



Statement by Tlaleng Mofokeng

**Special Rapporteur on the right of everyone to the enjoyment of the
highest attainable standard of physical and mental health**

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Agenda Item 3: Promotion and protection of all human rights, civil, political,
economic, social and cultural rights, including the right to development

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Geneva

Mr. President,
Distinguished Delegates,
Civil society representatives,

It is a great honour for me to present **my fourth thematic report to the Human Rights Council which focuses on *Drug use, harm reduction and the right to health***. I thank all stakeholders for the contributions received. Last year, I undertook two country visits: to Luxembourg and to Costa Rica. My intervention will also focus on these visits.

Mr. President,

While the hour is already late, with nothing else left to say or do with the mandate given to me, I share in the collective rage and fury as we watch day after day horrific genocidal acts unfold and documented in real time. And in this moment, I bear witness to many people around the world who too under the crushing weight of the of imperialism and colonial oppression know nor peace or respite.

I remain optimistic that world leaders will summon the necessary political and diplomatic force to bring an urgent ceasefire so desperately needed.

Mr. President,

Drugs have been a part of human history for thousands of years, whether for medical healing, religious and cultural ceremonies or as commodities for pleasure.

It is crucial to distinguish between **drug use and drug use disorders**. Drug use is NOT a medical condition. The majority of people who use drugs do not have dependency and do NOT require treatment. Drug use disorders, including

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drug dependency, are a medical condition thus requiring appropriate support and treatment.

Together, the social, political, commercial and legal determinants of health can create and reinforce health disparities. With that in mind, I focus on how the availability, accessibility, acceptability and quality of care is affected by punitive approaches. I explored how **drug control compounds** and disproportionately affects certain rights and individuals. We must examine the **underlying power structures** that perpetuate the systems of disadvantage that have outlived colonialism, shaping the underlying dynamics of both drug use and how States address it.

The **intersection of criminal law, health, and human rights** is multifaceted. The failure to adopt a human-rights based approach to addressing drug use has had negative impacts especially on those in situations of homelessness or poverty, people with mental health conditions, sex workers, women, children, LGBTIQ+ persons, Black people, Indigenous Peoples, migrants, persons who are incarcerated or detained, persons with disabilities, persons living with HIV, and people living in rural areas.

Criminalization is but a single – and extreme option within a regulatory spectrum. Regulatory frameworks need to be cohesively developed by States in a way that is dependent on scientific evidence and considered power asymmetries and without undue influence from corporations.

Within **prison settings**, a lack of access to harm reduction services lead to a high prevalence of HIV, hepatitis C and tuberculosis. All measures necessary to implement the Nelson Mandela Rules should be taken. In addition, the Bangkok Rules and the Beijing Rules are applicable to women and children, respectively, deprived of their liberty.

Mr. President,

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Women who use drugs are also subject to higher rates of violence. Thus integration of harm reduction services with those for gender-based violence and sexual and reproductive health is required.

About 1 in 10 new **HIV infections** result from drug use by injection, yet over 92 countries have criminal laws relating to HIV. I urge all States to adhere to human-rights principles when negotiating the resolution on 'Human rights in the context of HIV and AIDS.'

For **both conflict and non-conflict** emergency situations, access to controlled medicines is a key element of the right to health, including anaesthesia during medical procedures and for the management of various health conditions. In this context of harm reduction, my upcoming report to the General Assembly in October 2024 will delve deeper into the themes of sustainable peace and security, sustainable development.

All people rely on **essential controlled medicines** for pain management, opioid dependence treatment, palliative care and other health conditions at some point in their life. Given the discriminatory perceptions of pain and who "deserves" relief, leads to a failure to ensure access to essential medicines for pain relief and drug use disorders and threatens the realization of the rights to health and to freedom from cruel, inhumane and degrading treatment.

Although not in the present report, I will pay attention to developments and advise on these trends of **using the courts** in spheres of medicine other than those related to drug use. For example, those seeking to restrict medicines for the management of medical abortions; causing harm to the practice of medicine by unfairly restricting essential medicines, contrary to WHO evidence-based guidelines and essential drug list.

