



DRUGS AND HUMAN RIGHTS: THE NEED FOR A PARADIGM SHIFT

SUBMISSION TO THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
31 MAY 2023

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1. INTRODUCTION

Amnesty International welcomes the opportunity to provide comments in response to a call for input issued by the Office of the High Commissioner for Human Rights (OHCHR) pursuant to Human Rights Council resolution 54/22 in preparation for the upcoming report on “the human rights challenges in addressing and countering all aspects of the world drug problem”.

As evidenced by the OHCHR in its previous report on human rights and drug policy published in 2018,¹ the blanket prohibition of drugs has led to a litany of abuses. As the international community embarks on the mid-term review of the 2019 Ministerial Declaration and begins considering the international community’s commitments beyond 2029, a sustained paradigm shift towards drug policies grounded in the protection of public health and human rights is essential. Shifting away from punitive models is critical to address the widespread human rights violations that arise from or are facilitated by the implementation of drug control policies.

Amnesty International highlights in this submission five key areas that have been relegated from international drug policy debates that must be urgently addressed to align drug control efforts with international human rights law. The submission is largely based on research conducted by Amnesty International, although it should not be considered as an exhaustive list of all concerns the organization has regarding human rights and drug policies.

2. ARBITRARY DETENTION AND MASS INCARCERATION

Around the world, the blanket prohibition of drugs has created a pernicious cycle of arbitrary detention and mass incarceration that undermines human rights.² In many countries, people suspected or accused of using, possessing or selling drugs are caught under two parallel systems of detention and punishment: the criminal justice system or drug-related administrative detention. The decision whether an individual is placed in one or the other is in many instances arbitrary and without a clear or systematic pattern.³

As emphasised by the UN Working Group on Arbitrary Detention, arbitrary detention in the context of drug policies occur in a wide range of settings.⁴ Several human rights mechanisms have similarly expressed concerns over the unnecessary and disproportionate use of the criminal justice system to deal with drug-related offences, which has led to the exponential growth of prison populations.⁵ In addition, compulsory detention regimes in the name of “rehabilitation” have been found to be inherently arbitrary.⁶

¹ Office of the United Nations High Commissioner for Human Rights, “Implementation of the joint commitment to effectively addressing and countering the world drug problem with regard to human rights”, 14 September 2018, UN Doc. A/HRC/39/39

² Working Group on Arbitrary Detention, “Study on arbitrary detention relating to drug policies”, 18 May 2021, UN Doc. A/HRC/47/40

³ Amnesty International, “Substance abuses: the human cost of Cambodia’s anti-drug campaign” (ASA 23/2220/2020), 12 May 2020. Available at <https://www.amnesty.org/en/documents/asa23/2220/2020/en/>

⁴ Working Group on Arbitrary Detention, “Study on arbitrary detention relating to drug policies”, 18 May 2021, UN Doc. A/HRC/47/40

⁵ Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 6 August 2010, UN Doc. A/65/255, para. 62; Human Rights Committee, General Comment 35: Article 9 (Liberty and security of person), 16 December 2014, UN Doc. CCPR/C/GC/35, para. 40; Report of the Working Group on Arbitrary Detention, 30 June 2014, UN Doc. A/HRC/27/48, para. 72-73; Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 14 January 2009, UN Doc. A/HRC/10/44, para. 55; World Health Organization. *Consolidated guidelines on HIV prevention, diagnosis, treatment and care for key populations*. Geneva, 2014, pp. 91; UNAIDS. *HIV prevention among injecting drug users*. Geneva, 2009, pp. 183

⁶ Working Group on Arbitrary Detention, “Study on arbitrary detention relating to drug policies”, 18 May 2021, UN Doc. A/HRC/47/40; Report of the Working Group on Arbitrary Detention, 10 July 2015, UN Doc. A/HRC/30/36, para. 74; Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 6 August 2010, UN Doc. A/65/255, para. 32;

