizontal Working Party on Drugs, a coordination body responsible for leading and managing the European Union Council's work on drugs; the ASEAN Intergovernmental Commission on Human Rights; and the Latin American Commission on Drugs and Democracy.

Moreover, the Working Group will streamline the recommendations in its own work, through, for example, our official country visits to States where the drug policy debate is pertinent. In this context, the Working Group will encourage States to implement the relevant recommendations contained in the study.

In concluding, the Working Group stands ready to work with all the stakeholders including the civil society, in further disseminating the report and its recommendations. Within its mandate, the Working Group on Arbitrary Detention shall welcome all approaches for advice and assistance and stands ready to support States and other stakeholders, including civil society organizations and affected communities, in promoting and protecting human rights and especially freedom from arbitrary detention while addressing the drug problem. Moreover, we call upon all stakeholders to take an active role in disseminating this study to uphold the common duty to further the effective implementation of the absolute prohibition of arbitrary detention in the context of drug policies.

Thank you.