Mr. President,

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Distinguished Delegates,

Harm reduction includes a wide range of policies, programmes and practices that are aimed at minimizing the negative health, social and legal impacts associated with drug use, drug laws and policies. They work best when tailored to the intersecting needs of individuals and communities.

Some practical harm reduction measures that numerous States have begun to implement include: Needle and syringe programmes, opioid agonist therapy, drug consumption rooms and supervised injection facilities, drug checking, overdose prevention and reversal, housing, employment and education and sustainable funding. I will take the opportunity later during this dialogue to explain these concepts further.

Harm reduction measures also focus on the removal of criminal penalties for drug offences, including for, but not limited to use or possession, and is a way of reducing the negative impacts of punitive drug policy on the right to health. I support the **full decriminalisation** of drug use. Evidence from jurisdictions that have taken a decriminalization approach demonstrates that adopting less punitive policies does not result in an increase in drug use, drug-related harms or other crimes.

End the 'war on drugs' as this is a war on people. I urge all States to be **centred on dignity, public health and human rights**. Harm reduction as an approach will improve trust, dialogue, creativity and innovation in this urgent moment of a paradigm shift. States should evaluate the possibility to create a mechanism mandated to monitor the situation of drug policies and human rights.

Mr. President,

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I extend my gratitude to the Governments of Luxembourg and Costa Rica for inviting me to assess the realization of the right to health in their countries. I also express my gratitude to all the different stakeholders and persons who met with me during both countries.

Visit to Luxembourg

I commend the authorities for the project adopted in October 2022 on Universal Healthcare Coverage (UHC), aiming at ensuring access to basic health care for vulnerable groups of the population who do not have compulsory health insurance. In line with the principles of UHC, health protection, including through social security, must be guaranteed to **everyone**, regardless of people's professional or administrative situation.

I commend the authorities for the adoption of the agreement between the Government and the National Health Funds implemented as of 1 April 2023, which ensures access to contraceptives and without age limit. I note that family planning services, including emergency contraception and safe abortion services, are largely accessible in the country.

At the time of my visit, I was pleased to learn that a draft national plan for mental health was being discussed.

I observed the collaborative nature of the relationship between ministries and associations/NGOs. However, the administrative burden placed on some associations is large, as some depend on volunteers to implement programmes to supplement what the State should offer. I also noted that the basis for many interactions between ministries/departments is trust and dependency on individual relationships, arising from Luxembourg being a small country. There will be benefits for the whole population if the agreements between ministries/Government entities could be codified into law to ensure the perennity of good practices.

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There is also a need to ensure the quality and timely collection of appropriately disaggregated data to inform public policies, resource allocation, forecasting of needs and make the reality and needs of marginalized groups of the population.

Finally, I commend civil society for a follow up activity organized after my visit - to which I participated - which provided technical capacity to medical practitioners on issues related to intersex persons.

Visit to Costa Rica

I was pleased to learn about the efforts the Government had made since 2016 to move towards universal healthcare coverage (UHC) and the inclusion of an important number of persons belonging to marginalized groups in the UHC provided by the Social Security Fund.

The country's efficient response to the COVID-19 pandemic was made possible by historical investment and political support for the health system. The country developed an operational and technical structure to respond to the pandemic, the agility of which was illustrated in relation to vaccination programs, public trust and national strategic plans.

During interviews including a visit to a mental health facility, there was an overall agreement that mental health was under strain, both regarding the experiences of the population and the response of the health system. With reference to Bill No. 22430, it subsequently became Law No. 10412, the National Mental Health Law post my visit.

I urge an expeditious move to full decriminalisation of abortion, criminal and legal restrictions are discriminatory in nature.

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I also wish to commend The National Strategy for Healthy Ageing based on the Life Course 2022–2026, as well as the leadership of many public officials. I was pleased to learn of and witness initiatives on refurbishment and remodelling projects for health facilities and measures to improve quality care. I observed that the citizens and public officials alike, carry a sense of pride for the public health system.

Mr. President,
Distinguished Delegates,

I am looking forward to continued cooperation with you to ensure that everyone throughout the world can realize the full enjoyment of the right to the highest attainable standard of physical and mental health and I remain available to provide technical assistance on aspects related to my mandate.

Thank you.

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