As noted by the UN Common Position on Drugs, the criminalization of drugs poses a direct threat to a person's health and wellbeing, leading to widespread human rights violations while failing to decrease the use and availability of drugs.⁷ Moreover, people convicted for a drug-related offence face additional obstacles in obtaining employment and pursuing education, as well as adverse effects on the custody of children and accessing government benefits such as public housing, food assistance or student financial aid.⁸

Nevertheless, despite numerous recommendations by international bodies and mounting evidence that removing sanctions against people who use drugs can reduce prison overcrowding, improve health outcomes, uphold human rights, and address stigma and discrimination, the number of countries that have decriminalised the use, possession, purchase and cultivation of drugs for personal use remains low.⁹ Even when alternatives to incarceration are available, such as for caregivers in Brazil, their application seems to be rare for drug-related cases and usually fails to reach marginalized people.¹⁰

Amnesty International calls on States to adopt new models of drug control that put the protection of people's health and other human rights at the centre, including the decriminalization of the use, possession, purchase and cultivation of drugs for personal use and an expansion of health and other social services to address the risks related to the use of drugs. The criminalization of other minor drug-related offences such as subsistence cultivation of drug crops or transportation of small quantities of drugs (drug couriers), which have mostly affected people from marginalized groups - often women and people from racial, ethnic or other minorities or Indigenous peoples - due to their stigmatisation and over-policing. When determining whether minor, non-violent drug-related conduct should be maintained as a criminal offence, States must ensure that the crime is clearly defined in law; that proscribing the conduct is aimed at addressing a specific public health problem directly associated with the possible abuse of a particular drug; and that the conduct puts others at risk of serious harm, for example by knowingly supplying adulterated drugs. States should also ensure a process to review convictions and sentences for such offences and, where appropriate, quash, commute or reduce existing convictions and/or sentences.

3. THE MILITARIZATION OF ANTI-DRUG OPERATIONS

Countries in all regions of the world have relied on military forces and have adopted military techniques, training and equipment for use by the police and other law enforcement agencies as part of their efforts to stem the use and distribution of drugs based on the premise that national security or public safety is at stake.

Amnesty International has documented widespread human rights violations resulting from the militarization of anti-drug operations that disproportionately impact the poorest and most

Committee Against Torture (20 January 2011), Concluding observations: Cambodia, UN Doc. CAT/C/KHM/CO/2, para. 20; ILO, OHCHR, UNDP, UNESCO, UNFPA, UNHCR, UNICEF, UNODC, UN Women, WFP, WHO and UNAIDS, "Joint statement on compulsory drug detention and rehabilitation centres", March 2012

⁷ UN System Chief Executives Board for Coordination, United Nations system common position supporting the implementation of the international drug control policy through effective inter-agency collaboration", 18 January 2019, UN Doc. CEB/2018/2

⁸ Office of the High Commissioner on Human Rights, "Study on the impact of the world drug problem on the enjoyment of human rights", 4 September 2015, UN Doc. A/HRC/30/65, para. 50

⁹ International Drug Policy Consortium, "Taking stock: A decade of drug policy", April 2018, pp. 51. Available at <https://idpc.net/publications/2018/10/taking-stock-a-decade-of-drug-policy-a-civil-society-shadow-report>

¹⁰ Land, Work and Citizenship Institute. Implementation of house arrest for women in Brazil in light of the Access to Information Law, 2021. Available at <https://ponte.org/wp-content/uploads/2021/12/Relatorio-LAI.pdf>

marginalised sectors of society, including arbitrary detentions,¹¹ torture and other ill-treatment,¹² enforced disappearances,¹³ and extrajudicial executions.¹⁴ For example, Amnesty has documented a pattern of crimes against humanity in the Philippines by which thousands of people, overwhelmingly from poor and marginalised communities,¹⁵ suspected of using or selling drugs have been killed by the police or by unknown individuals, many of whom may have links to the police.¹⁶ In Bangladesh, reports of extrajudicial executions spiked sharply following the launch of an anti-drug drive in 2018 in which more than 52 people were killed by security forces within just the first ten days of the operation.¹⁷ In Mexico, gender stereotypes and other patriarchal norms have put women, particularly those who are young, poorly educated and low-paid, at a particular risk of being arbitrarily arrested and tortured by the security forces in the context of drug-related operations.¹⁸

