

May 21, 2023

Human Rights and Drug Policy

Submission of the International Association for Hospice and Palliative Care

In response to your letter of April 21, 2023, the [International Association for Hospice and Palliative Care](#) (IAHPC) is pleased to make the following submission to the Office of the High Commissioner of Human Rights (OHCHR) for consideration in the preparation of the study mentioned in Resolution 54/22 adopted on 4 April 2023 by the Human Rights Council. The submission is endorsed by the [Worldwide Hospice Palliative Care Alliance](#), the [International Children's Palliative Care Network](#), [Palliative Care in Humanitarian Aid Situations and Emergencies](#), the [African Palliative Care Association](#), the [Asia Pacific Hospice Palliative Care Network](#), the [Latin American Palliative Care Association](#), and the [European Association for Palliative Care](#).

As global and regional organizations active in the field of palliative care, our submission discusses governments' obligations to 1) respect protect and fulfil the rights of people with clinical needs to access to medicines containing controlled substances -- our focus is on essential opioid analgesics for pain management and palliative care -- while 2) protecting society from the harms of non-medical use of those same substances. Those member state obligations are mutually reinforcing under the right to the highest attainable standard of physical and mental health.

I. Introduction

Internationally controlled essential medicines (ICEMs) are those included both in the schedules of the three international drug control conventions *and* in the World Health Organization Model List of Essential Medicines (for adults and children). ICEMs are the cornerstone of palliative care practice. The International Narcotics Control Board (INCB) estimates that more than 80% of the world's people live in countries where access to ICEMs is low to inadequate. (1) Adequate availability of, and affordable access to these medicines supports the rights to life and personal security, to medical care, to the highest attainable standard of physical and mental health, and to participation in political, social, family, economic and civic life, among others. Morphine, fentanyl, hydromorphone, oxycodone, and methadone are included in the WHO Model List of Essential Medicines for the treatment of moderate to severe pain and dyspnea in advanced disease. They are also listed, or 'scheduled', for extra regulatory control under the international drug control conventions. These conventions mandate governments to promulgate regulatory controls to prevent harmful non-medical use that many regulatory bodies have translated into unduly restrictive national policies and social attitudes that prevent rational opioid availability for medical purposes and

1

result in preventable suffering that violates, *inter alia*, the right to the highest attainable standard of physical and mental health.

Palliative care (PC) is the active holistic care of individuals across all ages with serious health-related suffering (SHS) due to severe illness, including those near the end of life. It aims to improve the quality of life of patients, their families and their caregivers. (2) The World Health Organization estimates that only 14% of people in the world with palliative care needs, mostly in upper income countries, receive it. (3)

The **IAHPC** is a non-governmental organization in consultative status with the United Nations Economic and Social Council (ECOSOC) and a non-state actor in official relations with the World Health Organisation.

II. Background: global unavailability and serious health related suffering

[Experts estimate](#) that SHS, and thus the need for PC will increase in all regions of the world, with the largest proportional rise in low-income countries (155% increase between 2016 and 2060). By 2060, an estimated 48 million people (47% of all deaths globally) will die experiencing SHS, which represents an 87% increase from 26 million people in 2016. 83% of these deaths will occur in low-income and middle-income countries. Globally, SHS will increase most rapidly among older persons (aged 70 years and above --183% increase between 2016 and 2060). In absolute terms, it will be driven by rises in cancer deaths (16 million people, 109% increase between 2016 and 2060). The condition with the highest proportional increase in SHS will be dementia (6 million people, 264% increase between 2016 and 2060). (4)

According to the [INCB](#), more than **80%** of the world population, more than 5.5 billion people, mainly in low- and lower middle-income countries, has no access to internationally controlled essential medicines to address SHS associated with severe pain, palliative care needs, treatment of substance use disorder, and other conditions. Morphine, particularly oral morphine, is the gold standard of pain management according to WHO, and is unavailable to 75 per cent of the global population. The INCB also reports that lack of training of the health workforce, unduly restrictive regulations, and “fear of addiction” are the main impediments to opioid availability.

The [Lancet Commission on Palliative Care and Pain Relief](#), which studied the health economics of the global abyss in access to internationally controlled essential medicines such as morphine, calculated that improving access to medical morphine would cost the global community around USD145 million per year, [a fraction of the USD100 billion the world spends every year on drug control](#).

III. Human Rights Standards

The obligation to provide access to essential medicines is a [core minimum obligation of the right to health](#), which means that such access should be prioritised. The [Office of the United Nations High Commissioner for Human Rights](#) (OHCHR) has consistently linked access to medicines with the principles of equality and non-discrimination, transparency, participation, and accountability. ICMEs are not excluded from this interpretation of human rights principles relating to access to medicines generally. They should be available in appropriate formulations (including for children), with appropriate safeguards and prescribed by properly trained health workers, for people with palliative care needs throughout the health system, including in humanitarian emergencies.

The obligation of states to respect, protect, and fulfill the right to health includes an obligation to ensure consistent, safe, access to pain medicines and palliative care. (5) The United Nations Committee on Economic, Social and Cultural Rights has identified providing essential medicines, as defined by the WHO, as a core obligation under the right to health. (6) The WHO has included morphine in its Model List of Essential Medicines, a list of the medications that should be available to all persons (adults and children) who need them, since it was first established in 1977. (7) The right to be free from torture, cruel, inhuman, or degrading treatment or punishment also creates a positive obligation for states to protect persons in their jurisdiction from unnecessary pain related to a health condition.(8)

In 2008, the U.N. Special Rapporteur on The Right to the Highest Attainable Standard of Health and the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment jointly recognized that a failure to address barriers to palliative care and pain treatment can be a violation of human rights:

The failure to ensure access to controlled medicines for the relief of pain and suffering threatens fundamental rights to health and to protection against cruel, inhuman and degrading treatment. International human rights law requires that governments must provide essential medicines—which include, among others, opioid analgesics—as part of their minimum core obligations under the right to health. (9)

Since 2008, an increasing body of statements supports the right to pain treatment and palliative care including for women and children, in statements by the [Committee on Economic, Social and Cultural Rights](#) (CESCR) (10) the [Committee on the Elimination of Discrimination against Women](#) (CEDAW), (11) and the [Committee on the Rights of the Child](#) (CRC). (12)

Article 24, CRC, [General Comment 15 \(2013\) on the right of the child to the enjoyment of the highest attainable standard of health](#): States have an obligation to make all essential medicines on the World

Health Organization Model Lists of Essential Medicines, including the list for children (in paediatric formulations where possible) available, accessible and affordable.

Article 19 of the [Inter-American Convention on the Rights of Older Persons](#), stipulates that state Parties should “[e]nsure that medicines recognized as essential by the World Health Organization, including controlled medicines needed for palliative care, are available and accessible for older persons.” (13)

Article 2, Resolution 48/3 (Human Rights of Older Persons) approved by the Human Rights Council in 2021, “Calls upon all States to [...]promote and ensure the full realization of all human rights and fundamental freedoms for older persons in, inter alia, [...] the provision of [...] long-term support and palliative care services.” Consistent availability of controlled medicines is key to provision of palliative care services.

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