Militarized operations in residential areas have resulted in the suspension of essential services with a great impact on economic, social and cultural rights. In countries like Cambodia and the Philippines, Amnesty documented how police forces targeted neighbourhoods surrounding facilities that provide harm reduction, drug treatment, and other health services with a chilling effect on those seeking medical care.¹⁹ In Brazil, more than 6.000 people, more than 80% of them Black,²⁰ have been killed on average every year in the last decade by police officers in anti-drug operations mostly conducted in favelas that have been characterized by the use of heavy weapons.²¹ These militarized operations regularly disrupt local services that lead to the temporary closure of schools and health facilities.²²

States must ensure that the maintenance of public order is primarily reserved for civilian police forces, who should be properly trained and equipped to allow for a differentiated use of force in accordance with the principles of necessity and proportionality. As recently pointed out by the Inter-American Court of Human Rights, States should only resort to military forces extraordinarily, temporarily and restricted to what is strictly necessary in the specific circumstances.²³ In such

¹¹ Amnesty International, "Substance abuses: the human cost of Cambodia's anti-drug campaign" (ASA 23/2220/2020), 12 May 2020. Available at <https://www.amnesty.org/en/documents/asa23/2220/2020/en/>

¹² Amnesty International, "Make him speak by tomorrow: torture and other ill-treatment in Thailand" (ASA 39/4747/2016), 28 September 2016. Available at <https://www.amnesty.org/en/documents/asa39/4747/2016/en/>; Amnesty International, "Out of control: torture and other ill-treatment in Mexico" (AMR 41/020/2014), 4 September 2014. Available at <https://www.amnesty.org/en/documents/amr41/020/2014/en/>; Amnesty International: "Shadow of impunity: torture in Morocco and Western Sahara" (MDE 29/001/2015), 19 May 2015. Available at <https://www.amnesty.org/en/documents/mde29/001/2015/en/>

¹³ Amnesty International, "Treated with indolence: the state's response to disappearances in Mexico" (AMR 41/3150/2016), 14 January 2016. Available at <https://www.amnesty.org/en/documents/amr41/3150/2016/en/>

¹⁴ Amnesty International, "Killed in crossfire: allegations of extrajudicial executions in Bangladesh in the guise of a war on drugs" (ASA 13/1265/2019), 4 November 2019. Available at <https://www.amnesty.org/en/documents/asa13/1265/2019/en/>; Amnesty International, "Indonesia: At least 60 killed as police shootings of drug suspects skyrocket", 16 August 2017. Available at <https://www.amnesty.org/en/latest/press-release/2017/08/indonesia-at-least-60-killed-as-police-shootings-of-drug-suspects-skyrocket/>;

Amnesty International, "If you are poor, you are killed: Extrajudicial executions in the Philippines' 'war on drugs'" (ASA 35/5517/2017), 31 January April 2017. Available at <https://www.amnesty.org/en/documents/asa35/5517/2017/en/>; Amnesty International, "You killed my son: Homicides by military police in the city of Rio de Janeiro" (AMR 19/2068/2015), 3 August 2015. Available at <https://www.amnesty.org/en/documents/amr19/2068/2015/en/>

¹⁵ Amnesty International, "If you are poor, you are killed: Extrajudicial executions in the Philippines' 'war on drugs'" (ASA 35/5517/2017), 31 January April 2017. Available at <https://www.amnesty.org/en/documents/asa35/5517/2017/en/>

¹⁶ Amnesty International, "Philippines: New administration must confront human rights crisis, ensure accountability", 29 June 2022.

Available at <https://www.amnesty.org/en/latest/news/2022/06/philippines-marcos-president-inauguration/>; Amnesty International, "Philippines: ICC launches probe into deadly 'war on drugs', seeks to end impunity", 16 September 2021. Available at <https://www.amnesty.org/en/latest/news/2021/09/icc-launches-probe-philippines-war-on-drugs-duterte/>; Amnesty International, "My Job is to Kill: Ongoing human rights violations and impunity in the Philippines," 25 September 2020. Available at <https://www.amnesty.org/en/documents/asa35/3085/2020/en/>;

Amnesty International, "They Just Kill: Ongoing extrajudicial executions and other violations in the Philippines' 'war on drugs'" (ASA 35/0578/2019), 8 July 2019. Available at <https://www.amnesty.org/en/documents/asa35/0578/2019/en/>

¹⁷ Amnesty International, "Killed in crossfire: allegations of extrajudicial executions in Bangladesh in the guise of a war on drugs" (ASA 13/1265/2019), 4 November 2019. Available at <https://www.amnesty.org/en/documents/asa13/1265/2019/en/>

¹⁸ Amnesty International, "Surviving death: Police and military torture of women in Mexico" (AMR 41/4237/2016), 28 June 2016. Available at <https://www.amnesty.org/en/documents/amr41/4237/2016/en/>

¹⁹ Amnesty International, "Substance abuses: the human cost of Cambodia's anti-drug campaign" (ASA 23/2220/2020), 12 May 2020. Available at <https://www.amnesty.org/en/documents/asa23/2220/2020/en/>

²⁰ Fórum Brasileiro de Segurança Pública (2022), "Anuário Brasileiro de Segurança Pública 2022". Available at <https://forumseguranca.org.br/wp-content/uploads/2022/06/anuario-2022.pdf?v=5>

²¹ Amnesty International, "You killed my son: Homicides by military police in the city of Rio de Janeiro" (AMR 19/2068/2015), 3 August 2015. Available at <https://www.amnesty.org/en/documents/amr19/2068/2015/en/>; Amnesty International, "The state of the world's human rights: Amnesty International's annual report 2021/22", p. 101. Available at <https://www.amnesty.org/en/documents/pol10/5670/2023/en/>

²² Amnesty International, "You killed my son: Homicides by military police in the city of Rio de Janeiro" (AMR 19/2068/2015), 3 August 2015. Available at <https://www.amnesty.org/en/documents/amr19/2068/2015/en/>

²³ Inter-American Court of Human Rights, *Alvarado Espinoza and others v. Mexico*, 28 November 2018, para. 182

exceptional circumstances, the participation of the armed forces must be subordinated and complementary to civilian forces and be regulated and supervised by civilian authorities. When military personnel perform functions that would normally correspond to civilian forces, they must be subjected in all respects to the same rules and procedures as those established for law enforcement officials.²⁴

4. THE USE OF THE DEATH-PENALTY FOR DRUG-RELATED OFFENCES

Hundreds of executions continue to be carried out each year for drug-related offences despite the fact that such offences do not meet the threshold of the “most serious crimes” - namely those “of extreme gravity involving intentional killing” - to which the use of the death penalty must be restricted under international law.²⁵ Amnesty’s most recent report on the use of the death penalty showed that the recorded number of people executed for drug-related offences more than doubled in 2022 compared to 2021, amounting to 37% of all executions recorded globally by the organization.²⁶

Four countries were known to have executed people for drug-related offences in 2022, namely China, Iran, Saudi Arabia and Singapore (Viet Nam also very likely carried out executions, but secrecy prevented confirmation). Of the 325 confirmed executions for drug-related offences, 255 were recorded in Iran – where drug-related offences accounted for 44% of known executions carried out in 2022; 57 recorded in Saudi Arabia – where a moratorium on executions for drug-related offences, which the Saudi Human Rights Commission had said was put in place in 2020, ended in 2022; and 11 recorded in Singapore – where executions resumed in 2022 and all were for drug-related offences. Amnesty International also confirmed executions carried out for drug-related offences in China but had insufficient information to provide a credible minimum figure.²⁷

Amnesty International has highlighted how the use of the death penalty for drug-related offences in several countries frequently follows proceedings that violate safeguards established under international human right law and standards to guarantee the protection of the rights of those facing execution.²⁸ Additionally, many cases of people sentenced to death for drug-related offences recorded by Amnesty International over the years involve foreign nationals, often from disadvantaged socio-economic backgrounds who are unable to speak the language of the country in which they were arrested. In Malaysia, Amnesty International found that a disproportionate number of those on death row by 2019 (44% of the total) were foreign nationals with a particular overrepresentation of women foreign nationals. According to numbers available to Amnesty International in 2019, 86% of all women sentenced to death – and 90% of women sentenced to death for drug trafficking – were foreign nationals.²⁹

²⁴ Commentary to the UN Code of Conduct for Law Enforcement Officials, nb 2 to Article 1

²⁵ Article 6.2 of the International Covenant on Civil and Political Rights and Article 4.2 of the American Convention on Human Rights. See also Human Rights Committee, General Comment No. 36 on Article 6: Right to Life, UN Doc. CCPR/C/GC/36 para35

²⁶ Amnesty International, “Death sentences and executions 2022” (ACT 50/6548/2023), 16 May 2023. Available at <https://www.amnesty.org/en/documents/act50/6548/2023/en/>

²⁷ In calculating the global total of executions carried out for drug-related offences, two were counted for China in accordance with Amnesty International’s research methodology.

²⁸ Amnesty International, “World Drugs Day: UNODC must integrate ending drug-related executions in its work” (ACT 50/4347/2021), 26 June 2021. Available at <https://www.amnesty.org/en/documents/act50/4347/2021/en/>

²⁹ Amnesty International, “Fatally Flawed- Why Malaysia Must Abolish the Death Penalty” (ACT 50/1078/2019), 10 October 2019. Available at <https://www.amnesty.org/en/documents/act50/1078/2019/en/>

5. INTERSECTIONAL DISCRIMINATION IN ACCESSING ECONOMIC AND SOCIAL RIGHTS

The criminalization of drugs has created additional obstacles for people to access their economic and social rights, particularly when it exacerbates stigma faced by people who use drugs afflicted by intersecting forms of discrimination based on, for example, ethnicity, race, gender, sexual orientation, gender identity or expression, disability, socio-economic circumstances or migration status.

Amnesty International has documented a wide range of instances in which denial of economic, social and cultural rights worsens the abuses faced by people who use drugs. For example, pregnant women who use drugs in the USA have been driven away from healthcare, prenatal care and drug treatment for fear of being criminally prosecuted under “fetal assault” laws that assume they have caused or risked harm to their foetus due to their use of drugs.³⁰ Amnesty also found that drug use and dependence was an underlying factor driving homelessness in England as many people were asked to be sober before receiving help with housing.³¹ Authorities in Ireland have denied access to social services to sex workers because of their use of drugs and in several cases the police discredited their testimonies of sexual or domestic violence because of their use of drugs.³²

States have an obligation to address the underlying socio-economic factors that increase the risks of using drugs or that lead people to engage in the drug trade, including ill-health, denial of education, unemployment, lack of housing, poverty or discrimination. Drug control policies should therefore be understood as a way to achieve broader objectives, including the protection of the right to health, ensuring equality and non-discrimination, and avoiding the violence associated with illicit markets.

Amnesty urges States to put in place measures to tackle social inequalities to promote social justice and advance economic, social and cultural rights, including a wide set of gender-sensitive and holistic socio-economic protection measures tackling the different stages of the drug trade, from cultivation and production to distribution and use.

³⁰ Amnesty International, “Criminalizing pregnancy: policing pregnant women who use drugs in the USA” (AMR 51/6203/2017), 23 May 2017. Available at <https://www.amnesty.org/en/documents/amr51/6203/2017/en/>

³¹ Amnesty International, “An obstacle course: homelessness assistance and the Right to Housing in England” (EUR 03/5343/2022), 7 June 2022. Available at <https://www.amnesty.org/en/documents/eur03/5343/2022/en/>

³² Amnesty International, “We live within a violent system: Structural violence against sex workers in Ireland” (EUR 29/5156/2022), 25 January 2022. Available at <https://www.amnesty.org/en/documents/eur29/5156/2022/en/>

6. INTERNATIONAL COOPERATION AND THE DRUG CONTROL REGIME

States and intergovernmental organizations engaging in international assistance and cooperation, including in the area of drug control, have an extraterritorial obligation to ensure that their drug policies do not lead to human rights abuses in other countries, either directly or indirectly.³³

The use of the death penalty for drug-related offences has highlighted how international cooperation in the area of drug control can lead to human rights violations.³⁴ As pointed out by the UN Special Rapporteur on extrajudicial executions, abolitionist countries and intergovernmental organizations may be responsible for the imposition of the death penalty in other countries due to cooperation over law enforcement programmes, the provision of technical or legal assistance, or extradition to countries where the death penalty is still imposed for drug-related offences.³⁵ Similarly, donors may be complicit when training projects funded by them result in arrests that carry capital punishment.³⁶ States may also be responsible for their failure to take reasonable steps to prevent or stop human rights abuses committed as part of their international assistance and cooperation in the area of law enforcement, including the sale and transfer of arms used to violate human rights during drug enforcement operations.³⁷

Historically, the drug control regime has been largely dissociated from human rights mechanisms and efforts to ensure system-wide coherence have not succeeded.³⁸ International drug control mechanisms have largely failed to ensure that drug policies are consistent with international human rights law while the lack of consideration of human rights among international drug control mechanisms has resulted in poor human rights compliance among drug control bodies.³⁹ The Commission on Narcotic Drugs (CND) has largely failed to discuss the human rights impact of punitive drug policies⁴⁰ and UNODC has been criticised for its failure to address human rights in a comprehensive way, both in its operative and monitoring tasks.⁴¹

States and intergovernmental organizations must ensure that any financial and technical assistance provided to third countries for drug-enforcement operations does not contribute, or carries a real risk of contributing, to the commission of human rights violations. Any such cooperation, including training or technical advice, must be halted if used (or if there is a real risk of it being used) to commit human rights abuses or violations, either directly or indirectly.

³³ See Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights

³⁴ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 7 August 2015, UN doc. A/70/304, paras. 95-98

³⁵ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 7 August 2015, UN doc. A/70/304; Report of the Secretary-General to the Human Rights Council, 2 July 2012, UN doc. A/HRC/21/29

³⁶ Amnesty International, "Addicted to death: Executions for drug offences in Iran" (MDE 13/090/2011), 15 December 2011. Available at <https://www.amnesty.org/en/documents/mde13/090/2011/en/>

³⁷ Report of the Office of the United Nations High Commissioner for Human Rights, "Impact of arms transfers on the enjoyment of human rights", 3 May 2017, UN Doc. A/HRC/35/8

³⁸ Jelsma, Martin. "UN-Common Position on drug policy – Consolidating system-wide coherence", December 2019. Available at <https://idpc.net/publications/2019/12/un-common-position-on-drug-policy-consolidating-system-wide-coherence>

³⁹ International Drug Policy Consortium, "Taking Stock: A decade of drug policy – A civil society shadow report", 21 October 2018; Damon Barrett and Manfred Nowak, *The United Nations and Drug Policy: Towards a human rights-based approach*. International Harm Reduction Association. London 2009, pp. 8

⁴⁰ In 2008, the CND adopted a resolution calling for increased cooperation between human rights mechanisms and UNODC. Since then, the CND has not adopted or discussed human rights concerns in a comprehensive manner. See CND Resolution 51/12, "Strengthening cooperation between the United Nations Office on Drugs and Crime and other United Nations entities for the promotion of human rights in the implementation of the international drug control treaties"

⁴¹ International Drug Policy Consortium (IDPC), "For the third year in a row, 100+ NGOs urge UNODC Director to mark International Human Rights Day by calling for rights-affirming drug policies", 30 November 2022. Available at <https://idpc.net/news/2022/12/for-the-third-year-in-a-row-100-ngos-urge-unodc-director-to-mark-international-human-rights-day>

Amnesty International calls on all international drug control mechanisms, including the CND and UNODC, to consistently incorporate human rights into their bodies of work. In particular, the CND should establish a standing item in its agenda to address the human rights impacts of drug policies and UNODC should include a specific chapter on human rights in its yearly World Drug Report.

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CONTACT US



info@amnesty.org



+44 (0)20 7413 5500

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